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Tax Alert

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Something for everyone in the new tax bill

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Something for everyone in the new tax bill

By Emma Marr

If you're thinking it's been a long time between tax bills, you're right – before this month's bonanza of tax reform was released, it had been nine long months since the last bill was introduced. Inland Revenue has not wasted the gestation period, there is a lot in the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill 2021, from GST reform to changes to local government tax rules, and a host of remedial changes. As if that wasn't enough, the Government has swiftly followed that up with a Supplementary Order Paper (SOP) primarily covering one of the hottest tax topics of recent times, the interest limitation rules on residential property, and snuck in an additional option for calculating FBT that might reduce the FBT payable by some employers.

The first and arguably most important feature of the Bill is to set the annual tax rates for the 2021-22 income year. The government can't collect tax without this Bill being passed, so you can be certain at least a component of it will be enacted by 31 March 2022. There is nothing new in these rates, which include the top personal tax rate of 39% on income over $180,000 which applied from 1 April 2021.

The star of the Bill is GST, and as well as some policy changes, there are a host of remedial changes – and the word "remedial" is doing a lot of heavy lifting here. Anyone registered for GST will want to read our article GST reforms in this edition on the GST changes , because there are some fairly fundamental changes to invoicing and some other useful remedials coming your way in 2022.

Eagerly awaited details on the deductibility of interest on residential property introduced in the SOP are covered in our article Property tax details revealed in this edition, as well as remedial changes to the bright-line test, including an improvement to the way the rules apply to homes under construction. You'll want to read that promptly, because the rules will have retrospective effect from 1 October 2021 when they are passed.

The Bill will also make the tax status of cryptoassets clear, with proposals to exclude them from GST and from the financial arrangement rules entirely. You can read our article Tax rules are catching up with cryptoassets in this edition for more detail on these rules.

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Employers who have been wrestling with the prospect of paying FBT at the single rate of 63.93% will be relieved to know the government has had a change of heart and found a compromise that should be good news for some. You can read about this change in New FBT rate option in this edition.

Local authority tax

The rules for taxing local authorities are changing in some respects. A wholly-owned council-controlled organisation (CCO), port company, or energy company will be able to pay exempt dividends to the local council that owns them, in the same way that wholly-owned companies can pay exempt dividends to their corporate shareholder.

The Bill will also limit deductions relating to donations and financing costs. The commentary to the bill states that this is to prevent local authorities accruing tax losses when they are largely exempt from tax, and using those losses to reduce the tax of CCOs in the same tax group.

Therefore, local authorities will no longer be able to deduct donations to charitable organisations or other public benefit gifts. There will also be limits on deductions for finance costs of local authorities, so that the total deductions cannot exceed costs incurred on:

- Loans made to a council-controlled trading organisation (CCTO);
- Borrowings to acquire shares in a group company that is a CCTO; and
- Base price adjustments for financial arrangements involving CCTOs.

Local authorities will no longer be able to convert excess imputation credits to losses, or use imputation credits within a consolidated group if the credit is attached to a dividend derived by the local authority.

These changes will apply from the 2022-23 income year.

Other changes include:

- Changes to the rules that apply to foreign currency hedges against a foreign investment taxed under the fair dividend rate method.
- Updates to the list of charities on the overseas donee list.
- Removing time limits on sharing of information that enables COVID-19 related initiatives between government agencies.
- Creating an offence for using electronic sales suppression tools. These tools alter point-of-sale data to understate or conceal revenue, resulting in lower (or no) tax payments. A range of penalties would apply for the manufacture, supply, use, acquisition, or possession of such a tool, ranging from $5,000 to $250,000, and stronger shortfall penalties for unpaid tax resulting from the use of such tools.
- Changes to expand the scope and make remedial amendments to the hybrid and branch mismatch rules, in particular in relation to the imported mismatch rule.
- Improved access to tax pooling for taxpayers in a number of circumstances, including those in their first year of paying provisional tax.
- Preserving shareholder continuity in corporate spin-outs for subsidiaries of the spun-out company.
- Allow capital gains to be preserved in a share-for-share exchange, so that the capital gains can be distributed tax-free in a future liquidation.
- The SOP included some technical amendments to the business continuity test (BCT) rules enacted earlier in 2021 that enabled losses to be carried forward after a breach in shareholder continuity if there were no major changes to the business.

There is a lot in the Bill and we encourage you to read the more detailed articles that follow, as they are very useful guides to the changes coming. Please contact your usual Deloitte advisor if you would like to discuss how the changes in the Bill will impact on you or your business.

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GST reforms: GST is moving into the digital age & other remedials proposed

By Allan Bullot & Dave Morris

Any businessperson who has grumbled about the pernickety requirements of GST invoicing will perk up their ears at the news that, in future, there will be more flexibility around tax invoice requirements. Flexibility in record keeping is one of a raft of proposed changes to GST in the new Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill (the Bill). As indicated in the title the Bill has a focus on GST with many of the changes following on from the GST issues paper released in 2020.

While there are a number of good intentions in the proposed changes, there will need to be some substantial changes before the Bill is in a form that will give effect to these good intentions in the real world. Some of the application dates for these proposals are impractical or lack certainty as to how they apply to transactions in the past. We urge people to consider the changes and the impact they will have on their businesses and make submissions.

We have commented on some of the more significant changes below.

Move into the digital age and away from paper-based record keeping systems – bye bye to GST Tax Invoices?

There have not been significant changes to legislation for invoicing and documentation since GST was introduced in 1985, in contrast to the vast improvements to technology and business systems. In the Bill, Inland Revenue seeks to remove requirements for documentation rules that were originally based on paper-based records, allowing for more flexibility in the way that the required GST information is shared between suppliers and their customers.

The proposed changes will not mean that business will have to stop using their existing systems, as the information required in the proposals often does not change significantly, rather the proposals are intended to provide business with more flexibility in an increasing digital world.

The required information to be held in finance systems will (at this stage) be known as *supply information* and *taxable supply information*, so no more GST Tax Invoices. In order to claim GST input tax credits you will need to hold the applicable *taxable supply information*, similar to the current tax invoice requirements.

The threshold for GST *supply information* under $50 will increase to $200 and there will no longer be the simplified invoice requirements for sales between $50 - $1,000. However, there is not yet any specific confirmation on the ability for purchasers to make claims of GST for purchases under $200 without detailed supporting GST information. This is an area that will require some further work, as is the one-size fits all approach for all supplies over $200 – there are many instances where there is no current process for the supplier to record the name and address of the recipient.

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The current overly technical credit or debit note rules will be simplified and when correcting *supply information*, the only test will be that the original information was incorrect.

It will no longer be necessary to issue credit or debit notes or print "copy only" on duplicate invoices, but currently there is a requirement in the Bill to keep a record of requests for replacement information from customers. This register is one element that will need to be removed if the legislation is to be workable in a practical digital environment.

One significant improvement in the Bill is that businesses wanting to issue buyer-created tax invoices would no longer need prior approval from Inland Revenue. There would still need to be an agreement that only the recipient would create *taxable supply information*.

In some situations, it can make sense for a shared tax invoice to be issued for a number of supplies by different businesses supplying the same customer. This is one area where the intention of the proposed changes is positive, but the details currently have issues. Significantly, the proposed requirement for joint and several liability is not something that is likely to work well in practice. We suggest that there are other ways that the desired intention could be obtained.

There are also changes to the current offence of issuing multiple tax invoices, with the Bill proposing to create a strict liability offence for the recipient to claim multiple input tax deductions for the same supply.

It is important to note that these changes to taxable periods after the date of enactment (expected to be March 2022) and that current legislation will apply up until then. We strongly recommend that businesses familiarise themselves with the proposals.

Change to GST groups – technical clarification, and better M&A treatment for departing members

The GST grouping rules are designed to prevent distortions arising from intra-group supplies and reduce compliance costs for companies who are part of the same group. Under the proposed changes there will be more legislative certainty for the treatment of GST groups.

In particular, the legislation will be explicitly clear that: the GST group would effectively be a single registered person for the purposes of carrying on their activities and for supplies to third parties; there would be no requirement for members to return intra-group supplies; each member will have joint and several liability; and a nominated member company's IRD number could be used for every member's invoicing. Group members can join either at the start of the GST period or when the company is registered. This means that part period returns from members who are yet to join a group are no longer required.

There have been no changes to the eligibility requirements to form a GST group.

It is proposed that when a company leaves the GST group, Inland Revenue could allow the joint and several liability obligation to be suspended for the departing company.

This is a great improvement and will simplify many business sales; it effectively adopts the same position that can be taken for income tax purposes when a company exits a consolidated tax group. Some changes will be needed to the detail of this proposed rule, but it is a great first step.

Property development remedials

Second-hand input tax credits and associated persons – a positive change

Often when starting a property development project a person may initially purchase a commercial property in their own name and then subsequently sell the property to their associated company once it has been registered. Currently the GST legislation prevents people being able to claim any input tax credit on the purchase, due to the way the associated persons rules work if the original non-associated vendor was not GST registered.

Under the new Bill, GST input tax would be able to be claimed by an associated party capped at the GST tax fraction of the most recent sale from a non-associated party before the second-hand goods was purchased by associated party.

This is a positive development as anti-avoidance associated persons legislation has arguably been "working" too well in many situations and people have missed out on receiving significant GST refunds which should have been available from a GST policy perspective.

GST sundry remedials

Domestic transport

Often international companies will subcontract an NZ courier for the

domestic leg of the transport of goods which is part of a larger international transportation arrangement. At a technical level this has often led to the incorrect zero-rating of the domestic leg of the transportation being a common occurrence by the NZ-based courier.

To fix this problem the Bill would allow the domestic leg of the transport of goods that are being exported or imported to be zero-rated, bringing the treatment in-line with what is already often occurring at a practical level and preventing commercial bias towards international couriers. It is good to see that this technical deficiency in the GST Act is being corrected.

Non-residents ability to claim import GST

While non-resident businesses who don't make GST taxable supplies in New Zealand are, under certain conditions, able to claim GST inputs for costs in New Zealand via a special non-resident registration process, currently this does not allow import GST to be reclaimed.

The changes in the Bill would allow import GST inputs to be claimed by non-residents provided that the imported goods are sold to a GST registered business in New Zealand. These changes are welcomed and will potentially allow for some streamlining of certain import and distribution processes into New Zealand in the future.

Export of goods FOB - can zero rate supplies to both residents and non-residents now

When goods are provided to a non-resident buyer "free on board" and physically passed to a buyer at the New Zealand port for export they can still be deemed to be supplied in New Zealand for GST purposes. However, the goods can currently be zero-rated as long as they meet certain criteria, which includes a requirement that the customer be a non-resident.

Under the proposed changes the zero rating for goods provided "free on board" would be extended to both resident and non-resident customers. This change will give some greater certainty to many businesses that are involved in primary industries. For example, a supplier who delivers logs to the ship of a New Zealand resident recipient who then physically exports the logs outside of New Zealand would be able to zero-rate the supply of logs, provided the supplier enters the goods for export.

Zero rated going concerns – change of use

Currently at a strict technical level there may be no requirements for a recipient of a zero-rated supply of a going-concern to adjust for private or exempt use of the supply. This contrasts with zero-rated land sales where an adjustment is clearly required for the portion of private or exempt use.

To align the going concern rules with the land use rules, from the date of enactment purchasers of a going concern would also be required to determine if they will use the supply for a non-taxable use and return GST on the apportioned amount.

Apportionment agreements for all

Currently a rule technically prevents most businesses with a turnover of less than $24million from agreeing a customised GST apportionment method with Inland Revenue. The Bill proposes that any registered person will be able to agree an apportionment method with Inland Revenue. While in practise the restriction has often not really been applied by Inland Revenue, the change indicates that they are willing to be approached on more apportionment issues and is a great step forward. It is good to see Inland Revenue encouraging taxpayers to engage with them on a prospective basis.

Overall, many of these GST changes will be welcomed by many at a conceptual level, but there is a need for a reasonable number of amendments to still be made to ensure that the GST changes give effect to the good intentions behind the proposals. Given many of the changes apply from the date of enactment of the Bill, it will be crucial that the Finance and Expenditure Committee receive submissions and make a number of practical changes to these proposals to ensure they work.

Please get in touch with your usual Deloitte advisor if you would like to discuss how these reforms will affect your business.

Overall, many of these GST changes will be welcomed by many at a conceptual level, but there is a need for a reasonable number of amendments to still be made to ensure that the GST changes give effect to the good intentions behind the proposals.

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Property tax details revealed

By Robyn Walker, Annalie Hampton, Susan Wynne, Hiran Patel, Jess Wheeler

After the surprise announcements in March, followed by a consultation paper in June, late September saw the introduction of legislation designed to switch off interest deductions for many owners of residential rental properties, starting from **1 October 2021**.

The legislation comes via a Supplementary Order Paper (SOP) added to the Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill (the Bill). The Bill had its first reading and is now with the Finance and Expenditure Committee (FEC) for consideration. The FEC will consider the contents of the Bill and SOP over the next six months and has called for public submissions by 9 November 2021. The general expectation, given the majority Labour Government, is that the legislation will largely proceed as proposed (with potential tweaks to the legislation to ensure it does work as intended). The legislation should be enacted by the end of March 2022.

What are the main proposals in relation to interest deductions?

- Interest deductions on many residential properties (including bare land zoned for residential use) acquired on or after 27 March 2021 will not be allowed from 1 October 2021.
- Interest on loans for residential properties (including bare land zoned for residential use) acquired before 27 March 2021 can still be claimed as an expense, but the interest deductions will be phased out from 1 October 2021:

Date interest incurred	Percent of interest you can claim
Before 1 October 2021	100%
1 October 2021 – 31 March 2023	75%
1 April 2023 – 31 March 2024	50%
1 April 2024 – 31 March 2025	25%
1 April 2025 onwards	0%

- If money is borrowed on or after 27 March 2021 to maintain or improve property acquired before 27 March 2021, it will be immediately non-deductible from 1 October 2021 rather than subject to the phase out rule. There are some transitional rules to allow refinancing of borrowing (and certain other transactions) without forfeiting interest deductions.
- Interest which is incurred in relation to non-residential property purposes will remain deductible (for example, a plumber draws down a loan against a residential property in order to buy a business van).
- Transitional rules exist to help taxpayers apportion borrowing which has mixed purposes (e.g. a loan for a mixed-use building).
- An exclusion from the interest denial rules applies to "new builds". A "new build" is a self-contained dwelling which has received a code of compliance certificate (CCC) on or after 27 March 2020 (a year earlier than originally proposed). Owners of new builds will be able to claim interest deductions for 20 years from the date of the CCC (this includes the original owner and any subsequent owners if the property is sold).
- There are also exclusions from the rules for a number of different property types and owners; generally situations where the property wouldn't typically be used by an owner-occupier.
- The property exclusions are: main homes (e.g. flatmate/border situations), most business premises (e.g. a house converted to a doctor's surgery), hospitals, hospices, nursing homes, convalescence homes, retirement villages, rest homes, hotels, motels, hostels, inns, campgrounds, houses on farmland, bed & breakfasts, employee accommodation, student accommodation and land outside New Zealand.
- Generally, social housing providers are also exempted from the rules.
- Companies which have less than 50% of total assets in residential property subject to these rules will also be outside of these rules unless they are a "close company". A company is a close company when 5 or fewer natural persons or trustees own more than 50% of the voting interests in the company, treating all associated persons as one person.
- A new concept of an "exempt Māori company" has been introduced which is excluded from the interest limitation rules on the same basis as companies which are not close companies. This will include a company that is a Māori Authority, eligible to be a Māori Authority or wholly owned by a Māori Authority. "Māori excepted land" is also excluded from the rules. This includes certain types of Māori land title, land transferred as part of a Treaty settlement and land owned by a Māori authority (or entity eligible to be one) and used to provide housing to a member of the relevant iwi or hapu.
- Property developers should not be affected by these changes and will still be able to claim interest as an expense.
- If a taxpayer has been denied interest deductions but is subsequently taxable on the proceeds when the property is sold (for example it is sold within the bright-line period), the taxpayer will be able to claim interest deductions up to the amount of the taxable gain on sale.

What are the main proposals for the bright-line test?

- Earlier this year the bright-line test was extended to apply for 10 years. This legislation will reduce the bright-line test to 5 years for "new builds". This amendment will be backdated to 27 March 2021. For the purposes of this rule, a "new build" is a property acquired on or after 27 March 2021 which has been acquired within 12 months of receiving its CCC.
- The bright-line test has had many changes in length since it was first introduced and the following table summarises which rule applies:

When the property was acquired	The bright-line period that applies
On or after 27 March 2021, unless the property is a "new build"	10 years
Between 29 March 2018 and 26 March 2021 (inclusive) for properties which are not "new builds" On or after 27 March 2021 for properties which are "new builds"	5 years
Between 1 October 2015 and 28 March 2018 (inclusive)	2 years

We will be running a property tax rules webinar for our clients on 28 October 2021

1 October 2021 is the start date for a range of significant changes to the taxation of residential rental property. Interest deductions will either be switched off completely or phased out for many property owners. The legislation effecting these changes has not yet completed its parliamentary processes, so there is still a chance to influence some of the details by making a submission by 9 November 2021.

Our property tax experts are running a client webinar on the new rules on Thursday 28 October, 11:30am – 12:30pm. Register below to secure a spot in the webinar, space is limited.

Follow the link below to register for the webinar.

Register for property tax rules webinar

For questions about the webinar please contact Wendy Luff

- New roll-over relief rules will apply from 1 April 2022 to ensure that in some circumstances the bright-line test is not triggered when the ownership of a property changes, but the effective ownership is the same (for example a property is transferred from personal ownership into a family trust).
- In addition to the changes contained in the SOP, the Bill also included some other changes to the bright-line test. These changes relate to situations where a "main home" becomes subject to the bright-line test, effectively fixing anomalies from when the legislation was rushed through earlier in the year.

Deloitte Commentary:

Property taxation has been the talk of the town since March 2021, and one thing has become very clear in that time: people have lots of different and complicated ways of holding property. How these rules will impact on individual taxpayers will vary depending on their particular circumstances. Taxpayers with a simple residential rental property should generally be able to understand the rules easily enough, but taxpayers with more complicated circumstances will need to review these rules in more detail; for example, taxpayers with mixed use borrowing, mixed use properties, land which contains an existing property where a new build may be added, subdivided land, properties where borrowing needs to be refinanced etc.

Because of the rush to have legislation drafted on time for the 1 October 2021 start date, Inland Revenue Officials have had insufficient time to prepare a detailed commentary to accompany these law changes, which is the normal public policy process when new legislation is introduced. When tax law is complex, it is the commentary which aids users of the draft legislation to understand the policy intent behind the rules. It is expected that the commentary will be completed and made available in mid-October. Still, this provides less time for tax advisors to analyse and understand the finer details before submissions are due.

As noted above, submissions on the Bill can be made until 9 November 2021. While the Government has made it clear that the substantive policy decisions will not change, there is still an opportunity to review the legislation and make submissions on how the legislation could work better or be clearer for taxpayers to comply with. Whether the Government will listen remains to be seen.

Other land matters to be aware of

On the day the SOP was released, Inland Revenue also released a draft interpretation statement on the application of the land sale rules to changes to co-ownership, subdivisions, and changes of trustees. We think the timing of the release was not a co-incidence, and submissions on this draft item also close on 9 November 2021.

The draft interpretation statement highlights a range of scenarios where there is a change in ownership interests in land which may therefore result in a "disposal" for the purposes of the land sale rules, with the consequence possibly being a surprise tax cost (for example, if the change in ownership occurs within the bright-line period). The following table is taken from the draft interpretation statement and summarises examples and conclusions contemplated by the document:

Sample scenario	Is there a "disposal" for the purposes of the land sale rules?
Change to form of co-ownership only A change to co-ownership from 50/50 tenants in common to joint tenants, or vice versa (same two owners)	No
Change to proportionality of co-ownership A change to co-ownership from A and B as either 50/50 tenants in common or joint tenants to tenants in common, A as 25%, B as 75%	Yes – disposal by A of an interest in the land as to 25%
Addition of a co-owner A change to co-ownership from A and B as equal co-owners (either joint tenants or 50/50 tenants in common) to A, B and C as equal co-owners (either joint tenants or tenants in common as to 1/3rd each)	Yes – disposal by A of a 1/6th interest in the land to C, and disposal by B of a 1/6th interest in the land to C
Removal of a co-owner A change to co-ownership from A, B and C as equal co-owners (either joint tenants or tenants in common as to 1/3rd each) to A and B as co-owners (either joint tenants or 50/50 tenants in common)	Yes – disposal by C of a 1/6th interest in the land to A, and disposal by C of a 1/6th interest in the land to B
Subdivision – all new titles issued to original owner Subdivision of land. All new titles issued to the original owner(s) in the same proportions or notional proportions that they held in the undivided land	No
Subdivision – new titles not all issued to original owner Subdivision of land. One of the new titles issued directly to a purchaser	Yes – disposal, by the owner of the original piece of undivided land, of the land comprised in the new title that is issued to the purchaser
Subdivision – co-owners each receive separate new titles Subdivision of land by equal co-owners, with each receiving one of the new titles (reflecting their proportionate or notional proportionate interest in the undivided land)	Yes – disposal by each co-owner of an interest in the land comprised in each new title issued to another co-owner. The extent of the interest disposed of in each lot issued to another co-owner is the proportionate or notional proportionate interest the person had in the undivided land
Transfer of land on change of trustee Transfer of land to reflect that there has been a change of trustees of a trust which owns the land	No

For more information on any of these issues please contact your usual Deloitte advisor.

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Tax rules are catching up with cryptoassets

By Ian Fay and Alex Chang

Following on from our previous article about investing in cryptocurrency (cryptoassets) and our article on blockchain forks and airdrops, the Taxation (Annual Rates for 2021-22,GST, and Remedial Matters) Bill currently before Parliament introduces a new definition of cryptoassets. The Bill uses the new definition to address the GST treatment of cryptoassets and also addresses the application of the financial arrangement rules. The Bill reflects that the law is catching up with current practice by proposing that the changes have retrospective effect from 1 January 2009, when Bitcoin was first launched.

The Bill recognises that cryptoassets are a complex and constantly evolving area. As more and more taxpayers start investing or dealing with digital assets, the Bill proposes a broad definition option for cryptoassets in an attempt to future proof the legislation and provide greater clarity on how tax laws apply.

Clearer definition of cryptoassets?

Both the GST Act and the Income Tax Act are having identical definitions of "cryptoasset" added. The proposed definition of cryptoasset is a digital representation of value that is designed to be fungible and exists in "a database that is secured cryptographically and contains ledgers, recording transactions and contracts involving digital representations of value, that are maintained in decentralised form and shared across different locations and persons; or another application of the same technology performing an equivalent function".

The proposed definition of cryptoassets does not apply to non-fungible tokens. Non-fungible tokens or NFTs are units of data stored on a blockchain that certifies a digital asset that is unique and not interchangeable, such as photos, videos, audio, and other type of digital files stored on a blockchain.

GST treatment of cryptoassets

Currently, most cryptoassets are unlikely to be "money" for the purposes of the GST rules. As a result, the supply of cryptoassets is uncertain and could be subject to GST at 15%; an exempt financial services; or a zero-rated supply to a non-resident. From a policy perspective, the commentary to the Bill identifies that there three main issues if GST is imposed on transactions involving cryptoassets: (1) it disincentivises purchasing of cryptoassets by residents, (2) it results in double taxation, and (3) it increases compliance costs.

The proposed changes will exclude the supply of cryptoassets from the definition of services, effectively treating cryptoassets like money. While the supply of cryptoassets would not be subject to GST, goods and services which are bought using cryptoassets will still be subject to GST just like other goods and services purchased using money.

The supply of non-fungible tokens will remain subject to GST if supplied by a registered person.

Financial arrangement rules and cryptoassets

Financial arrangements (FAs) are broadly defined and include most arrangements where there is an exchange of value but a time gap between the giving and receiving of value, for example a loan. Some types of cryptoassets may be categorised as FA under the current rules, which could lead to accrual-based taxation on large unrealised gains and losses on some cryptoassets. Given the volatility of crypoasset values, to the extent that cryptoassets would be FAs this could lead to significant volatility in taxable income and resulting tax liabilities where the taxpayer does not have funds available to meet these obligations.

The proposed changes will treat most cryptoassets, other than those that are similar to loans, as excepted financial arrangements such that the FA rules will not apply, meaning that unrealised gains and losses will be outside of the tax net, but realised gains will be subject to tax (Inland Revenue have previously advised that all disposals of cryptoassets gives rise to income).

Deloitte's Comment: Greater clarity but tax treatment of cryptoassets is still a complex area

While the introduction of a broad definition of cryptoassets and associated carve out from GST and FA rules is useful and provides some certainty, the tax treatment of cryptoassets remains a complex area. This will continue to evolve.

The changes to application of GST and FA rules to cryptoassets with retrospective effect from 1 January 2009 will bless the approach taken by many taxpayers to date. However, it will be interesting to see how Inland Revenue deal with taxpayers who paid the GST on cryptoasset transactions over the last 12 years as normal practice for reassessments is to only go back 4 years.

If you have any queries on the income tax or GST treatment of cryptoassets, or unsure of your tax obligations, please seek advice from your usual Deloitte tax advisors.

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New FBT rate option announced – but how helpful is it?

By Andrea Scatchard & Jonny Reid

Included in the Government's expected announcement of the draft interest deductibility rules at the end of September was something perhaps unexpected, but not necessarily unwelcome: a proposal for a new option to calculate fringe benefit tax (FBT) on fringe benefits provided to employees from the 2021/2022 tax year onwards. On the face of it this seems like a good development but we are not sure it is really adding much practical value for most employers.

Impact of FBT rate change

As we noted in an earlier article, from 1 April 2021 the top marginal tax rate for individuals increased to 39% and the top FBT rate was raised to 63.93%. Prior to this change, many employers were using the single rate option to calculate FBT on all benefits provided at a flat rate of 49.25%. Employers that do not have any employees who earn over the $180,000 threshold faced an unwarranted 30% increase in their FBT bill. As a result of this increase more and more employers have been forced to consider using the compliance heavy alternate rate method of calculating FBT to minimise the increase in their FBT liability.

Under the alternate rate method, the employer pays FBT at either 49.25% or 63.93% in the first three FBT returns each year and then performs an attribution calculation for the March quarter, which acts as a wash-up of the annual FBT liability. The full attribution calculation is complicated but broadly aligns the FBT rate that applies to benefits provided to each employee with their marginal tax rate.

The FBT rules recognise that performing this full attribution calculation carries a higher compliance cost so also provides a low compliance cost option. This currently allows employers to calculate the annual FBT liability for the purpose of the washup calculation at the flat rate of 63.93% on the taxable value of the attributed fringe benefits, and this is where the proposed change will take place.

Proposed change

Under the proposal, employers will have the choice to calculate their annual FBT liability using the flat rate of 49.25%, except for attributed benefits provided to employees that have all-inclusive pay of $129,681 or more which must be taxed at 63.93%. (All-inclusive pay is net cash remuneration plus the value of attributed fringe benefits, and $129,681 of all-inclusive pay is equivalent to $180,000 gross income.) Generally, this higher rate will only apply to benefits provided to employees earning close to or more than $180,000 of gross salary and wages.

Where employees are clearly under or over the all-inclusive pay threshold amount, it will be easy for employers to pick the appropriate FBT rate to apply in the wash up calculation. But for employees that are on the cusp of the threshold, employers will still need to calculate the employee's all-inclusive pay, which involves determining which benefits need to be attributed as if a full attribution calculation is going to be undertaken (i.e. the very process that the proposal seeks to avoid).

As the change only affects the March quarter FBT return, any employers who paid FBT at the higher rate of 63.93% in the June 2021 quarter will need to wait until the March 2022 FBT return is filed to receive a refund of the excess paid. This is just adding an unnecessary layer of complexity for what will largely be smaller employers.

So how beneficial is this change?

While this is a welcome change, especially for smaller employers, the Supplementary Departmental Disclosure Statement issued with the proposal states that this change has "*been assessed as having no or a very minor impact on businesses, individuals, or organisations*". This assessment reflects that the change really just legislates a de facto approach that many employers would have taken in calculating their annual FBT liability in the March 2022 quarter, and the amendment would have been completely unnecessary if Inland Revenue had more fully considered some of the wider implications of introducing the new 39% top tax rate in the first place.

It is also disappointing to note that there has been no change to the FBT rate that applies to benefits that are able to be pooled under the alternate rate calculation methodology. This rate increased from 42.86% to 49.25% from 1 April 2021 and represents another unwarranted tax grab from employers that do not have many or any employees earning over $180,000. This aspect of the original FBT rate change has previously been raised with Inland Revenue officials as (in our view) needing to be addressed to restore a common sense position for employers.

With more calculation options now available, please reach out to your Deloitte adviser if you would like to discuss how to calculate your FBT liability in your next FBT return or to review the benefits you are currently providing to employees to ensure you are not overpaying FBT.

It is also disappointing to note that there has been no change to the FBT rate that applies to benefits that are able to be pooled under the alternate rate calculation methodology. This rate increased from 42.86% to 49.25% from 1 April 2021 and represents another unwarranted tax grab from employers that do not have many or any employees earning over $180,000.

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COVID-19 Updates – October 2021

By Robyn Walker

As the COVID-19 response reaches its 19th month in New Zealand, various forms of business support continue. In this article we provide a stocktake of what is available.

Business Support Payments

The Wage Subsidy

The August 2021 Wage Subsidy has reached its fourth fortnight of support for employers. The Wage Subsidy continues to provide payments to the self-employed and employers who have suffering a 40% or greater loss of revenue as a consequence of Alert Levels 3 and 4. The revenue test period for the fourth round of the Wage Subsidy is 28 September 2021 to 11 October 2021. Applications for the fourth round of the Wage Subsidy remain open until 11:59pm, 14 October 2021.

The eligibility criteria remain consistent with prior schemes with a key factor being now that businesses located in areas which are at Alert Level 2 need to establish how their revenue loss is connected to parts of New Zealand being at Alert Level 3 or higher. If part of New Zealand moves either up or down the Alert Level 2 - 3 boundary during a Wage Subsidy period, impacted businesses can just assess their total revenue loss rather than needing to segregate the causes of the revenue loss between different Alert Levels. For the fourth round of the Wage Subsidy, this means that Waikato businesses who have moved to Alert Level 3 are eligible to apply even though part of the revenue loss period was spent at Alert Level 2.

The Wage Subsidy will continue for each fortnight part of New Zealand remains at Alert 3 or higher, with a fifth round of the Wage Subsidy already confirmed. For more information about the Wage Subsidy, please refer to our earlier articles:

Wage Subsidy criteria become harder to meet as time goes on | Tax | Deloitte New Zealand

Objective and subjective considerations in relation to the Wage Subsidy | Tax | Deloitte New Zealand

Leave Support Scheme and Short-Term Absence Payment

Administered by the Ministry of Social Development, the Leave Support Scheme and Short-Term Absence Payments are available for businesses to support their employees regardless of what Alert Level applies within New Zealand.

The Leave Support Scheme provides a lump sum payment to support employees who are unable to work from home and are required to self-isolate for up to 14-days due to a potential exposure to COVID-19, or they are considered "higher risk" if they contract COVID-19 when there is active community transmission.

The Short-Term Absence Payment provides a lump sum payment which effectively covers a couple of days leave when employees are required to stay at home while awaiting the outcome of a COVID-19 test and the employee cannot work from home.

The Resurgence Support Payment

The Resurgence Support Payment (RSP) is a lump sum payment available to businesses to assist in meeting costs while any part of New Zealand is at Alert Level 2 or higher. To date the Government has confirmed four rounds of the RSP will be available as part of the current outbreak. Applications for the third round of the RSP open on 8 October 2021 through the Inland Revenue website. Subject to Alert Levels, a fourth round of the RSP will open three weeks later.

Small Business Cashflow Loan

A potentially interest-free loan (if repaid within 2 years) is available to viable businesses with 50 or fewer full-time equivalent employees. The Small Business Cashflow Loan Scheme is administered by Inland Revenue.

For more information about the Resurgence Support Payment, Leave Support Scheme, Short-Term Absence Payment and Small Business Cashflow Loan Scheme please refer to our earlier article:

COVID-19: What government support is available for businesses? | Tax | Deloitte New Zealand

Recent Tax Developments

In 2020 a power was introduced to allow the Commissioner of Inland Revenue (Commissioner) to vary due dates or other requirements, when compliance with those requirements become impossible, impractical, or unreasonable in the context of COVID-19. This power was due to expire on 30 September 2021, however on 30 August 2021, the Tax Administration (COVID-19 Response Variations) Order 2021 was made extending the powers to 1 October 2022.

The most recent use of the Commissioner's variation power took place on 30 September 2021, when Inland Revenue released variation determination COV 21/03 - Variation of section 15D(2) of the Goods and Services Tax Act 1985 for applications to change a GST taxable period. The variation applies to a registered person who wishes to change from a 6-month to a 1-month taxable period, and for a 6-month taxable period commencing between 1 April 2021 and 31 March 2022. All previous COVID-19 variations are available here.

The Taxation (Annual Rates for 2021-22, GST, and Remedial Matters) Bill (the Bill) contains a proposal to expand some of the COVID-19 use-of-money concessions discussed in our previous article. Once enacted, it will be possible for use-of-money concessions to be targeted towards specific groups of taxpayers rather than all taxpayers.

The Bill also contains proposals to extend out the time period that Government agencies are able to share data between themselves for COVID-19 related initiatives. Originally information sharing was to be constrained to a 24-month period, but will become open-ended. Presumably the extended time-period will help facilitate the Minister of Social Development undertaking reviews of Wage Subsidy applications in the years to come.

Other Tax Support to be aware of

While not new developments, its worth reminding readers that a number of tax changes have been made since the beginning of the COVID-19 outbreak in New Zealand, some of which may still be of relevance. Three major developments to be aware of are:

- A loss carry back rule still exists, so businesses who have now determined they have ended in a tax loss position in the 2021 income year will have the option to carry that loss back to the 2020 income year to obtain a refund of previous tax paid. You can read more about these rules here.
- The new business continuity test exists to allow businesses which are in a tax loss position to carry forward tax losses when there is a change in shareholding. You can read more about these rules here.
- Depreciation on non-residential buildings was reinstated for the 2021 income year onwards. As businesses prepare tax returns for this year they should ensure they are claiming this depreciation deduction. You can read more about these rules here.

For more information about any of these topics, please contact your usual Deloitte advisor.

A potentially interest-free loan (if repaid within 2 years) is available to viable businesses with 50 or fewer full-time equivalent employees. The Small Business Cashflow Loan Scheme is administered by Inland Revenue.

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Tax Governance: Inland Revenue's latest compliance campaign

By Annamaria Maclean & Jodee Webb

The New Zealand Inland Revenue is following the lead of other tax authorities around the world and this week launched a compliance campaign focusing on tax governance. The first step of the campaign kicked off with Inland Revenue issuing a questionnaire to approximately 150 organisations with over $30m of revenue (both foreign and NZ-owned). We understand a tax governance review will also be undertaken on organisations that are subject to annual risk reviews as part of their annual compliance programme with Inland Revenue.

The questionnaire's focus is deeper than ensuring an organisation has a tax strategy in place, but reviews how it is embedded into systems and processes. Inland Revenue expect tax strategies and tax control frameworks to be in place, with sound systems, clear accountabilities, strong controls and highly skilled people supported by robust processes and procedures. Inland Revenue also focuses on senior management (i.e. the CFO) taking responsibility for tax governance.

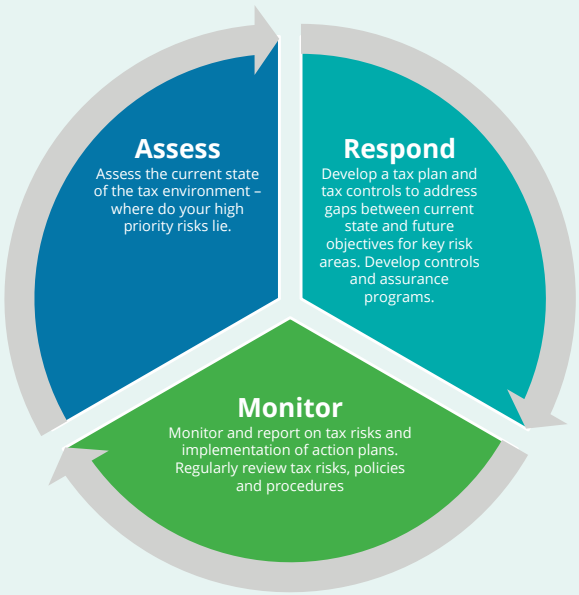
There is also a clear expectation that Board members have an understanding of, and take responsibility for, the tax risks of the companies they act for.

It is not just Inland Revenue and other tax authorities that are raising questions around tax governance, investors are increasingly interested in knowing that businesses are sustainable long-term and part of this is their "social licence to operate". The Global Reporting Initiative (GRI) Standards, which are designed to be used by organisations to report on their impact on the economy, the environment and society have introduced a standard for reporting on tax which is applicable to periods after 1 January 2021. This helps an organisation communicate with its stakeholders on a range of topics, including: management's approach in relation to tax; its tax governance and control framework; how the organisation engages with the tax authorities; tax policy advocacy; and the level of direct and indirect tax paid by the organisation on a country by country basis.

Given Inland Revenue are starting on a journey to review tax governance frameworks, and the increasing focus for other stakeholders, even if you are not a recipient of the questionnaire, now is a good time to reflect on your tax governance framework and consider whether it is robust enough in the current climate.

How to strengthen your tax risk management framework

We suggest a three-step approach to strengthening your tax risk management framework and ensuring it is fit for purpose.



Assess

Organisations should undertake an initial assessment of the current state of their tax governance position. To help you develop an initial assessment or benchmark we can use Tax Risk Cube ("The Tax Cube"), a risk assessment diagnostics tool. The Tax Cube is a comprehensive set of questions based on best practice in the area of tax risk management and is completed in a workshop with your tax / finance team and other key stakeholders.

The results of the workshop are summarised in a heat map which will then enable you to identify priorities for change and clear actions to take forward.

We also offer a Tax Cube Lite version, which provides an insight into the key aspects of governance and general tax management within the organisation without drilling into specific tax types. This would provide a great starting point in determining how well an organisation could respond to Inland Revenue's questionnaire.

Respond

Risks identified during the Assess phase can be responded to by implementing a robust tax control framework or refining an existing framework where one already exists.

The Tax Cube

	General tax management	Income tax	GST	Employment taxes	Customs & excise	Other taxes
Governance	78%	34%	56%	33%	31%	34%
People	56%	45%	33%	55%	66%	54%
Process	81%	68%	81%	71%	80%	80%
Data & systems	63%	40%	76%	38%	73%	62%
Technology	77%	33%	62%	34%	54%	62%

High priority risk
Medium priority risk
Low priority risk

What is a Tax Control Framework?

A Tax Control Framework incorporates board level controls, the organisations risk appetite and approach to risk management, and embeds this in internal controls, policies and procedures so the organisations tax strategy can be implemented in practice.

The essential components of a Tax Control Framework should include:

- Defining tax risk – what are we trying to manage?
- Tax risk management processes – how do we go about managing risk?
- Tax risk appetite – what risks are we willing to take?
- Tax risk management segregation of duties – who is responsible for what?
- Tax risk governance – how do we oversee tax risk management?

There are several elements to consider when putting in place a robust tax control framework. These can be categorised under the five interrelated components of the Tax Risk Cube: Governance, People, Process, Data & Systems, and Technology. Tax controls should be applied comprehensively to cover all transactions that have an impact on all relevant tax positions.

Tax controls and documentation

Once in place, the tax frameworks and control documentation should take a top down approach, with the Board having overall responsibility for the tax strategy for the organisation.

Documentation should include:

- Tax strategy document set and owned by the Board covering areas such as the organisation's tax risk tolerance and approach to relationships with tax authorities;
- Tax control framework to assist management with managing tax risks, including tax management plans and tax risk registers;
- Tax control processes for each specific tax type;
- Tax policies and procedures to provide guidance at a day to day operational level.

Review of specific tax risks

If risks in relation to specific tax types have been identified during the Assess phase, we can assist clients undertake more focused reviews on certain tax types. This will help close any gaps in the tax control framework, tax policies and procedures and ensure the risk is better managed going forward.

Given Inland Revenue's increasing use of data analytics to identify risks, our reviews are more and more data analytics focused.

Even if risks regarding a specific tax type are not identified at the Assess phase, it is best practice to have rolling independent reviews of key tax risk areas for the business (for example, fixed assets, GST, customs, PAYE, FBT and other indirect taxes), including a review of the tax controls in those areas.

Monitoring and ongoing compliance

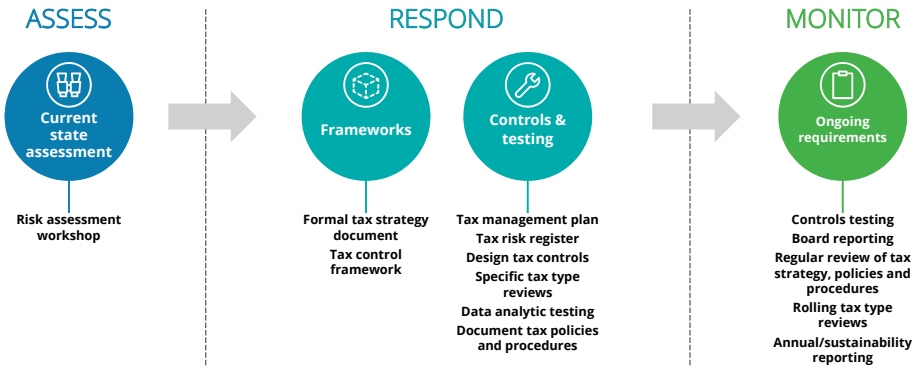
As with any process, tax governance is not a "set and forget" exercise but requires regular attention and testing to ensure it meets the organisation's needs.

Ongoing monitoring and regular reporting to the Board and other stakeholders is essential to ensure that tax risks are continually monitored and reviewed. To facilitate this, the Tax Cube can be re-performed to see how an organisation is tracking against the original benchmark assessment.

Tax control testing is also a really vital part of the monitor phase to ensure that the tax controls are working as intended. The Inland Revenue also expect that tax controls and the tax control framework is tested independently every three years.

We can help to test tax controls in many ways including a walkthrough of tax compliance controls, testing the operational effectiveness of controls and assessing the design effectiveness of controls.

Process overview



Contact us

If you would like to discuss tax governance further or are interested in running a Tax Cube diagnostic workshop, then please get in touch. We can also help to test the design and operational effectiveness of tax controls for those companies that have put tax governance policies and controls in place.

We will be running a tax governance webinar for our clients on 20 October 2021

The webinar will provide an overview of what good tax governance means, what a tax control framework looks like, and the various phases involved in its maintenance. A representative from Inland Revenue will also be attending to share their views.

Follow the link below to register for the webinar.

Register for tax governance webinar

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Economic income and tax on a collision course? Inland Revenue's effective tax rate project is about to start.

By Robyn Walker

It's no secret that broadening of the tax base is on the wish-list of parts of the Labour Party. Since the failure to get a capital gains tax over the line in 2019, despite being recommended by the last Tax Working Group, it's been necessary to search for more creative ways of expanding the tax base. While nothing is currently on the table in this electoral cycle, an information gathering exercise is about to start to better understand wealth and effective tax rates in New Zealand.

At present there is very limited data about high wealth individuals, and this can lead to conjecture as to whether these individuals are paying their fair share. The basic premise is simple, an individual who has a lot of appreciating assets in a country without a comprehensive capital gains tax is able to increase their wealth without the same tax burden as an individual who does not own any appreciating assets and only earns salary and wages. This all contributes to increasing wealth inequality.

In order to plug the information gaps, Inland Revenue are about to undertake a project to research the effective tax rates on the economic income of high wealth individuals. The research project will involve an extensive information request being sent to those who are fortunate enough to have been identified as part of this population. Around 400 "family units" with estimated wealth in excess of $20million will be receiving the first of two information requests in December 2021. The first information request will ask the individuals to confirm what businesses they hold interests in. Phase two of the project is expected to start in April/May 2022 and will formally request a range of financial and personal information from these individuals, covering six years. The data collected will be analysed and the ultimate output will be a report in June 2023. The report will be made public and will contain aggregated data.

The purpose of the report is to look at effective tax rates of high wealth individuals. The effective tax rate will be established by comparing income tax paid to the "economic income" (not income under current tax definitions). The results are going to inevitably show an effective tax rate which is below the highest marginal tax rate, because the calculations are measuring things which are not currently subject to tax. Whether the effective tax rate calculated for this population is materially different to the effective tax rate of an "average home-owning New Zealander" is another question, and not something which is in the scope of the project. Like all things to do with tax, its usually not as simple as it first seems, for example should GST be included in the calculations, what about foreign taxes, or charitable donations?

Please contact your usual Deloitte advisor if you'd like to understand more about this project.

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IBOR reform - time to check the tax impact

By Sam Kettle, Joo Cha, Troy Andrews, Will Dawson & Bart de Gouw

Interbank Offered Rate (IBOR) reform is one of the most significant undertakings in the financial services industry in recent years. The resulting potential changes to affected contracts could have a variety of tax impacts, so it's important as part of the review process to ensure those tax impacts are properly understood and reflected in the updated agreements, if relevant, and in related tax filings. IBORs, especially the LIBOR, have set the benchmark rate for lending on an unsecured basis, underpinning the worldwide trade in financial products. However, a series of scandals surrounding LIBOR during the last financial crisis and sustainability concerns in the unsecured banking market led regulators around the world to look into alternative risk-free reference rates (RFRs).

The UK's Financial Conduct Authority (FCA) announced earlier this year that from 31 December 2021, all GBP, EUR, CHF, and JPY LIBOR settings in all tenors (overnight, one week, and one, two, three, six, and 12 month settings), and USD LIBOR one week and two month settings either will cease to be provided by any administrator or will no longer be representative. USD LIBOR overnight and one, three, six, and 12-month settings will cease on 30 June 2023.

Accordingly, businesses may be looking to make changes to the contracts of impacted IBOR-based financial products by:

- replacing the existing IBOR in the relevant agreement with an alternative RFR.
- amending existing fallback clauses or introducing fallback clauses where they do not currently exist.
- making other variations to contracts as a direct consequence of IBOR reform, such as additional payments to be made for the purposes of preserving the parties' economic positions.

For different stakeholders, any variation to the financial contract must be carefully analysed to determine whether it amounts to:

- the modification of an existing contract (i.e. a continuation of the existing contract); or
- the termination of the existing contract replaced by a new contract.

These changes are likely to impact cash flows, financial reporting and tax, among other things. The affected entities should conduct impact assessments, design change solutions, plan the transition and implementation of the new RFRs.

New Zealand income tax considerations

While the Australian Tax Office ("ATO") has recently released a consultation paper surrounding the reform acknowledging there are likely to be challenging tax implications, Inland Revenue is yet to follow. The tax considerations contained in the ATO's consultation paper are broadly consistent with what we would consider in New Zealand.

Financial arrangement rules

The key consideration from a New Zealand tax perspective is whether a Base Price Adjustment (BPA) would be triggered under the financial arrangement rules. A BPA, which is a wash up calculation bringing all consideration under the arrangement to tax, is required when a financial arrangement matures – i.e. if there is a termination or extinguishment of the existing contract. This is a different analysis to the methodology that will be applied under IFRS 9 for accounting purposes, and so it may be the case that there are differences between tax and accounting that need to be understood.

Where the changes to the contract are regarded as a modification of the existing contract (such as where the existing fallback clauses are modified)

Determination G25 (Variations in the Terms of a Financial Arrangement) may need to be considered by some taxpayers (especially those not applying the IFRS method). Under this Determination, the total accumulated income or expenditure up to the end of the year of variation is equal to the amount that would have been subject to tax had the changes been known at the date of issue or acquisition. In other words, the life-to-date income or expenditure is reset treating the new terms as if they applied from the inception.

Transfer Pricing

Most entities that have any transfer pricing arrangements will need to consider the effect of the cessation of IBOR. If IBOR has been used as a reference rate, the cessation could result in financial contracts with related parties needing to be re-drafted to include a new RFR. Further consideration will need to be given to how the rate is adjusted and what the consequences of those adjustments are in the context of New Zealand's transfer pricing framework. Questions could include: is the all-in interest rate still considered to be at an arm's length rate or is one party now receiving a benefit from the cessation of LIBOR and transition to a more/less risky base rate? It will be important to observe how the market reacts to the transition, and whether lenders/borrowers are seeking to renegotiate risk premiums in loan agreements that had previously relied on an IBOR as the base rate. Further, in relation to the fallback provisions that are encouraged to be negotiated into financial contracts – are these considered to be at arm's length?

In addition, it will be necessary to consider the restricted transfer pricing ("RTP") implications and whether a change in base rate constitutes a "renegotiation" for RTP purposes. If a loan is renegotiated, then the RTP rules would require determination as to whether the borrower is a high BEPS risk borrower on that day. For loans that have been in place since before the introduction of the RTP and revised thin capitalisation rules, that may result in loans being classed as being "high BEPS risk" when they previously were not. Additionally, the determination of deductible interest is required to be undertaken as at the day of renegotiation. In the current interest rate environment that may result in a reduction of the deductible amount of interest.

Deductibility of associated costs

For any costs that fall outside the scope of the financial arrangement rules (such as non-integral fees in IFRS terms), the deductibility needs to be considered under the DA 1 general provisions or, if the capital limitation is at play, under section DB 5. The analysis under DB 5 can be far from straight forward. The Commissioner's view (as expressed in the Interpretation Statement IS 13/03 *Income Tax – Deductibility of Expenditure Incurred in Borrowing Money – Section DB 5*) is that expenditure must be incurred in establishing or setting up the borrowing in order for the expenditure to be deductible under section DB 5. The Commissioner has explicitly added that costs associated with a variation of the existing loan that does not result in the rescission of the original loan contract and the establishment of a new one will not be deductible under section DB 5.

Withholding tax obligations

If any payment is made to preserve the economic positions of parties to a financial arrangement following an amendment to replace an IBOR rate, withholding tax obligations should be considered. The tax impact will depend on the source and character of the payment, the nature of the underlying contract, and the party making the payment (e.g., if a borrower is required to pay an amount to a lender, the payment could be in the nature of interest on money lent, whereas a payment from a lender to a borrower would be unlikely to be in the nature of interest).

Next steps

If you have any financial contracts referencing IBORs, the financial reporting and tax implications must be considered and, to the extent possible, feed into the negotiation process to achieve an optimal outcome. If you require any assistance, please contact the Deloitte team.

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Snapshot of recent developments

Tax legislation and policy announcements

Cost of EVs to be reduced by the clean car rebate amount

The Land Transport (Clean Vehicles) Amendment Bill was introduced into Parliament on 8 September 2021. This bill includes an amendment to Schedule 5 of the Income Tax Act 2007 to clarify that for fringe benefit tax purposes, the cost of a motor vehicle is net of the amount of a payment received by the owner under the clean vehicle discount scheme. On 21 September 2021, the bill completed first reading and has been referred to the Transport and Infrastructure Committee, with a report due on 21 March 2022. Submissions on this bill close on 4 November 2021. You can also read our July Tax Alert to understand more about the Clean Car Programme and the key underlying tax implications.

Ratified Child Support Convention active from 1 November 2021

The 2007 Hague Convention was ratified on 23 July 2021 and will be active in New Zealand from 1 November 2021. New Zealand will be joining 43 countries currently signed up to this agreement and Inland Revenue will be New Zealand's Central Authority. This means that from 1 November 2021, Inland Revenue will be able to request collection and enforcement of child support and domestic maintenance from taxpayers residing in one of the member countries. The member countries will also be able to ask Inland Revenue to collect from taxpayers living in New Zealand.

Inland Revenue statements and guidance

GST - definition of a resident

On 3 September 2021, Inland Revenue released the finalised interpretation statement IS 21/07 - GST - definition of a resident. This statement provides guidance on how to determine whether a person is a resident for GST purposes. The Commissioner's position has remained unchanged from the draft statement.

Determining the cost price of bloodstock

On 9 September 2021, Inland Revenue published QB 21/09 - How to determine the cost price of bloodstock. This statement notes that when valuing bloodstock for tax purposes, the overarching principle is that, wherever possible, actual cost should be used as the basis of valuation. Where the actual cost is not known with certainty, a consistent means of establishing the cost price of the bloodstock is still required.

Foreign Investment Fund determination

On 10 September 2021, Inland Revenue issued Determination FDR 2021/03 - A type of attributing interest in a foreign investment fund (FIF) for which a person may not use the fair dividend rate method (The Daintree Core Income Trust – New Zealand Dollar class of units). This determination notes that any investment by a New Zealand resident investor in the NZD class units of the Daintree Core Income Trust, to which none of the exemptions in s 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 fair dividend rate method to calculate FIF income from the interest.

Elections not to depreciate commercial buildings

On 24 September 2021, Inland Revenue released consultation document ED0233 - Elections not to depreciate commercial buildings. This draft Questions We've Been Asked states that if the taxpayer made an election in writing prior to the 2012 income year to treat commercial building as not being depreciable property, this election is irrevocable and they are bound by this election until the building is disposed of. If such election was not made, the taxpayer must continue to depreciate the commercial building at the rate set by the Commissioner. Further, if a taxpayer did not make an election and has never claimed a depreciation in respect of their commercial building, they may make a retrospective election not to depreciate that building. The draft also states that an election to not claim depreciation under

this section is not effective if taxpayers have simply not claimed a depreciation deduction in one's tax accounts as this does not provide sufficient notice. A retrospective election will apply from the date the building was acquired. Submissions close on 5 November 2021.

Land sale rules consultation

On 28 September 2021, Inland Revenue released draft Interpretation Statement PUB00411 - Income tax - application of the land sale rules to changes to co-ownership, subdivisions, and changes of trustees. The Commissioner clarifies her position on whether, and if so to what extent, the land sale rules in the Income Tax Act 2007 apply to changes to co-ownership, subdivisions of land, and changes of trustees. In particular, the Commissioner has explained the types of transactions that involve a "disposal" of land, for the purposes of the land sale rules. If there is a "disposal", and it is for less than market value consideration, the Income Tax Act 2007 may deem the person who disposed of the land to have derived an amount equal to the market value of the land at the time of the disposal. The draft statement is accompanied by two fact sheets that summarise the conclusions in the draft interpretation statement in relation to changes to co-ownership and subdivisions of land. Submissions close on 9 November 2021.

Tax issues for content creators

On 28 September 2021, Inland Revenue published finalised Interpretation Statement IS 21/08 - Content creators - tax issues, along with a fact sheet. The Commissioner's interpretation has remained unchanged from the draft version. This statement provides guidance to taxpayers and tax agents to help online gamers, streamers, bloggers, influencers, artists, makers and other online content creators to understand and meet their income tax obligations. It expands on the previously published QB 17/05 – Income tax – whether YouTube receipts are taxable as covered in our May Tax Alert.

An extra week to file and pay GST and income tax

On 1 October 2021, Inland Revenue issued a media release informing taxpayers of an extra week to file and pay GST and income tax currently due on 28 October 2021 until 4 November 2021. Ministers have agreed to the extra week and will give effect to that decision through an Order in Council. This is in response to Inland Revenue's systems shutting down for their final Business Transformation release from 21 October (3pm) until the start of business on 28 October, including their contact centre and myIR secure services.

Deloitte Global News Focus

Update on ATO draft royalties and software ruling

As mentioned in our August Tax Alert, the ATO previously released draft ruling TR 2021/D4 - Income tax: royalties - character of receipts in respect of software for consultation. In response to community feedback the draft ruling will be updated to provide clarity of the ATO's view on the application of Australia's double tax agreements to relevant cases and the circumstances where the final ruling will apply before its date of issue. The draft ruling will also be updated to include amended and new examples. Included will be an example where a receipt requires apportionment. A further draft ruling will be published before completion in early 2022.

US Tax Reform

The tax reform proposed by Congress is still a work-in-progress. The corporate income tax rate is proposed to increase from 21% to 26.5% for income over US$5million. Directionally, the US tax burden will increase, although not as high as Biden Administration's original proposal. Deloitte US tax@hand has recently published the following two articles in relation to the tax reform if you are interested in following this development.

- Ways and Means Committee approves budget reconciliation tax package
- Deloitte Tax materials on budget reconciliation available

Global Tax Reform

Our latest Deloitte Global Perspective article discusses the key takeaways from Pillar One & Two, broad timeframes ahead, as well as the three actions tax leaders can take now to prepare for the tax reform.

Euromoney's 2021 Transfer Pricing Expert Guide recognises Deloitte leaders

Euromoney's 2021 Transfer Pricing Expert Guide has acknowledged 150 Deloitte leaders across 56 jurisdictions for their leadership in transfer pricing, including Bart de Gouw and Melanie Meyer from Deloitte New Zealand. Nomination of the leaders in Euromoney's guide focuses on various aspects of a leader's work, their contribution, along with client and peer feedback. This clear recognition cements the Global Transfer Pricing practice's eminence and leadership, where Deloitte professionals have responded with agility to varied client needs arising from the pandemic.

Deloitte Global Tax Survey - Beyond BEPS

The full report from Deloitte's eighth annual global survey on the OECD's BEPS initiative and beyond was released recently. The latest survey asked tax and finance managers and executives from across the globe about topics that were high on their agenda in 2021, including the Pillar 1 / Pillar 2 project, digital taxation, tax transparency, tax governance, US tax proposals, progress of BEPS related measures as well as impact of COVID-19 pandemic and the support and relief measures enacted by local governments. The survey result suggests the impact of the BEPS project and other tax reform initiatives will continue to be felt throughout 2021 and 2022, particularly as more measures become embedded into local laws. As governments seek to finance large deficits, the impact of the COVID-19 pandemic is expected to continue, likely leading to increased taxes and tax disputes.

Deloitte Global Impact Report

Deloitte's 2021 Impact Report was released on 10 September 2021. It covers tax and governance as well as other areas such as business, environmental and social. Deloitte has also written an article on tax governance in this month's tax alert.

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

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