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Tax Alert

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COVID-19: What government support is available for businesses?

Page 2

Objective and subjective factors to consider before claiming a wage subsidy
Page 6

Running a business with ongoing border uncertainty
Page 12

How confident are you in your transfer pricing?
Page 18

Managing tax filings, payments and cashflow in light of COVID-19
Page 10

COVID-19 Tax considerations for a locked down workforce
Page 14

Snapshot of recent developments
Page 21

COVID-19: What government support is available for businesses?

By Robyn Walker

While New Zealand has coped exceptionally well with COVID-19 since March 2020, going back into Alert Level 4 at 11:59pm on 17 August has been a shock for many businesses who once again find themselves either completely unable to trade or materially constrained in how they can operate.

Given its now clear that parts of New Zealand will be in Alert Level 4 for at least 4 weeks before moving back through the Alert Levels, in this article we explain what assistance is available to support businesses at each Alert Level.

What is available at COVID-19 Alert Level 3 or 4

Each time Alert Levels escalate to Level 3 or higher in any part of New Zealand for a period of seven days or more, there is a new Wage Subsidy Scheme (WSS) put in place. In this instance, a WSS opened for applications on Friday 20 August 2021. A second round of the WSS is opening on Friday 3 September.

Many of the terms and conditions of the WSS are similar to those applied under the former schemes, however the amounts of the payments have increased to be $600 per week for a full-time employee and $359 for a part-time employee. Key features to be aware of include:

- Support is being provided in two-weekly payments, for the duration of the COVID-19 Alert Level escalation, rounded to the nearest fortnight (e.g. if Levels 3 & 4 are in place for 22 days there would be an ability to apply for two rounds of payments, if Levels 3 & 4 remain in place for 36 days there would be three payment rounds, etc). Separate applications need to be made for each fortnight. This contrasts to the lump sum approach taken with the original Wage Subsidy (12 weeks) and the Wage Subsidy Extension (eight weeks).
- Businesses will need to see a 40% reduction in revenue as compared to the typical fortnightly revenue during the six-week period immediately preceding the change in COVID-19 Alert Levels (in this case, the date range should be 6 July to 16 August 2021). The revenue loss will need to take place over a consecutive 14-day period in each subsequent fortnight. This can be based on a forecast revenue loss (provided it then materialises).

- Businesses will be required to document and have available evidence of the decline in revenue being due to the change in Alert Level (e.g. it was not an expected normal decline in revenue due to normal seasonal variations).
- Many other requirements remain consistent with prior schemes, such as seeking consent from employees to apply (ideally in writing), the requirement to retain staff, pass on the subsidy amounts to staff and taking active steps to mitigate the financial impact of COVID-19 (for example drawing on cash reserves, engaging with your bank and insurer).

The WSS is administered by the Ministry of Social Development. Applications for the first round can be made here until 11:59pm Thursday 2 September and applications for the second round open on Friday 3 September at 9am.

For further details about the WSS please read our other article here.

Businesses receiving the wage subsidy cannot also be receiving Leave Support Scheme payments or Short-Term Absence Payments in respect of the same employees at the same time (these schemes are discussed further below).

What is available at COVID-19 Alert Level 2 and higher

A "Resurgence Support Payment" is available when New Zealand, or any region/s within the country, moves to COVID-19 Alert Level 2 (or higher) for seven days or more. A new Resurgence Support Payment is available for businesses given more than 7 days has already been spent at Alert Level 4.

This payment will be available to businesses which see a 30% or greater reduction in revenue as a consequence of the change in Alert Level.

To determine whether this criterion is met, businesses will need to show an actual 30% reduction over a seven-day period following the change in COVID-19 Alert Level, as compared with a typical seven days of revenue in the six weeks immediately before the change in levels.

The RSP will be available to all businesses (including sole traders) that have been operating for six months or more. Full eligibility criteria can be found here.

The value of the payment will depend on the size of the organisation; individual businesses will receive a payment of $1,500, plus an additional $400 per employee, up to a total of 50 FTEs. This means the maximum payment available will be $21,500 (noting there are specific rules for commonly owned groups). There is also a 'lesser of' test, meaning that the amount of the payment is the lesser of the amount calculated using the previously mentioned formula and four times the actual revenue decline.

It is worth noting that the RSP is subject to GST therefore GST registered businesses will need to return 3/23rds of the payment to Inland Revenue. However, input tax credits can then be claimed when the RSP is spent.

The RSP is administered by Inland Revenue and applications opened on Tuesday 24 August and remain open for one month after all of New Zealand returns to Alert Level 1.

Recipients of the RSP will have their name listed on a public register as has occurred with previous RSP payments. Applications are required to maintain a full set of documentation supporting their eligibility to make a claim.

A business is able to apply for both the wage subsidy and the RSP if it meets the qualifications for each. The table overleaf summarises the main similarities and differences between the two schemes:

	Wage Subsidy	**Resurgence Support Payment**
Revenue drop	40% + compared with a typical 14-day period in the 6 weeks before 17 August 2021	30% + compared with a typical 7-day period in the 6 weeks before 17 August 2021
Revenue loss period	14 days – must be a 14-day period between 17 August to 31 August 2021 for round one Must be a 14-day period between 31 August and 13 September for round two	7 days – you can choose any 7-day period within the increased alert level period
Revenue or capital loss?	Revenue or capital raising ability for pre-revenue start-ups (tightly defined)	Revenue or capital-raising ability for pre-revenue businesses
Actual or predicted revenue loss?	Either – but a predicted revenue loss has to then be verified and the wage subsidy repaid if the revenue loss test was not satisfied	Actual – you can only apply for the RSP after you have suffered the 7-day loss
How much?	$600 per week for full time employees $359 per week for part time employees If an employee ordinarily earns less, the surplus should be applied towards paying other staff or repaid	$1500 + $400 per FTE, capped at 50 FTEs (i.e. $21,500) Amount is also capped at 4x actual revenue decline
How long does it last?	Each wage subsidy runs for two weeks, and will continue so long as a part of New Zealand remains in Alert Level 3 or higher (rounded to the nearest fortnight)	As long as any part of NZ is above Alert Level 1 (this is a one-off payment)
What can it be spent on?	The wage subsidy must be passed through to employees	Must be used to cover business expenses such as wages and fixed costs (e.g. rent). While the payment is calculated with reference to employees, it does not have to be spent on employees
How does it apply to groups?	Bit complicated, but look at the revenue loss on an entity basis, unless the group has a separate employing company, then you need to suffer a 40% revenue loss across the whole commonly-owned group	Commonly owned groups must be down 30% across the whole group Groups can claim on a per entity basis (i.e. up to $21,500 each) if the whole group meets the 30% revenue decline test and the individual entities also meet the 30% revenue decline test
Details published?	Yes – here	Yes – here
What if the business is new?	The business must have traded for 14 days before 17 August 2021 to be eligible	Must have been in businesses for at least 6 months

(Continues >)

	Wage Subsidy	**Resurgence Support Payment**
Other criteria	Yes – there are a number of criteria, including mitigating the effects of the Alert Level change (such as using cash reserves, claiming insurance, talking to the bank) and complying with employment law (including using best endeavours to pay employees 80% of ordinary earnings)	Yes – the business must be considered viable and on-going Passive income is excluded from the revenue calculations
Documentation	Applicants must prepare and retain evidence to support the declaration made	Records need to be prepared and kept available for Inland Revenue on request
Tax & GST treatment	Receipt of the wage subsidy is not subject to income tax (unless self-employed), but cannot claim tax deductions for employee costs funded by the wage subsidy No GST	Receipt of the RSP is not subject to income tax, but cannot claim tax deductions for costs funded by the RSP GST output tax must be returned on payments, input tax credits can be claimed when the RSP is spent
Interaction with other schemes	You cannot get more than one COVID-19 payment (wage subsidy, leave support scheme & short-term absence payment) for the same employee at the same time	You can be receiving leave support scheme payments, short-term absence payments or the wage subsidy at the same time as the RSP

If you meet the criteria you can claim both the wage subsidy and the resurgence support payment

What is available at all COVID-19 Alert Levels

Businesses are able to utilise the Leave Support Scheme when employees who cannot work from home are required to self-isolate due to potential exposure to COVID-19, or they are considered "higher risk" if they contract COVID-19 when there is active community transmission. The Leave Support Scheme provides a fortnightly payment of $1,200 or $718 respectively for a full-time or part-time employee who is isolating.

Since mid-February 2021 the Leave Support Scheme has also been supplemented by the Short-Term Absence Payment (STAP). This payment of $359 per eligible employee is available to support employees who are required to stay at home while they await the results of a COVID-19 test but are unable to work from home. The payment also applies to parents or caregivers who have dependents awaiting a test result, as well as self-employed workers.

Employers can apply for the STAP once in any thirty-day period per eligible worker (unless a health official or medical practitioner advises or requires the worker to re-test during that period). If the employee subsequently tests positive, they will be eligible for the Leave Support Scheme.

Businesses with 50 or fewer employees can be eligible to apply for a Small Business Cashflow Loan. This scheme, administered by Inland Revenue, allows certain businesses to apply for a loan of up to $100,000. The maximum value of the loan available is $10,000 plus $1,800 per full time equivalent employee. Loans are interest free for a period of up to two years (if fully repaid in that time).

If you have any questions in relation to the issues discussed above, please consult your usual Deloitte advisor.

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Objective and subjective factors to consider before claiming a wage subsidy

By Robyn Walker and Andrew Button

On Thursday 2 September applications close for the first round of the latest wage subsidy; on Friday 3 September applications open for round two. Many aspects of this latest wage subsidy remain the same as previous schemes, but the context in which applications may be made is different. In this article we explain some of the factors to consider before making a claim.

What is available?

Qualifying businesses (including sole traders) are able to make a claim for a two-week wage subsidy of $600 per week ($1,200) for a full-time employee and $359 per week ($718) for a part time employee for every fortnight that any part of New Zealand remains in either Alert Level 3 or Alert Level 4. The first fortnight covered the period 17 August to 31 August (with claims needing to be made by 11:59pm on 2 September), and the second fortnight will cover the period 31 August to 13 September (during which we know Auckland will remain in Alert Level 4). A third fortnightly claim may be possible for Auckland (or another part of New Zealand) remains at Alert Level 3 or 4 for a total period exceeding 5 weeks.

Claims under the Wage Subsidy Scheme August 2021 (WSS) can be made through the Ministry of Social Development (MSD) website here. Businesses must reapply for each fortnightly claim.

What are the eligibility requirements?

The purpose of the WSS is to support employers to continue to pay employees and protect jobs for businesses affected by the move to Alert Level 4 on 17 August 2021.

To be eligible for each tranche of the WSS there are a number of criteria to meet, including:

- You must be an eligible employer, which includes charities, non-Government organisations, sole traders and contractors.
- The employees must be legally working in New Zealand.
- Employees must consent to being included in the WSS application.
- The employer must retain employees for the duration of the wage subsidy period and must use best efforts to pay staff at least 80% of their usual wages. Employers still need to comply with employment law, including not requiring employees to vary employment agreements or use leave entitlements without agreement.
- There must be a 40% decline in revenue (explained further below).
- Active steps must have been taken to mitigate the impact of the change in alert levels (discussed further below).
- Applications cannot be made in respect of employees who are the subject of a separate COVID-19 payment (e.g. a Short-Term Absence payment or Leave Support Scheme payment).
- Evidence must be prepared and retained to support all aspects of the WSS claim.

The revenue decline test

A business needs to suffer a 40% decline in revenue over each 14-day period as a consequence of the change in alert levels. The revenue during the elevated alert levels is compared to a 'typical' 14-day period between 6 July to 16 August 2021 (being the six weeks before the change in alert levels). Businesses with highly seasonal revenue have the option of looking back at income in the same 14-day period in either 2019 or 2020.

An application can be made before the conclusion of each 14-day period on the

basis of a predicted 40% revenue reduction however; the revenue drop will need to be subsequently verified with the wage subsidy repaid if the threshold is not met.

Example: Capital Perk Limited is a coffee shop based in Wellington, all its coffees are $5 each. It typically sells 500 coffees a day, 5 days a week, giving typical fortnightly revenue of $25,000. From 18 – 31 August Capital Perk has $0 in sales and it applies for the first round of the wage subsidy. On 1 September, caffeine deprived Wellingtonians purchase 1,000 coffees, before sales taper back to a more modest 300 coffees a day for the next fortnight. In the period 1 – 14 September Capital Perk has total sales of $18,500. As this represents a 26% reduction in typical revenue Capital Perk is not eligible for the second round of the wage subsidy.

Revenue is defined as "the total amount of money a business has earned from its normal business activities, before expenses are deducted", and shouldn't include the Wage Subsidy or any other government assistance payments.

Objectively, this revenue decline test may be relatively easy for businesses to satisfy if they are unable to operate during Alert Level 4 and may have experienced two weeks with no revenue already. The test does require more consideration for businesses which are able to operate at a reduced capacity (particularly for the parts of the country who have moved back to Alert Level 3) or for businesses who may be unable to work but may still be contractually entitled to payment.

The guidance from MSD does not currently elaborate on how a revenue drop should be substantiated for a business which is not regularly invoicing customers (for example, customers are invoiced monthly). By comparison the Inland Revenue provide the following guidance when measuring revenue declines for the purpose of the Resurgence Support Payment: "For a cashflow business, such as a restaurant, this is likely to be the daily takings. For a business that invoices clients, this will be the activities the business carries out that would entitle it to bill or invoice either immediately or at a later date". We recommend businesses consider a similar approach in relation to the WSS.

Example: Holidaze Limited runs school holidays programmes. Holidaze earns the majority of its income during school holidays, but also earns some income during school terms running after school programmes. Holidaze earned $50,000 per week ($100,000 in a fortnight) between 12-15 July, in the subsequent 3 weeks income is $5,000 per week ($10,000 in a fortnight). When New Zealand enters Alert Level 4 income drops to $3,500 per week ($7,000 in a fortnight) in the period 17 August to 30 August.

Holidaze should compare its revenue from 17-30 August to a 'typical' fortnight, being $10,000. In this instance it would not be appropriate to compare the revenue during Alert Level 4 to the $100,000 earned during the school holidays; instead revenue should be compared to the 'typical' earnings of $10,000 per fortnight. As a highly seasonal business, Holidaze could potentially look at revenue earned from 17-30 August 2019 and 17-30 August 2020 to determine if there had been a 40% decline in revenue which was due to the change in Alert Levels. Holidaze would need to document the basis on which its business is of a seasonal nature, and how the seasonal nature of the business made it harder for the business to meet the 40% revenue decline using the default comparator period.

A common issue we are seeing in reviews we have carried out, is that businesses are not making it clear that the decline in revenue is the result of the change in alert levels and not because of other factors. This becomes more important when the revenue reduction is close to the required decline percentage. The WSS requires applicants to prepare and retain evidence that demonstrates how the revenue loss was attributable to the change in alert levels. We strongly recommend your supporting documentation identifies any other revenue reduction factors to ensure you do have the required revenue decline due to the change of alert levels.

Example: Snow Work Limited is operated by Lindsey, its sole shareholder-employee. In early August, Lindsey decided to take a six-week extended holiday and cancelled all upcoming workstreams. In late August Lindsey has no income, and therefore has had a 40% drop in revenue. However, Lindsey is not eligible for the wage subsidy as the decline in revenue is due to her decision to close the business for her holiday rather than the change in alert levels.

Mitigating the impact of the change in alert levels

Each previous wage subsidy scheme has included the requirement that: "Your business must have taken active steps to mitigate the financial impact of COVID-19."

This phraseology has subtly changed for this wage subsidy and now requires "[B] efore making an application, you must have taken active steps to mitigate the impact of the move to Alert Level 4 on 17 August 2021 on your business activities. This includes (but is not limited to) engaging with your bank, drawing on cash reserves as appropriate, and making an insurance claim."

What precisely is required remains slightly unclear, particularly in relation to "drawing from your cash reserves as appropriate". In particular, while there should be an expectation that businesses look to their own available resources in order to pay employees, when faced with an uncertain period of lockdown it may also be reasonable to not use all cash reserves to pay employees when there are other expenses to be paid and using those reserves may otherwise negatively impact on the on-going viability of the business.

It is worth nothing that the review of the management of the wage subsidy scheme by the Auditor-General identified this requirement as "not clearly defined" and noted the subsequent difficulties caused by applicants not needing to provide corroborative evidence at the time of application. The Auditor-General stated: "We recommend that, when public organisations are developing and implementing crisis-support initiatives that approve payments based on "high-trust", they ensure that criteria are sufficiently clear and complete to allow applicant information to be adequately verified."

While the WSS hasn't gone so far as to elaborate on when cash reserves should be used, the WSS declaration makes it very clear there is an obligation to fully document the active steps that have been taken. Applicants should proceed on the assumption that this documentation will be requested as part of a post-application review.

We recommend that businesses undertake (and document) cash flow forecasts which model a range of potential scenarios when assessing whether this criterion has been satisfied. This might include looking across a reasonable range of potential timeframes based on the information available at the date of the application.

Practical matters to consider

While applications are now open for the WSS, there are a number of practical issues to consider before putting in an application. These include:

- Crunching numbers on the revenue decline expected. Applicants will need to be confident that there will be a decline in revenue (this will need to be substantiated at the end of each 14-day period). For more complex businesses, the WSS includes a new concept of a 'commonly owned group' which should be considered.
- Seeking consent from employees to make the application. This should be in writing where practicable.
- Obtaining all the information about employees you are applying for, including cross checking to ensure there are no double claims if a Short-Term Absence Payment or Leave Support Payment has been applied for recently.
- If you have staff working variable hours (including casual staff), you'll need to establish whether they are full time employees (20 hours or more per week) or part time employees (less than 20 hours per week).
- Cross-checking that your information is up to date with Inland Revenue. MSD will be validating data with Inland Revenue, so ensure that any recent changes to employees have been updated to prevent delays in processing your claim.
- Documenting all active steps taken to mitigate the effect of COVID-19, as well as substantiating how the revenue decline relates to the change in alert levels.

Other observations

Each previous wage subsidy scheme has operated in slightly different contexts from each other. The original wage subsidy scheme in March 2020 came about when the future was very uncertain and no one had any idea how long the lockdown would last with mass redundancies being predicted. Subsequent lockdowns have been short and sharp focused around Auckland and they have also involved regions being in Alert Level 3 so many more businesses were able to operate

to some degree (and subsequently may not have been able to meet the revenue decline tests). This lockdown also comes with uncertainty because it involves the delta strain of COVID-19 and we can look to Australia to see that extended lockdowns may be possible if the virus is not brought under control. However, in contrast to the original wage subsidy scheme the labour situation in New Zealand is quite different. With many employers desperate for staff before the outbreak, it seems less of a risk that mass redundancies and high unemployment will result from the lockdown. While employers may be less likely to lay off staff, the reality is that there still needs to be cashflow to pay those staff.

We also have a better understanding of market behaviour around lockdowns. Some businesses will suffer a permanent reduction in revenue due to a lockdown (you'll never be able to buy yesterday's flat white) while other businesses have previously experienced a post lockdown surge in sales where consumers purchase all the goods and services they otherwise would have been acquiring during the lockdown. This previous experience is something which businesses should be considering as part of the process of determining whether to apply for the wage subsidy. For example, businesses with a history of a strong sales bounce-back may find banks are willing to be more flexible around additional lending and debt covenants; thereby mitigating the effects of COVID-19 and the need to apply for the WSS.

At this stage it is not clear how long New Zealand will be at an elevated Alert Level, but this will become much clearer each week. The Minister of Finance made is clear in February that support will continue to be available:

"The Wage Subsidy Scheme will also be available nationally when there's a regional or national move to Alert Levels three and four for a period of seven days. The support will be provided in two weekly payments for the duration of the alert level period, rounded to the nearest fortnight. The Wage Subsidy Scheme has been very effective in keeping people in work so far with more than $14 billion paid out to protect 1.8 million jobs."

Each round of the wage subsidy will remain open for two weeks, and a business is only able to claim for the second round two weeks after the application for the first round. Some key dates to be aware of are below.

The WSS continues to be a high trust scheme, so it's important to ensure it is only claimed when appropriate. If you'd like more guidance on how the WSS works please get in touch.

There is other business and employee support available in the form of Short-Term Absence Payment, the Leave Support Scheme, the Resurgence Support Payment and the Small Business Cashflow Loan Scheme. You can learn more about them here.

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Key dates:

Round	Applications Open	Revenue Loss Period	Applications Close
Round 1	9am Friday 20 August	17-30 August or 18-31 August	11:59pm Thursday 2 September
Round 2	9am Friday 3 September	31 August – 13 September	11:59pm Thursday 16 September *
Round 3 **	9am Friday 17 September **	14 September – 27 September**	11:59pm Thursday 30 September **

*Date to be confirmed once wage subsidy round 2 commences

** If a third wage subsidy is required, these dates have been predicted based on the timetable of other wage subsidies and are all subject to confirmation

Managing tax filings, payments and cashflow in light of COVID-19

By Veronica Harley

For some businesses presently, managing cashflow in light of the COVID-19 lockdown restrictions will be critical. We thought it could be useful to outline for our readers the types of tax relief available to those struggling with meeting tax obligations, plus a few other thoughts that might help with managing cashflow when it comes to taxes.

1. Keep filing returns on time

Whilst it may be challenging, businesses need to keep on top of filing employment and PAYE information, GST, FBT and other tax returns even if making the associated tax payments will be difficult. Inland Revenue is unlikely to consider requests for relief if it doesn't have this information as a starting point. Also bear in mind that this information will be required as evidence of ongoing business activity when applying for the resurgence support payment, the small business cashflow loan scheme or the wage subsidy. For the small number of businesses that may struggle to physically file returns, we expect Inland Revenue will be flexible in this regard and not impose any late filing fees, provided contact is made as early as possible.

2. Set up an instalment arrangement

If a business will struggle to make tax payments on time because it has been significantly impacted by COVID-19, a business can apply for instalment arrangement. Again it best to get on to this as soon as practicable and not leave it until after the payments are due. Deloitte can assist you with setting this up. Essentially you will need to agree on an instalment amount, a payment start and end date. Inland Revenue may ask for some financial information to support the application that tax payments can't be made. It can be set up for any tax type. But the overriding condition is that you will need to agree to pay the tax as quickly as possible. In other words, this is not a holiday or deferral from paying tax. A 1% penalty (instead of potentially 5%) will still be applied upfront, but Inland Revenue has discretion to remit this down the track if the business complies with the arrangement.

3. Apply for UOMI relief

Use of money interest, or UOMI, will still be charged for missing a payment at the current rate of 7%. However under current rules introduced last year, Inland Revenue has discretion to waive UOMI charges until 25 March 2022 if the taxpayer's ability to make payment on time has been significantly adversely affected by COVID-19 and certain criteria are met. This relief only applies to tax payments due on or after 14 February 2020 and is only available once the core tax has been paid in full. The government has already remitted UOMI of more than $17 million for 96,000 taxpayers and suppressed a further $71 million for 21,000 taxpayers who have a current instalment arrangement.

Given the current lockdown, we understand that work is underway to extend the ability to apply for relief beyond 25 March 2022, so watch this space. It should be noted that this rule does not apply to interest charged for not getting provisional tax instalments correct.

4. Penalty relief

One good reason for struggling businesses to apply for instalment arrangements, particularly for PAYE and FBT payments, is to minimise the penalties that might be charged in the first place. Generally a 1% initial late payment penalty is applied on the day after the due date, with a further 4% applied at the end of the 6th day if still not paid. However for PAYE and FBT liabilities, an incremental monthly late payment penalty of 1% might also be imposed. The incremental monthly penalty can cause outstanding tax to balloon out of control very quickly if left unmanaged. But as noted above, this can be capped to 1% under an instalment arrangement if the terms are maintained.

5. Review upcoming provisional tax payments

We can't stress enough the need to talk with your tax advisor about options for managing provisional tax payments if you cannot make planned provisional tax instalments. The rules have become a lot more complicated in recent years as several technical changes have been made, particularly with regard to how UOMI is imposed on provisional tax. If you now expect the tax liability for 2022 to be lower than 2021, there are options, but it is necessary to ensure UOMI is minimised in this regard. While it is possible to estimate 2022 provisional tax lower (as opposed to paying based on prior years RIT), there are UOMI consequences to be aware of, particularly if a company is in a group of companies.

As a result of the first lockdown in 2020, the government did introduce a targeted temporary UOMI on provisional tax relief rule for those small to medium provisional taxpayers significantly affected by COVID-19. This might still be relevant for businesses who have yet to file their 2021 returns if they expect UOMI to be imposed. But this relief only applied to UOMI imposed on underpaid 2021 provisional tax. We have raised with Officials whether they will consider introducing a similar rule for 2022 provisional tax.

6. Investigate tax pooling options

Tax pooling intermediaries offer many options when it comes to managing provisional tax payments and UOMI. Tax pooling is particularly useful when there are decreasing profits or missed payments. It can also allow taxpayers to postpone tax payments (at a competitive interest rate) to free up working capital. We suggest you talk to your Deloitte advisor to find out more about tax pooling and whether it is right for your business.

7. COVID-19 variations to ease administrative issues

During last year's lockdown, the government passed legislation which enables the Commissioner of Inland Revenue to quickly issue temporary variations for administrative issues arising as a result of COVID-19. Last lockdown, these were mainly around extending due dates, deadlines, time periods or varying a procedural or administrative requirement. While most of these have now expired, we can still raise new issues on taxpayers' behalf with Inland Revenue via a dedicated unit.

8. Restricting access to vehicles to minimise FBT

A common issue that cropped up last time was whether FBT applied to motor vehicles during the level 4 lockdown period. The key is whether a vehicle is still "available" for an employee's private use during this time. Inland Revenue's view is that while opportunities for an employee to use a vehicle for private use are practically restricted under level 4, if the vehicle is nonetheless still "available", whether or not any use has occurred, that vehicle is still subject to FBT. However, an employer can issue a directive to its employees prohibiting private use on any day during level 4 to minimise the FBT liability. This will might only be practicable if an employee has access to an alternative vehicle. Plus employers will need to consider how they provide evidence that actual use did not occur in the event of an inquiry.

Conclusion

If any of these issues will be relevant for your business, please reach out to your usual Deloitte tax advisor for assistance.

Given the current lockdown, we understand that work is underway to extend the ability to apply for relief beyond 25 March 2022, so watch this space.

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Running a business with ongoing border uncertainty

By Emma Marr and Stephen Walker

Running a business when you can't travel overseas

Seventeen months after the World Health Organisation declared the COVID-19 outbreak a pandemic, it is clear that travelling the world, and running an international business from New Zealand, isn't going to return to 2019 patterns of behaviour any time soon, if ever. It's impossible to say what the future holds, but for now New Zealand business owners are finding ways to run the existing international arms of their business from New Zealand, and to push further into other international markets without leaving home.

It's exciting to see creative-thinking Kiwis find innovative ways to get into markets and support their overseas operations from New Zealand. At the same time, it's useful to check in with local tax rules to make sure that you understand the tax obligations and costs of running your business remotely.

When you can't get in-market, your solution might create tax costs

Pre-2020, entrepreneurs with brilliant businesses travelled the world to promote their product, and meet potential and existing customers. Fleeting visits to other countries didn't create tax issues, or if they did they were minor enough to be overlooked. In March 2020 the borders slammed shut, and the globe-trotting came to a halt. After a brief pause, those same entrepreneurs found workarounds, often by finding great people in-market to do the sales and marketing, logistics, product demonstrations and after-market support that they had once been doing themselves. Those people live and work permanently in those markets, and they undeniably create tax issues.

Whether your in-market presence is an employee, a contractor, or an agent, you should be considering how to identify and manage any tax issues that this creates. You might need to register as an employer and pay payroll taxes. In many countries a person's presence, even if working from a home office, might create a permanent establishment for your New Zealand company in that other country. In that circumstance, you will need to consider the tax cost that this creates, and whether you need to do more to manage it. Often setting up a branch or a subsidiary in the other country is the best option to keep tax obligations and costs separate across borders.

How to employ someone in another country

Unfortunately, there's no one-size fits all solution to managing tax risks when looking to employ someone in another country. Each individuals' personal facts and circumstances differ and could have a bearing on the tax outcomes for their employer. Similarly, each country has differing tax rules and exemptions that may or may not apply and each may operate their tax regimes differently in light of

COVID-19. There are also non-tax issues to consider, such as immigration, employment law, access to technology and systems, and the protection of intellectual property, just to name a few.

Managing and keeping track of these issues is no small task and can cause a bit of headache. The good news is that Deloitte does have a technology tool that can be used to provide a high-level assessment and flag key areas of risk across these issues, given a set of inputs and country combinations. If you would like to know more about this and how it could be used within your organisation, please get in touch.

Managing companies from another country

In the past you might have travelled to another country to run your business there. If you had a company in that country, you could hold board and management meetings, and make strategic decisions in-country. Now that you can't travel, you're probably doing all of that from New Zealand. Similarly, you might have directors in another country who, in pre-COVID times, travelled to New Zealand for board meetings, who now cannot get into New Zealand.

Running a company from another country can create tax problems for that company, as it might become tax resident in more than one country. Some tax authorities (including Inland Revenue) are being understanding about the position that puts the companies in. If the reason a company is being run in New Zealand is because of COVID-related travel problems, they may be willing to overlook that – for now. Many other countries are offering the same concessions. However, that position isn't universal, and even if a revenue authority is being tolerant of unusual situations, that won't last forever. If COVID has caused the way you manage companies across borders to change, we recommend you check the rules applying in both the country where the company is incorporated, and the country where the people run it from.

Being tax resident in more than one country isn't necessarily a big problem – unless you ignore it for long enough that it becomes one. Many companies file income tax returns in more than one country. That might mean that no, or only a small amount of income is taxed in one country, and most or all of it is taxed in another. Double tax agreements can help reduce the tax cost.

What you can do now

The biggest expense from having tax obligations in another country, or from changing the way you manage your business cross-border, usually arises from failing to understand what your tax obligations are, particularly when several years have passed before this is picked up.

Picking up the phone to check with your accountant or tax advisor will give you the information you need to make a decision about the best way to manage your risk. Deloitte can draw on its international network of member firms to find an advisor in almost any country in the world. Give your usual Deloitte advisor a call if you'd like to discuss how you are managing your business.

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COVID-19 Tax considerations for a locked down workforce

By Jess Wheeler & Aaron Mitchell

With the current Alert Level 4 nationwide lockdown potentially millions of New Zealanders are back to working from home. We thought now would be an opportune time to remind employers of the key employment tax issues which can arise when employees are working from home, as well as shed some light on the new Inland Revenue guidance surrounding this.

Employers might again be grappling with questions such as:

- If employees take home equipment from the office or are reimbursed for purchasing home office equipment, does this create any issues?
- If an allowance is paid to employees for working from home, is this taxable?
- If an allowance has been paid to employees to cover the cost of using their own telecommunication devices, is this taxable?
- If an employee has been provided with a motor vehicle but is no longer travelling to work, is there a fringe benefit being provided?

On 25 August 2021, Inland Revenue issued Determination EE003: Payments provided to employees that work from home; Employee use of telecommunications tools and usage plans in their employment. Determination EE003 effectively combines and replaces Inland Revenue's two previous determinations (Determination EE001: Employee use of telecommunications tools and usage plans in their employment and Determination EE002: Payments to employees for working from home costs during the COVID-19 pandemic, including the two extensions to EE002).

Determination EE003 aims to reduce compliance costs for businesses who are paying - or who are intending to pay - an allowance or reimbursement to employees for furniture and/or equipment, telecommunication usage plan costs and other expenditure.

We note that Determination EE003 is only valid on payments made to employees from now up until 31 March 2023. Inland Revenue are doing some further work in this area and hope to have something more permanently in place by this time.

Home office set ups

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

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

Employer-owned equipment

Under the first two options, where the employer owns the office equipment, no adverse tax implications should arise. Reimbursement by the employer for the cost of new office equipment can be made tax free to the employee.

GST can be claimed by the employer in the usual way provided a valid tax invoice is provided by the employee. This is because the employee has acted as an agent of the employer in incurring the cost. It is acceptable for the tax invoice to be made out in the employee's name.

The cost to the employer will be deductible up front if the value is under the low value asset threshold, which from 17 March 2021 is $1,000. Incidental private use of the office equipment by the employee will not be subject to FBT provided the assets are business tools used primarily for work purposes and cost less than $5,000 including GST.

Employee-owned equipment

Reimbursement of the cost of new or existing office equipment (including telecommunications equipment) that is owned by the employee is not so straightforward. The tax treatment may vary depending on the level of work versus private use of the assets, the cost of the assets and the date they are/were acquired. Recognising that employers could face significant compliance costs in making such assessments, Determination EE003 provides some safe harbour options for employers. It is important to note that applying Determination EE003 is optional - employers can use other methods to determine the tax-free amount of payments to employees provided they are reasonable and supported with evidence.

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

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

The 'safe harbour' option allows employers to treat an amount of up to $400 paid to an employee for all furniture and/or equipment costs as exempt income. It is important to note there is an additional $400 that employers can pay as exempt income to also cover all telecommunications equipment.

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

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

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

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

Reimbursing employees for using their own telecommunication devices

Determination EE003 sets out guidance relating to telecommunication reimbursements paid to employees for using their own devices or usage plans, again you don't need to follow this if you don't want to providing you keep supporting evidence to justify treating the payments you are making as tax free. It is important to note that Determination EE003 applies regardless of whether employees are working from home or not. The Commissioner has noted that although EE003 replaces EE001, the guidance contained in EE001 is still relevant with the only difference being that EE003 now has an end date, which EE001 did not. The starting point is that if the reimbursement only covers the business use of the device, then the payment will be fully exempt. If employee uses their telecommunications device for both business and personal use the

Determination sets out three categories for allocating the reimbursement payments between business and private use:

- The principally busines use category: employers can treat any reimbursement of up to 75% of the amount of the affected employee's total usage plan bill as exempt income of the employee.
- The principally private use category: employers can treat any reimbursement of up to 25% of the amount of the affected employee's total usage plan bill as exempt income of the employee;
- De minimis category: 100% exempt where the amount reimbursed is $5 a week, noting the Commissioner has clarified this amount includes any amount of depreciation loss on existing depreciable telecommunications assets the employee may use.

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

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

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

Reimbursing employees or paying an allowance to cover household expenses

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

Under Determination EE003, an employer can pay its employees up to $15 per week to cover these expenses, and this will be treated as exempt income. Employers will not be required to collect any evidence as to what the employees use these payments for; albeit an allowance can only be paid tax free if an employee is actually working from home on a more than minor basis (which happens during lockdowns). The payments do not have to be paid weekly, and can instead be made fortnightly or monthly to align with the employees' regular payday (i.e. $30 per fortnight).

These payments can be combined with payments made under the telecommunications tools and/or usage plan payments outlined above as well. The determination will cease to apply to these reimbursements (other than telecommunication costs) when an employee stops working from home.

Fringe Benefit Tax on motor vehicles

A common question we were asked in the level 4 lockdown last year was what effect the lockdown would have on the FBT payable on motor vehicles provided to employees. Inland Revenue have since confirmed that the normal FBT treatment of motor vehicles will apply during level 4 lockdown periods, i.e. vehicles are still available for private use even though opportunities for the employee to privately use the vehicle are restricted under Level 4 lockdown by the government.

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For employers, this means that unless you have a specific arrangement with your employees to make the vehicles unavailable for private use during the Level 4 lockdown period (i.e. employers have issued letters restricting private use of motor vehicles during the period, or employers have required company cars to be left onsite for lockdown) FBT will continue to be calculated on the taxable value of motor vehicles as normal. When issuing such letters, employers should also be aware of any employment law matters. i.e. if the employees contract allows them to have a motor vehicle for full private use then there may be issues in trying to restrict its use.

Pool vehicles and employees working from home

For completeness, we also note that Inland Revenue released specific guidance in respect to the treatment of pool vehicles, home as a place of work and other available exemptions. An overview in respect of these positions is below:

- Pool vehicles – If the vehicle was 'subject to a genuine private use restriction' during lockdown, no FBT will need to be paid. However, FBT is required to be paid on the day the vehicle was brought home and the day it was returned to work, other than where the employee's home is also a workplace.
- Home as a place of work – Given that many people's place of work has been their home during the level four lockdown (and beyond), the Commissioner has stated that she will accept that home to work travel 'such as driving a pool vehicle home before level 4 and returning it when the employee can go back to work' is not subject to FBT. She has stated however that there needs to be a genuine private use restriction in place for this to apply.
- Exemptions – An FBT liability may not arise if one of the normal exemptions applies, e.g. emergency calls.

FBT tips

In the current environment it is particularly important for businesses to be considering their tax costs and taking advantage of available exemptions from FBT and considering how their FBT liability is calculated (since the last Level 4 lockdown the default rate of FBT has increased from 49.25% to 63.93%). For example:

- Ensure your employees are claiming all available exempt days for all motor vehicles provided - don't just pay FBT on 90 days every quarter if there was not actually full availability for private use;
- Review your motor vehicle policies; are there any options here to reduce the availability of vehicles for private use?
- Are there any vehicles being provided which could be work related vehicles (and exempt from FBT) but are not currently being treated as such?
- Ensure you are structuring your employees' arrangements correctly to fall within FBT rather than PAYE if there is a possible exemption in the FBT regime which is not replicated for PAYE purposes;
- Consider the application of the de minimis rule (which allows unclassified fringe benefits of up to $300 per employee per quarter and $22,500 to all employees over the current and previous three quarters to be exempt from FBT) - can you manage your fringe benefits to fall within these rules? Remember that the $22,500 threshold must be assessed at a group level;
- Are you looking at undertaking an attribution calculation in the 4th Quarter (quarter ended 31 March 2022) which attributes fringe benefits to your employees? If so, FBT can be paid at an alternate rate of 49.25% for Quarters One to Three. While undertaking an FBT attribution calculation in Quarter Four is more time consuming than paying FBT at a flat rate of 63.93%, there are potentially tax savings to be made.

If you are considering paying an allowance or reimbursement to your employees, or have any questions relating to FBT on motor vehicles during lockdown or FBT in general we recommend getting in touch with your usual Deloitte tax advisor.

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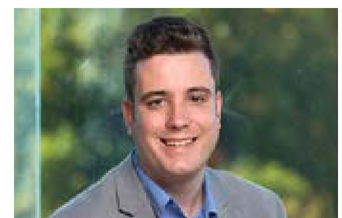

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How confident are you in your transfer pricing?

By Bart de Gouw, Will Dawson and Celia Brownlee

Transfer pricing - a new legislative landscape

Inland Revenue have high expectations in relation to transfer pricing and evidencing that transactions have been undertaken at arm's length. Even diligent taxpayers could get tripped up by underestimating the level of work or support required. In recent years, we have seen an increasing level of focus from Inland Revenue on taxpayers' cross border related party transactions. Neglecting your business's transfer pricing policies and documentation carries significant risk.

Inland Revenue's powers to investigate and adjust/reassess transfer prices have been enhanced. In addition to the burden of proof now being on the taxpayer to evidence transactions have been undertaken at arm's length, Inland Revenue's powers include:

- the ability to request information held anywhere within a "large multinational group" from a New Zealand entity in the group, which can be enforced against the local taxpayer;
- requiring New Zealand taxpayers to provide information held by offshore entities they control, regardless of whether they are part of a large multinational group;
- an extended time bar of 7 years for transfer pricing matters; and
- requesting information or documents for a purpose relating to the development of policy for the improvement or reform of the tax system.

These powers mean a greater ability to scrutinise taxpayers' transfer pricing matters either individually, or at an aggregate level for policy development or targeted enforcement campaigns.

Another significant change to the legislative landscape is the adoption of the OECD Transfers Pricing Guidelines into domestic legislation, meaning a greater focus on economic analysis. For example, applying economic analysis of the cross border related party transactions to price the transactions based on the substance/actual conduct over just the legal form, where these differ.

Governance

Given the increased scrutiny and focus from Inland Revenue in respect of taxpayers' transfer pricing matters, it is now more important than ever before to demonstrate that cross border associated party transactions are transacted at an arm's length value (as determined by applying one or more of the methods prescribed in New Zealand legislation).

Taxpayers should have in place intercompany agreements that reflect the economic benefits conferred between group entities. The pricing of the transactions should be consistent with what is determined by applying the relevant prescribed method(s) and accounted for appropriately. Implementation should be reviewed regularly to sense check that the policy is resulting in the intended outcome and that the substance of the arrangement still aligns with the legal form. Depending on the characterisation of the transaction, consideration should also be given to other tax consequences, such as withholding tax and indirect taxes. Significant complexity can arise where there is a divergence between the conduct of the parties and

the legal form of the arrangement both in pricing the transactions but also in how these are accounted for and the consequential tax impacts.

In addition, documentation should be prepared annually with benchmarking updated regularly (the OECD guidelines state a renewal of benchmarking every three years with an update annually). Any economic or other circumstances that impact upon the transactions or pricing should be identified and addressed in the transfer pricing documentation prepared.

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Meeting the burden of proof

While there is no explicit statutory requirement to prepare or file New Zealand transfer pricing documentation, as the burden of proof is on the taxpayer, documentation is (in effect) required. If Inland Revenue challenges a transfer price and documentation has not been prepared, or is inadequate, then the taxpayer will be at a significant risk of being reassessed for increased assessable income and/or loss of deductions being sustained.

Not preparing adequate documentation also exposes taxpayers to loss of penalty protection. This means that a reassessment could lead to tax shortfall penalties in addition to a tax shortfall payable.

Inland Revenue has stated that:

"A failure to prepare adequate transfer pricing documentation or acceptance of pricing that is clearly inappropriate could result in a 40% shortfall penalty for gross carelessness if apparent problems involving material associated party transactions are simply brushed over lightly or even ignored."

It is common for New Zealand members of global groups to leverage transfer pricing documentation prepared by their overseas head office. However, care should be taken to ensure that any group policy and documentation will be sufficient for New Zealand tax purposes. The following is a non-exhaustive list of things to consider when leveraging documentation prepared by an overseas head office.

- Does the documentation cover all the relevant New Zealand transactions?
- Do global policies make sense when applied in a New Zealand context and have these been implemented as intended?
- Have the transactions been accurately delineated (i.e. characterised by what they are in substance)?
- Are there arrangements involving the New Zealand entity and third parties that may be used in evidencing an arm's length amount for associated party transactions? Often these would not be considered in group documentation.
- Is your benchmarking current?
- Is your benchmarking appropriate for a New Zealand market (where relevant)?
- Have you explained the impacts of COVID-19 and any resulting transfer pricing adjustments?
- Have New Zealand specific rules been considered? For example, the Restricted Transfer Pricing rules.

If the answer to any of the above is no, further support may be required.

Caution should also be taken when implementing group transfer pricing policies. Taxpayers should consider whether the outcome of the policies is arm's length from a New Zealand perspective in all the circumstances. This should include considering the overall profitability of the New Zealand entity.

Enforcement

In addition to the legislative changes mentioned above, we note that Inland Revenue has adopted a multinational compliance focus. Inland Revenue are actively seeking to obtain greater transparency over the tax affairs of multinational groups. This includes sending significant multinational enterprises annual questionnaires and using the data from those questionnaires to assess tax risks. Inland Revenue does not publish the threshold criteria for receiving these questionnaires, but it appears to be linked to New Zealand subsidiaries of multinational groups with revenue in excess of NZD 30 million. These questionnaires will assess risk against nine transfer pricing risk areas identified in the 2019 Multinational Enterprises Compliance Focus document.

The questionnaires we have seen issued so far are set out in the following table.

Questionnaire	Comment/focus
Basic Compliance Package	Involves the provision of Group structure, financial statements and tax calculation. This will subject to a closer specialist review compared to the tax return.
International Questionnaire	This is a generalist questionnaire aimed at capturing financial, thin capitalisation and transfer pricing information and feeds into Inland Revenues risk assessments.
Loss Makers Questionnaire	Focuses on transfer pricing policies of entities in sustained loss positions.
Distributors Questionnaire	Focuses on transfer pricing policies of distributor and wholesaler entities.
Financing Questionnaire	Focuses on transfer pricing policies in relation to financing transactions in multinational groups. This questionnaire requests both intercompany agreements and transfer pricing documentation that covers the financing transactions.
Royalties Questionnaire	Focuses on transfer pricing policies associated with royalty transactions.
Wage Subsidy and Transfer Pricing Questionnaire	Inland Revenue's expectation is that where the Wage Subsidy was received by a multinational operating in New Zealand, the benefit of that subsidy should generally be retained by that entity. This questionnaire is designed to help understand how the Wage Subsidy has been treated from a transfer pricing perspective. For more information on Wage Subsidies and transfer pricing, please refer to our article in the February 2021 edition of Tax Alert.

Takeaway

Given the inherit uncertainty in determining an arm's length price it is vital that taxpayers adopt a high level of care to transfer pricing to ensure that tax positions are as protected as possible from challenge. Taxpayers that adopt a light touch approach will be doing themselves a disservice and could receive a large and unexpected tax bill should Inland Revenue come knocking, as well as unexpected costs of a detailed transfer pricing and tax audit.

If you have any questions about your transfer pricing policies and preparation of appropriate supporting documentation, please contact your usual Deloitte tax advisor.

Given the inherit uncertainty in determining an arm's length price it is vital that taxpayers adopt a high level of care to transfer pricing to ensure that tax positions are as protected as possible from challenge.

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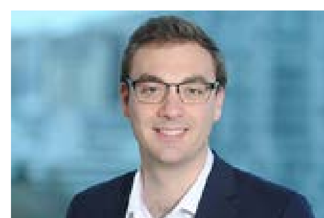

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Snapshot of recent developments

Tax legislation and policy announcements

Consultation on scope of Long Term Insights Briefing

On 13 August 2021, Inland Revenue released a consultation document - Tax, investment and productivity, proposing to focus its 2022 Long Term Insights Briefing on tax and its impact on investment and productivity. The aim is to obtain a better understanding of how taxes affect costs of capital (or hurdle rates of return) and the consequent implications for inbound investment, productivity, and economic performance. Public submissions close on 6 September 2021.

Inland Revenue statements and guidance

Inland Revenue's guidance on Clean Car Discount Scheme

Under the Clean Car Discount Scheme ("the Scheme"), a rebate will be paid to the first registered person of an eligible vehicle from 1 July 2021 until 31 December 2021. If proposed legislation changes become law, from 1 January 2022, the Scheme will be based on vehicle's Co2 emissions. This means that vehicles with zero or low emissions will qualify for a rebate and those with high emissions will incur a fee. This will have tax consequences if businesses receive a rebate or pay a fee under the Scheme, or lease a vehicle that comes under the Scheme. Inland Revenue has recently released tax guidance on getting the rebate, paying the fee, claiming depreciation, Fringe Benefit Tax, and GST.

Calculating a foreign tax credit – draft issued

On 18 August 2021, Inland Revenue released draft interpretation statement PUB00370: Income tax - foreign tax credits - how to calculate a foreign tax credit. This consultation statement explains how to calculate a foreign tax credit under subpart LJ of the Income Tax Act 2007, outlines relevant compliance obligations, explains in greater detail how to segment foreign-sourced income, and illustrates how the foreign tax credit calculation applies in some specific scenarios. Submissions close on 28 September 2021.

Excusing estates from filing income tax returns

On 24 August 2021, Inland Revenue published finalised Operational Statement OS 21/03 - Excusing estates from filing income tax returns. The Commissioner's position has remained unchanged from the draft statement. The Commissioner considers that executors and administrators are able to apply under s 43B of the Tax Administration Act 1994 to be excused from filing income tax returns where they have reached the point in administration of an estate that they are ready to distribute, or have distributed, the property in the estate to be held on trust for beneficiaries. It is also noted that a legislative change to s 43B that may alter some or all the matters covered in this statement is currently being considered by the Policy and Regulatory Stewardship Unit of Inland Revenue.

Apportioning expenditures for motels and hotels

On 26 August 2021, Inland Revenue released Questions We've Been Asked QB 21/10 - If I run a hotel, motel or boarding house and live on site, what expenditure can I claim? The Commissioner's answer remains unchanged from the draft statement and states that if a person has a business of providing accommodation through a hotel, motel, boarding house, or other business premises, and live on-site, any expenses they incur relating solely to the running of their business are fully deductible. However, expenses relating to their private quarters or family life are not deductible as they are private or domestic in nature. If the expenses relate to both their private quarters and their business, they can claim a deduction to the extent that the expenses relate to the running of their business. This requires a person to calculate the portion of these mixed expenses that are attributable to their business.

Foreign Exchange Rates

On 30 August 2021 Inland Revenue released draft determination PUB00401. This draft determination approves sources for foreign exchange rates that may be

used by any person who is required to convert a foreign currency amount into its New Zealand Dollar (NZD) equivalent for the purposes of determining their tax liability, unless the Act requires otherwise. It also approves the use of mid-month, end of month and rolling average rates. In addition, this approval explains how the relevant exchange rate should be used to convert foreign currency amounts to their NZD equivalent

OECD updates

Transfer Pricing country profiles

On 3 August 2021 the OECD published updated transfer pricing country profiles, reflecting the current transfer pricing legislation and practices of 20 jurisdictions, including New Zealand. The country profiles also contain new information on countries' legislation and practices regarding the transfer pricing treatment of financial transactions and the application of the authorised OECD approach when attributing profits to permanent establishments.

Progress towards a fairer global tax system

Progress continues in combatting harmful tax practices as new outcomes on the review of preferential tax regimes has been approved by the OECD/G20 Inclusive Framework on BEPS. At its April 2021 meeting, the Forum on Harmful Tax Practices took new conclusions on 25 regimes as part of the implementation of the BEPS Action 5 minimum standard. A number of countries have since abolished the local regimes concerned.

Deloitte Global News Focus

Deloitte wins at International Tax Review Asia-Pacific Tax Awards

Deloitte New Zealand is delighted to have been recognised as market leading tax advisors by the International Tax Review Asia Tax Awards, winning the New Zealand Tax Firm of the Year. Submissions are judged based on innovation, impact and complexity of the projects completed. Deloitte also received five regional awards, including Asia-Pacific Tax Firm of the Year, Asia-Pacific Diversity & Inclusion Firm of the Year, Asia-Pacific Tax Policy Firm of the Year, Asia-Pacific Tax Technology Firm of the Year and Asia-Pacific Impact Deal of the Year. In addition to regional awards, Deloitte member firms' tax practices in Hong Kong SAR, Indonesia, Japan, Malaysia, Taiwan and Vietnam won Tax Firm of the Year, and in Australia, Hong Kong SAR and Malaysia won Transfer Pricing Firm of the Year.

Deloitte Asia Pacific Tax Complexity Survey

Conducted in late 2020 and early 2021, Deloitte's fourth Asia Pacific Tax Complexity Survey, involving 407 business leaders in 24 key jurisdictions across the region, gauges business leaders' views on tax complexity, consistency and predictability to understand the current and anticipated tax environment and business landscape where they operate. This edition captures views on two additional factors that are seen to impact tax change: The digitization of business and the COVID-19 pandemic.

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

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