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Tax Alert

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Would your tax governance framework stand up to a review or audit?

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Would your tax governance framework stand up to a review or audit?

By Jodee Webb, Annamaria Maclean, Kirstie Anderson and John Alcantara

Inland Revenue has just launched its next step in its ongoing tax governance campaign and has made it clear that tax governance should be on the priority list for all significant enterprises in New Zealand. These "nudge letters" issued by Inland Revenue give taxpayers a chance to address any gaps in their tax governance framework before it is subject to scrutiny as part of a review.

Taxpayers who have been following the Inland Revenue activity in this area will be aware that this is the third campaign in as many years specifically focussed on tax governance and ensuring that organisations embed the right "tone from the top" when it comes to tax risk and compliance. Our October 2021 and March 2022 articles have highlighted the growing activity in this area, exhibited by the previous questionnaire campaigns.

We caught up with Inland Revenue to understand their overall objectives from this campaign, what they have learnt from the previous campaign, the latest round of "nudge letters", and what we can expect in terms of follow-up activity going forward. If your business has received this latest letter, or you are yet to be selected for a tax governance campaign, read on to find out why you should be taking stock of your organisation's tax governance.

What has Inland Revenue done so far?

Inland Revenue recognises that the focus of corporates over the last few years has drifted away from tax governance, with many finance teams pivoting to other priorities raised through the pandemic. The recent campaigns signal Inland Revenue's objective to correct this and put the spotlight back on the need to have robust tax governance practices in place.

As outlined above and in our previous articles on this topic, Inland Revenue's approach in the 2021 and 2022 campaigns was to send a short questionnaire to a total sample of 279 significant enterprises, including both foreign- and NZ-owned. This allowed Inland Revenue to build a picture of the overall level of tax governance among NZ corporates and identify key areas that generally require improvement.

The majority of respondents in these campaigns received follow-up action, with 171 of those taxpayers being placed either on a "watchlist" for further action, or an "unsatisfactory" list. The latter have already received follow-up compliance action by Inland Revenue in the form of further review/audit, due to being identified through the questionnaire as requiring significant improvement.

The key takeaway from these campaigns was the identification by Inland Revenue of three key "work-ons" that taxpayers should focus on to improve their overall tax governance. These include:

1. **Documentation of tax strategy and tax control framework:** Tax risks are often managed informally, with a lot of reliance placed on key personnel. Taxpayers are urged to formalise their tax governance practices through documentation. The format of this is not being prescribed by Inland Revenue as they appreciate it's not a 'one size fits all'.
2. **Testing and updating of controls:** Tax control frameworks should not be a "set and forget" exercise. Ongoing monitoring and updates are required to ensure the framework remains fit for purpose.
3. **Reporting to the Board:** Boards have overall accountability so they should be promptly informed about tax risks and how these are being managed.

2023 campaign

Unlike the first two years of the campaign where Inland Revenue required selected taxpayers to complete and submit a questionnaire in respect of their tax governance practices, Inland Revenue is taking more of an educational approach in 2023.

This year, Inland Revenue is encouraging all significant enterprises to work through the questionnaire as a self-assessment tool, to determine the current state of their tax governance framework and address any gaps. While there is no requirement to submit the questionnaire by a due date this time around, there is no room to be complacent. Inland Revenue has confirmed and we have seen that they are ramping up their review activity and will expect taxpayers to have good tax governance in place that is available for review, or at least be working towards a robust framework when questions on tax governance are raised.

Recommended action to ensure your business will stand up to future reviews

For 2023, Inland Revenue have sent letters to approximately 900 significant enterprises. However Inland Revenue has also made it clear that other taxpayers who didn't receive a letter, such as large family-owned groups, should also be taking a proactive stance to tax governance. In particular there will be a special focus on the for taxpayers who are subject to the risk review programme, with specific reviews and walk-throughs taking place from 2024.

As there is no "one size fits all" approach to tax governance, it is important to consider what is appropriate for your business and what actions are required. Inland Revenue specifically called out that New Zealand businesses that are part of a global group looking to leverage frameworks developed offshore should ensure that these are appropriately adapted for the New Zealand landscape.

The expectation is that corporate taxpayers should be at least "established" in Inland Revenue's maturity model (set out in our March 2022 Tax Alert and below), which essentially requires the taxpayer to be able to answer "yes" to all of the questions in the questionnaire.

Emerging

Certain processes have been used to develop some capabilities but they continue to be ad hoc and need further significant improvements.

Progressing

Certain process improvements have been initiated but these are not yet systematically implemented and institutionalised.

Established

Robust processes have been put in place, resulting in a high capability and they are institutionalised. Inland Revenue expects corporate taxpayers to be at this level.

Aspirational

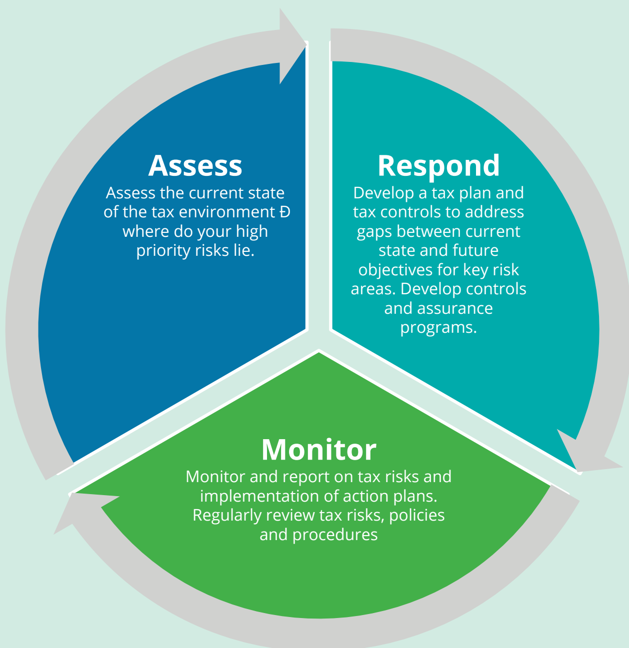
Processes have been optimised resulting in a paradigm shift, with use of new / innovative tools / technology and transparent reporting.

We encourage all taxpayers operating in New Zealand to use the Inland Revenue questionnaire as a self-assessment tool – even if your business has not yet received a letter from Inland Revenue this is a good starting point to identify any gaps in your existing tax control framework. We are currently working with our clients to complete these self-assessments and prepare a plan for addressing the gaps.

The Tax Governance Questionnaire asks 10 yes/no questions:

1. Does the company have a well-documented overarching tax strategy?
2. Does the CFO or tax manager formally confirm, at least annually, that this strategy is regularly reviewed, updated where necessary and followed in practice?
3. Does the company have an effective tax control framework to manage day-to-day tax risks?
4. Has the operation of the tax control framework been tested independently in the last three years?
5. In the last three years, have any tax control deficiencies been identified? If yes, have any follow-up actions been taken to remediate those deficiencies?
6. Are key internal policies, procedures and controls covering the data collection, analysis, calculation, recording and reporting for tax filing and other tax compliance requirements, documented and available for examination if required?
7. Does a review take place at least annually for changes to accounting policies upon which group financial statements are prepared and all items examined where tax treatment may differ materially from financial accounting treatment?
8. Is there a robust process in place for the finance and/or tax teams to stay on top of all relevant changes in tax law and related Inland Revenue guidance?
9. Is a process in place to identify significant transactions (including those which need to be reported to the board or relevant board sub-committees) in respect of which external advice and/or binding rulings may be required?
10. Does senior management report regularly to the board or relevant board sub-committees on potentially material tax issues or risks?

How would your business answer these questions?



In our October 2021 article, we included our recommended "Assess – Respond – Monitor" approach to strengthening a tax governance framework. This includes further examples of how we can help you transition from "Emerging" to "Established" in the maturity model.

What are Inland Revenue's next steps?

Inland Revenue recognises that developing a tax control framework takes some time, and indicated a rough timeframe of six months. In our experience this can often take longer, particularly when you factor in Board review and approval. It is therefore best to get onto this early to ensure you are able to demonstrate a robust framework in the event of an Inland Revenue review.

Starting in early 2024, Inland Revenue indicated that scrutiny of tax strategy and tax controls will be common practice in Significant Enterprise compliance reviews and audits. We understand there will be consequences for taxpayers under review who are found to have taken no action to ensure there are good tax governance practices in place. Further, should adjustments arise out of future compliance activities, the adequacy of tax governance will be considered with respect to any penalties applied. A lack of good tax governance may point to a taxpayer not taking reasonable care.

Aside from Inland Revenue activity, there are clearly many other good reasons to continually consider and improve the level of your organisation's tax governance. A proactive stance to tax governance ensures your business is actively managing tax risk and identifying any potential errors before they turn into material issues. Paying the right amount of tax is an important aspect of a business's social licence to operate, and a robust tax governance framework can go a long way to ensuring that this is the case. Certain ESG frameworks have also recognised this and having a well-documented tax governance policy can also improve ESG ratings as discussed in our February 2023 article.

With all this said, we believe it is time to give tax governance a closer look and ensure that your tax governance frameworks are up to scratch.

Contact us

Given tax governance is bespoke to each business, it can be difficult to know where to start and what the right approach is depending on the size and complexity of your finance function. We can assist in a range of different ways with your tax governance journey, whether it is an initial gap analysis or the development of a control framework and documentation to address gaps you already know exist. If you would like to discuss tax governance further please get in touch.

Aside from Inland Revenue activity, there are clearly many other good reasons to continually consider and improve the level of your organisation's tax governance. A proactive stance to tax governance ensures your business is actively managing tax risk and identifying any potential errors before they turn into material issues.

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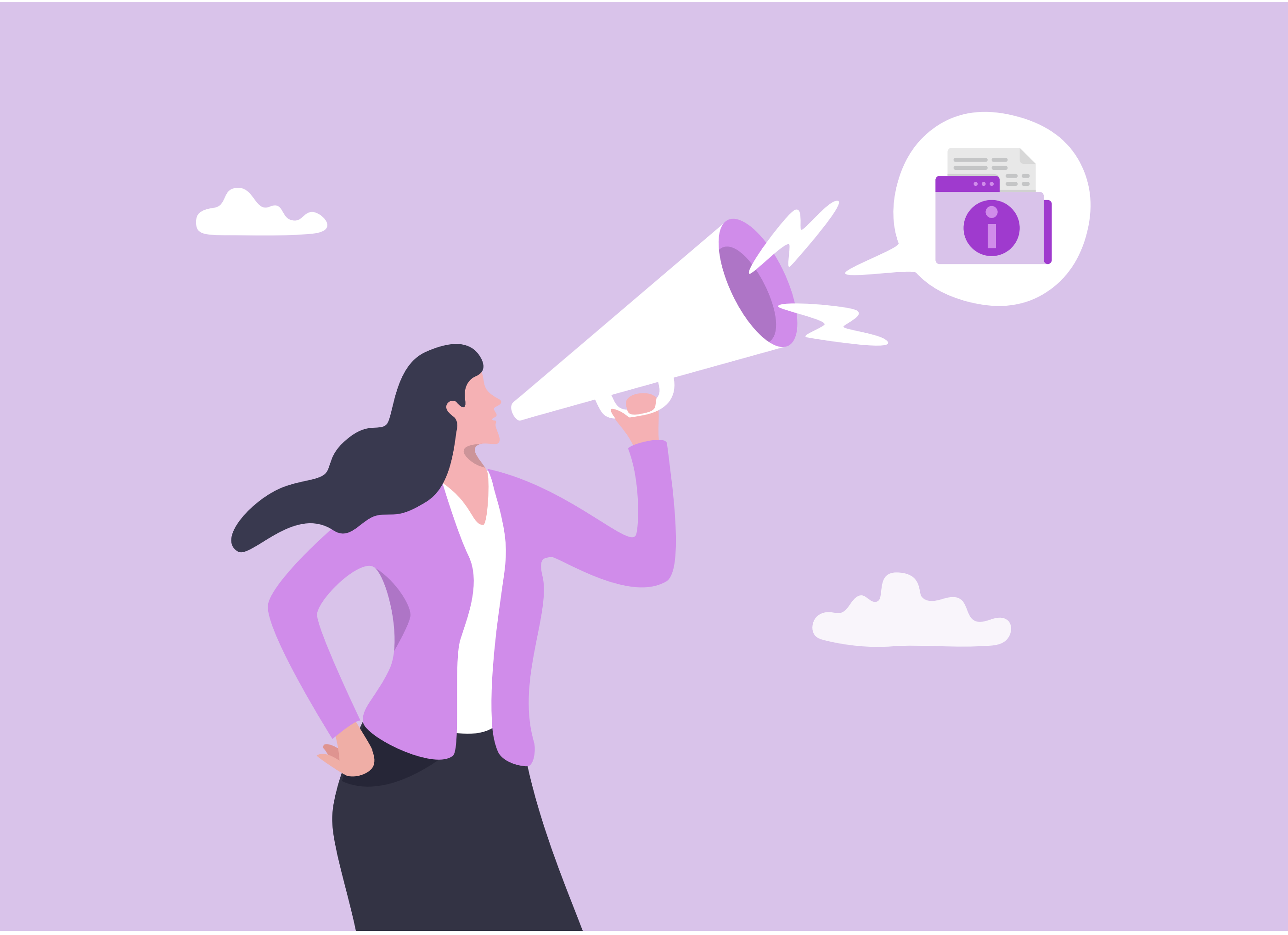
Taxation Principles Reporting Bill one step closer to law

By Robyn Walker



The Taxation Principles Reporting Bill ('the Bill') had its first reading May and was referred to the Finance and Expenditure Committee ('the Committee') for review. The Committee called for submissions and the Bill was criticised by submitters and opposition parties as being unnecessary, with particular concern also focused on the description of the tax principles in the Bill.

Despite this criticism, in late July the Committee completed its review of the Bill and the majority of the Committee recommended to Parliament that it be passed, but with some fairly technical amendments.

The purpose of the Bill is to oblige the Commissioner of Inland Revenue ('CIR') to report on taxation settings, with reports being made annually, and a more detailed report prepared every three years. As a consequence, the primary obligations in relation to the Bill fall on the Inland Revenue, however, there remains a concern that taxpayers will be required to supply additional information in order for the reporting to be meaningful (particularly given the references to economic income, refer below). Time will tell. The Bill requires the first report to be completed by the CIR before 31 December 2023.

The Committee specifically noted that it did not think the CIR should be reporting on the tax principles individually, but as a package, because of how the principles overlap and conflict. The Committee stated that *'[w]e think the key principles, which relate to how a tax system is designed, should be framed in relation to the overall purpose of a tax system, which is to raise revenue, and in some cases to correct behaviour or market failures.'* The Bill now also includes a statement of the purpose of taxation.

The Committee revised a number of the descriptions of the key tax principles that the CIR will be reporting on and they now read as follows:

Key principle	Description
Horizontal equity	Horizontal equity is the extent to which people with similar levels of economic income pay similar amounts of tax. In considering horizontal equity, the time value of money matters and the tax system should generally recognise the economic effect of income. In considering horizontal equity, there are important areas where exemptions to taxing economic income are justified in the pursuit of wider societal outcomes (for example, not taxing the imputed rent or gains on an owner-occupied home).
Efficiency	Efficiency is the extent to which tax revenue is raised in ways that minimise costs to the economy, including distortions.
Vertical equity	Vertical equity is the extent to which the tax system is progressive. Tax is progressive if people with higher levels of economic income pay a higher proportion of that income in tax. A progressive tax system does not mean that every tax is progressive (for example, GST is regressive relative to income) but the overall system ought to be. In practice, wealthy people should pay no lower an average rate of tax relative to their economic income than middle New Zealanders.
Revenue integrity	Revenue integrity is the extent to which the tax system is coherent and sustainable over time and minimises opportunities for tax avoidance and tax evasion.
Compliance and administrative costs	Compliance and administrative costs is the extent to which compliance and administrative costs for taxpayers and the Government are reasonable, but minimising costs is not justification for substantial unfairness in the tax system.
Certainty and predictability	Certainty and predictability is the extent to which the tax system is transparent and taxpayers are able to determine their tax obligations before they are due.
Flexibility and adaptability	Flexibility and adaptability is the extent to which the tax system keeps pace with changes in society, in particularly technological and commercial developments, and changes in inequality or comparative wellbeing.

Of note is that the principles continue to refer to concepts of 'economic income', and comparatives of the level of tax paid on economic income by both 'wealthy people' as well as 'middle New Zealanders'. Given economic income is a broad concept, taxpayers may be rightly concerned about the potential for further information to be gathered each year. The Bill also includes a new requirement that the CIR report 'must take into account the impact of the tax system on different communities of taxpayers within New Zealand'. This may lead to more questions for taxpayers about what 'communities' they identify with.

The Bill was an initiative of the Hon David Parker; now that he has moved on from the role of Minister of Revenue it is less clear whether this Bill will continue to be prioritised and speed through its remaining Parliamentary processes to be enacted prior to the current parliament being dissolved on 8 September. When questioned about the Bill and the concept of 'economic income' in Parliament the new Minister of Revenue Hon Barbara Edmonds stated she supported the Bill and noted 'I am willing to take time to consider the report back by the Finance and Expenditure Committee and will respond in due course.'

Even if enacted, if there is a change in Government following the election, this Bill may be repealed, with the National Party stating in the Committee report: 'If this bill is enacted, National will repeal the Act when elected to Government.'

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Cashflow for trailblazers: Inland Revenue's guidance on the R&D Loss Tax Credit Regime

By Zara McLellan, Brendan Ng and Ian Fay

In today's competitive business landscape, innovation can be the key to success. However, Research and Development (R&D) endeavours can be financially taxing, often leading to substantial upfront expenses and losses - especially for businesses in the start-up phase. To encourage and support innovation, there are a number of R&D support mechanisms, that serve as powerful incentives for businesses to invest in new ideas while easing the burden of R&D costs. This includes the R&D Loss Tax Credit (RDLTC) regime which has existed since 2016 and enables companies in a tax loss position to exchange these losses, that would otherwise be carried forward, for cash.

In July the Inland Revenue released a draft interpretation statement *IS XX/XX Research and development loss tax credits* (the draft interpretation statement) on the RDLTC regime, providing a deep dive into the rules and ongoing obligations of the regime. Until now, there has been minimal guidance on the intricacies of the RDLTC regime, an issue IRD aims to solve with the release of the draft interpretation statement.

What is the RDLTC Regime?

The RDLTC is designed to operate like an interest-free loan which must be 'paid back' over time. The RDLTC assists with cashflow through enabling R&D intensive companies to receive the tax effect of their losses as cash following the year incurred, instead of carrying forward these losses to offset these against future profits. The RDLTC and the R&D Tax Incentive (RDTI) regime are not mutually exclusive, so provided the specific individual regime definitions of R&D are met, companies can claim for the same expenditure under both (more detail on the RDTI can be found in this previous Tax Alert article).

The RDTLC operates on an annual basis. It has a strict eligibility criterion (which Inland Revenue has now elaborated on), and stringent filing timeframes apply. To apply for the RDLTC a company must file an R&D statement with Inland Revenue.

There are two key aspects the draft interpretation statement provides guidance on:

- Applying the eligibility criteria
- Considerations regarding the ongoing obligations of the regime

Applying the eligibility criteria

The eligibility criteria for the RDLTC are outlined in the Income Tax Act 2007, however, uncertainty has existed when applying the rules to individual company circumstances. The draft interpretation statement seeks to answer many of these questions and we've highlighted the most noteworthy below.

Definition of "research" and "development"

The RDLTC regime adopts the definitions of "research" and "development" as described in the New Zealand equivalent to International Accounting Standard 38 Intangible Assets (NZ IAS 38). The guidance elaborates on what qualifies as research and development, noting that this definition is different from that under the RDTI.

Wage intensity calculation
An eligible company must satisfy an R&D wage intensity calculation, requiring 20% of a company's total labour expenditure to be on R&D labour. This ensures that R&D forms a key part of a company's business activities.

The interpretation statement clarifies that the deductibility of labour expenditure is not relevant for the wage intensity calculation, meaning although R&D labour may be funded by other grants and rebates which make it ineligible expenditure, it is still relevant for this calculation.

Further, the guidance is not prescriptive in the methodology used to apply appropriate apportionment rates to labour costs when determining a split between R&D effort and other goods and services. However, it does note that the apportionment method needs to be fair and reasonable and supported by documentation showing how an outcome was reached.

How the eligibility criteria apply to R&D groups
If a company is a member of an R&D group, this can affect its eligibility to claim as:

- The wage intensity calculation must be satisfied for the R&D group; and
- The R&D group must have a net loss

The concept of an R&D group follows the same general company grouping rules as for other purposes. It is worth noting though, that although overseas expenditure is ineligible under the RDLTC, the guidance clarifies that this doesn't mean non-resident companies are excluded from being a member of an R&D group.

There are also considerations when one member of the R&D group undertakes the R&D itself, while another member of the group owns the intellectual property (IP) / results of the R&D. In this situation, without more the company undertaking the R&D cannot claim the RDLTC because the IP is owned by the IP company (and vice versa).

Qualifying expenditure
Unlike the RDTI regime which requires a minimum of $50,000 of eligible R&D expenditure, there is no minimum amount of eligible R&D expenditure to qualify for the RDLTC. However, the amount of eligible R&D expenditure is relevant for determining the amount of losses that can be cashed out.

The guidance provides flexibility in choosing the apportionment rates for costs which relate to both R&D and other activity, so long as they are reasonable and appropriate. The interpretation statement provides two examples of what might be an appropriate method of apportionment:

- Salaries and wages for overhead staff may be appropriate to apportion based on a percentage of R&D Staff as compared with non-R&D staff.
- Overhead costs such as electricity, insurance and rent may be more appropriately apportioned using the percentage of area used for R&D compared with other activities.

Considerations for the ongoing obligations of the regime

Until the value of the loss tax credit has been repaid in full, there are ongoing obligations that the company must meet each year (including when the loss cashed out is required to be repaid). Inland Revenue have provided clarification of these obligations and our key takeaways are below

Extinguishing losses and carrying forward excess losses

When a company cashes out its tax losses under the RDLTC, these are extinguished, meaning they have been used by the company and are no longer able to be carried forward and used in a subsequent income year.

If the amount of loss extinguished is less than the total available net tax loss, the remaining losses can be carried forward. Taking advantage of the RDLTC regime does not remove the requirements associated with carrying forward company losses that are not cashed out and these rules must still be considered each year.

Loss recovery events, requiring R&D repayment tax

When a company becomes profitable and pays tax on income, this is treated as repayment of the RDTLC. However, there are a further four loss recovery events, which may trigger an early repayment obligation. These are:

- disposal of intellectual property
- appointment of a liquidator
- company migration or no longer a company
- shareholding change of greater than 90%

Given the complexity associated with business transactions, restructures, and wind-ups, it is no surprise that these rules are not simple to apply. The guidance released aims to support companies in applying the rules to their unique circumstances, including outlining which calculation to apply if multiple events occur during one income year. If one of these may apply to you, we would recommend getting in touch with your usual advisor.

Imputation credits

Inland Revenue is conscious of the implications of being in an imputation debit position at year end. The draft interpretation statement clearly outlines that the amount of imputation debit is limited to the amount of tax paid during the year, therefore a company will not have a closing debit Imputation Credit Account balance due to the RDTLC.

The main consideration here, in many scenarios, is that a company will not be able to attach an imputation credit to dividends until it has repaid the RDTLC in full.

What should I do next?

Inland Revenue's RDLTC draft interpretation statement is open for public consultation until 30 August 2023, after which submissions will be considered and a final statement issued. If your business is currently enrolled in the regime and has questions about how the draft interpretation statement will affect your business or you have any feedback on the draft, we recommend you get in touch with the specialist Deloitte R&D team or your usual Deloitte advisor.

We also suggest that you consider whether the R&D Tax Incentive (RDTI) is right for your business. The RDTI provides a 15% tax credit (or refund in certain circumstances) for eligible R&D expenditure spent on an eligible R&D activity. The RDTI process has also been recently improved with the introduction of the in-year payment scheme, allowing businesses earlier access to the cash benefits of the RDTI.

If your business is not currently enrolled in the RDLTC or the RDTI and you think your business might be eligible, we can help.

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Should a giveaway come with a tax bill?

By Robyn Walker

For many years businesses have been complaining about an example of overreach in our tax laws – section GC 1 of the Income Tax Act 2007. Most people may have never heard of it, but what this section says is that any 'trading stock' is always deemed to be disposed of for market value. Trading stock has an expanded definition for the purposes of this rule and as well as traditional concepts of stock, it includes any land that may be subject to tax. Section GC 1 essentially exists to ensure that a business owner can't take stock for their own purposes or give stock to associates for free or for heavy discounts.

Section GC 1 is controversial because along with transactions with owners and associates, it raises the prospect that a business that is donating stock to a school raffle, giving food to a foodbank, providing emergency supplies in disaster zones, providing every 10th coffee free etc is also deemed to receive income under a fictitious sale transaction. If a business has the time and inclination to enter into some form of sponsorship agreement, then arguably the section would not apply as there is consideration being received for the trading stock.

In recognition of the overreach under section GC 1, a number of temporary overrides have been in place, both during periods with natural disasters and during COVID-19. The latest temporary exemption is due to expire on 31 March 2024.

With the looming expiry in mind, Inland Revenue has released an Officials' Issues Paper ('the Paper') which explores options of how to address the issues of overreach on a more permanent basis.

Businesses who routinely give away stock, and the charities and others who receive it should take note of the proposals and look to provide feedback before the 6 September closing date for submissions.

The paper primarily focuses on two types of transactions:

- Trading stock disposals that are not gifts
- Gifts of trading stock

Transactions between associates and those that are clearly intended to defeat the trading stock rules will continue to be subject to section GC 1. The Paper also proposes that any future concessions will not be extended to land transactions.

Disposals that are not gifts

This chapter of the issues paper considers transactions where stock is disposed of for less than market value in the ordinary course of business. This could include marketing or sponsorship arrangements and sales below market value to clear stock or improve cashflow. The paper notes that the need for businesses to assign market values is often subjective and inaccurate.

There are three options put forward:

1. Continue the status quo and require deemed income to be returned
2. Make the temporary relief permanent
3. Introduce a deemed deduction as well as a deemed expense

Under this third option, taxpayers would need to calculate and report market values of all stock falling under section GC 1, with equal and opposite amounts being disclosed as separate line items in tax returns. Option 2 seems a clear winner.

Gifts of trading stock

This chapter focuses on gifts to charities or donee organisations where there may not be a 'business purpose' (a true gift does not have a connection with income). The chapter contrasts the treatment of stock to the treatment of gifts in cash, where tax benefits (in the form of tax deductions) are limited to a company's net income.

The paper puts forward 5 options:

1. The status quo continues, with temporary relief in emergency times
2. Make the temporary relief permanent
3. Make the temporary relief permanent but limit it to donee organisations and exclude public authorities, and consider a cap based on net income
4. Deem all donors to derive income at cost or opening value of the donated trading stock (this is not a concessionary option but reduces compliance costs)
5. Remove the deemed income rule for gifts of food made to approved donee organisations and non-associated parties

Given the number of years that businesses have been raising these issues, it is somewhat disappointing that we are not yet closer to a chosen solution to the overreach of section GC 1. However, the Paper is a step in the right direction.

Deloitte comment

Given the number of years that businesses have been raising these issues, it is somewhat disappointing that we are not yet closer to a chosen solution to the overreach of section GC 1. However, the Paper is a step in the right direction.

Businesses are increasingly focused on how they can contribute to society and reduce environmental impacts (for example by being able to donate obsolete but still functional stock). Being able to provide goods to those who can use them for either no or low cost can be a win-win for everyone, however having an associated tax bill can be a bitter pill to swallow, so reform in this area is warranted. Continuing with a tax rule that encourages products to be sent to landfills rather than being given to those who can use them should not be an option we are prepared to accept.

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Accounts payable practices to be disclosed from 2024

By Robyn Walker

Legislation requiring large businesses to disclose the time it takes to pay invoices has been passed into law and will take effect from 2024. The Business Payment Practices Act 2023 ('the BPP Act') received Royal Assent on 26 July 2023 and will come into force on 26 May 2024.

However, the actual detail of what the BPP Act requires is still to be revealed, as the detail of what needs to be reported is to be set by regulation. We've previously summarised what was proposed in draft regulations, and it's understood these are being updated to address some of the issues raised by submitters; and there is no set date for the release of the regulations.

It is worth noting that a number of submitters were critical of the legislation and its draft regulations throughout the consultation process. Through the Parliamentary processes, the Economic Development, Science and Innovation Committee were unable to agree on whether the legislation should pass, and both the National and ACT parties have stated their intention to repeal the legislation should they form the next Government; with Hon Michael Woodhouse, perhaps in jest, suggesting that the legislation would be included in an omnibus "Well-meaning Waste of Time Repeal Bill".

Despite the threats of possible repeal, businesses still need to be aware of whether this Act will apply to them and to start thinking about how they will comply once the regulations are released. In this article, we summarise the requirements of the BPP Act.

Who is subject to the BPP Act?

The BPP Act applies to 'large' business that meets the 'payment threshold test'.

'Large' is defined by reference to the Financial Reporting Act 2013 definition and requires total revenue in excess of $33 million in the two preceding accounting periods for the entity and any subsidiaries (in aggregate).

The 'payment threshold test' looks at whether in the two-preceding accounting periods the total expenditure of the entity is $10 million or greater when wages and salaries and related party transactions are ignored.

Disclosures will be able to be made on a group basis or on an entity-by-entity basis. Subsidiaries that are independently large will be able to make separate disclosures.

What needs to be disclosed, and when?

As indicated above, the full details of what needs to be disclosed will be set by regulations. The regulations will be administered by a 'Registrar' to be appointed by the Chief Executive of the Ministry of Business, Innovation and Employment ('MBIE').

The BPP Act specifies the disclosure of the trading name(s) and New Zealand Business Number ('NZBN') of each entity, as well as the particulars set by the regulations about invoices received or paid and invoices issued during the disclosure period.

The BPP Act specifies that reporting will not be required for invoices or payments which relate to salary or wages, taxes, rents, leases, charges related to electricity, gas, telecommunication services or other utilities, local body rates and charges, and any other item specified in the regulations.

Disclosures will be made for each 'disclosure period', which is a 6-month period, with the 'disclosure deadline' not being earlier than 1 month later. During the consultation period there were a number of options for what the disclosure period could be, with MBIE favouring an option that varied based on a business' industry classification code.

When does the BPP Act take effect?

The BPP Act comes into force 10 months after the date of Royal Assent (26 July 2023).

However, Schedule 1 of the BPP Act includes a transition provision that provides for the legislation to phase in, with only businesses with revenue in excess of $100 million in the two preceding accounting periods having to complete disclosures in the first disclosure period.

Businesses also do not need to make disclosures if the first disclosure period starts prior to the BPP Act coming into force. For example, if a business was given a September/March disclosure period (i.e., 1 April – 30 September and 1 October – 31 March), its earliest disclosure period would be 1 October 2024 – 31 March 2025, as the BPP Act only comes into force part way through the 1 April 2024 – 30 September 2024 disclosure period.

What is the output?

The Registrar is required to establish and maintain a register called the 'Business Payment Practices Register'. The stated purpose of the register is to 'enable members of the public and entities to access information about certain business-to-business payment practices of large entities; and to help them make informed choices about whether to engage with those entities.' The register will be able to be searched based on an entity's name, NZBN or industry classification.

Are there any consequences of non-compliance?

Businesses who do not comply with the BPP Act will be potentially liable for infringement fees, fines and pecuniary penalties which could be as high as $500,000.

It is worth noting that the BPP Act also modifies the Tax Administration Act 1994 to ensure that the Commissioner of Inland Revenue can disclose information to the Registrar for the purpose of establishing and maintaining the register and monitoring compliance with the requirements with the BPP Act. While it is unclear what data would be disclosed, it seems likely that tax return data could be used to determine what entities are required to comply with the BPP Act.

For more information please contact your usual Deloitte advisor.

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Snapshot of recent developments

Tax legislation and policy announcements

Special report: Child Support (Pass On) Acts Amendment Act 2023

On 29 June 2023, Inland Revenue issued a special report providing early information on the passing on of child support, and the treatment of those payments for the purpose of determining entitlement to benefits and other assistance.

Charities Amendment Act 2023 passed

On 5 July 2023, the Charities Amendment Act 2023 was granted Royal assent. The Act modernises the charities sector, improves access to justice services and reduces the red tape that smaller charities face. It also empowers the Taxation Review Authority to hear Charities Act 2005 appeals.

Deposit Takers Act 2023 passed

On 6 July 2023, the Deposit Takers Act 2023 received Royal assent. The Act modernises the regulatory framework to help ensure the safety and soundness of deposit takers, provides for new inspection powers, and introduces a new Depositor Compensation Scheme.

Information releases: new legislation and Budget 2023 advice

Inland Revenue have recently published the following information releases, which includes policy advice and cabinet papers, about new legislation and policy announcements:

- Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023 (published 30 June 2023)
- Tax Administration (Extension of Due Dates) Order 2023 (published 30 June 2023)
- Budget 2023 tax initiatives (published 12 July 2023)
- Income Tax (Accommodation Expenditure – North Island Flooding Events) Order 2023 (published 17 July 2023)
- Income Tax (deemed rate of return on attributing interest in FIF, 2022-23 income year) Order 2023 (published 21 July 2023)

New Zealand-European Union Free Trade Agreement

On 10 July 2023, the Government announced that a Free Trade Agreement with the European Union has been signed. New Zealand is expected to gain up to NZ$1.8b in exports to the European Union per year. Duties have been removed on 91% of New Zealand's goods exports, and this will rise to 97% after seven years.

New Zealand-Australia Double Tax Agreement

On 26 July 2023, the New Zealand Prime Minister Chris Hipkins and Australian Prime Minister Anthony Albanese met in Wellington and announced they discussed a number of Trans-Tasman issues including "agreement to work towards updating our Double Taxation Agreement".

Inland Revenue statements and guidance

Tax Information Bulletin Vol 35, No 6 – July 2023

On 30 June 2023, Inland Revenue released the Tax Information Bulletin for July 2023.

Interpretation Statement: GST – Section 5(6D): Payments in the nature of a grant or subsidy

On 4 July 2023, Inland Revenue issued IS 23/05 which considers the application of section 5(6D) of the Goods and Services Tax Act 1985 and replaces GST and Compensation to Māori Organisations and GST on Grants in TIB Vol 4, No 7, March 1993.

The Statement confirms that when a payment in the nature of a grant or subsidy is paid on behalf of the Crown or by a public authority to a person in respect of their taxable activity, then that payment is deemed to be consideration for a supply of goods and services in the course or furtherance of the taxable activity (if the requirements in section 5(6D) are met). If the person is GST-registered, they must account for output tax.

Interpretation Statement: Income tax – Government payments in the nature of a grant or subsidy

On 4 July 2023, Inland Revenue issued IS 23/06 which considers the application of sections CX 47 and DF 1 of the Income Tax Act 2007 (the grant provisions) in relation to payments in the nature of grants and subsidies.

The Statement clarifies the Commissioner's view in situations where it is not clear how the grant provisions apply, including where the payment is not for any specific expenditure, the payment is not spent in the same year it is derived, and where there are surplus funds.

In summary, the payment and expenditure must correspond and are taxable when the business can keep the payment. Expenditure must be incurred in a "reasonable timeframe" and deductions that correspond to payments are denied to the extent they are funded by the payment. It is expected that surplus funds will be spent on other deductible or depreciable property.

Businesses must keep records to demonstrate the payment has been spent in their business and that corresponding deductions have not been claimed.

Interpretation Statement: GST – Court awards and out-of-court settlements

On 10 July 2023, Inland Revenue issued IS 23/07 which considers whether court awards and out-of-court settlements will be subject to GST. This may occur if the court award or settlement is consideration for a supply made by the person receiving the court award.

The Statement discusses the requirement for a sufficient connection to exist between a payment and a supply, different types of court awards, different GST accounting bases, claiming GST input tax deductions in a later period, payments received under a contract of insurance, and apportionment.

Technical Decision Summary: Distributions from private foundation on dissolution

On 11 July 2023, Inland Revenue issued TDS 23/10. A New Zealand resident taxpayer contributed funds to a private foundation established in, what was then, the Netherlands Antilles. The decision concerned whether funds of the private foundation were income to the taxpayer upon dissolution.

It was held that the private foundation was a "company" and the taxpayer a "shareholder" at the time the amount was distributed. The distribution was found to be capital in nature and therefore not income of the taxpayer.

Inland Revenue guidance on bright-line property changes and rollover relief

On 11 July 2023, Inland Revenue released further guidance on changes to the bright-line property rules and rollover relief. The bright-line property tax guide (IR 1227) has been updated and two new tools have been developed to assist taxpayers in working out whether rollover relief applies to:

- Transfers of residential land for family trusts, and
- Transfers of Māori residential land to or from trusts.

QWBA: GST: Directors and board members providing their services through a personal services company

On 21 July 2023, Inland Revenue issued QB 23/07 which considers the GST treatment of a director or board member who provides their services through a personal services company (PSC).

The QWBA confirms that if a director (or board member) provides services through a PSC, the PSC will be able to register for GST, even if the director would not be able to register if they were providing their services in their capacity as a natural person.

This is because the supply by a PSC of a person to provide directorship services is distinct from the supply of those directorship services by an individual. As long as the PSC's level of activity is sufficient to be a taxable activity, the PSC can register for GST.

Public Rulings: Investing into a US limited liability company – New Zealand tax consequences

On 24 July 2023, Inland Revenue published BR Pub 23/09 – 23/13. These five Public Rulings and accompanying commentary set out the income tax treatment of foreign tax credits or other forms of double taxation relief for New Zealand investors in a US limited liability company that is taxed on a fiscally transparent basis as a partnership in the US, but as a foreign company in New Zealand.

The Rulings apply from 26 June 2023 until 25 June 2028. This is a reissue of the earlier BR Pub 20/01 – 20/05 which expired on 25 June 2023. The Commissioner's view remains unchanged from BR Pub 20/01 – 20/05.

Global tax news

Deloitte 2023 Global Tax Survey: Confidence in times of change

The tenth annual global survey of multinationals provides valuable insight into how large multinational companies perceive and react to the ongoing changes in the international tax framework. More than 200 tax leaders from multinational companies across 28 countries responded to the survey.

Findings from our survey indicate Pillar Two is happening and businesses are preparing for impact. Stakeholder interest in tax will continue to increase but is becoming the new normality. Tax administration and tax disputes remain high on the corporate agenda. EU tax transparency proposals will affect many respondent groups, and BEFIT is not expected to simplify compliance. Voluntary tax transparency standards and strategies feature widely but many respondent groups plan to keep within standard financial reporting. Groups are also considering environmental taxation and international remote work. The survey results and full report can be accessed here.

Amendments to New Zealand International Accounting Standard 12 – Pillar Two

On 13 July 2023, the NZ XRB issued an amendment to IAS 12 which gives entities temporary relief from accounting for deferred taxes arising from the OECD Pillar Two rules, including tax law that implements qualified domestic minimum top-up taxes.

Except for the deferred tax exception, the amended standard applies to annual reporting periods beginning on or after 1 January 2023 that have not ended, or do not end, before 10 August 2023. Disclosure is not required for any interim period ending on or before 31 December 2023.

OECD Updates

OECD launches new version of the BEPS MLI matching database

On 29 June 2023, the OECD launched a new and improved version of the BEPS MLI database which will allow tax authorities and other interested parties to make projections on how the MLI modifies a specific tax treaty.

138 jurisdictions agree historic milestone to implement global tax deal

On 12 July 2023, the OECD announced that 138 members of the Inclusive Framework, representing over 90% of global GDP, agreed an Outcome Statement recognising the progress made and allowing countries to move forward with the Two Pillar Solution.

OECD invites public input on Amount B under Pillar One relating to the simplification of transfer pricing rules

On 17 July 2023, the OECD announced they are seeking public comments on Amount B under Pillar One. Interested parties are invited to submit their comments on the public consultation document by 1 September 2023 by answering this questionnaire or by email.

OECD Tax Report to G20 Finance Ministers and Central Bank Governors

On 17 July 2023, the OECD released a report which sets out the latest development in international tax reform.

Webinar: OECD Tax Talks

On 19 July 2023, the OECD recorded a webinar on recent and upcoming international tax developments.

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

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