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Tax Alert

June 2022

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2022 mileage reimbursement rates published

By Amy Sexton and Andrea Scatchard

Motor vehicle mileage rates is a topic which catches people's interest. It's bizarre but true that anything we write on this topic gets read more than any other tax topic. With that in mind, it's timely to advise that Inland Revenue has just released its latest kilometre rates:

	2022	
Vehicle Type	**Tier One Rate**	**Tier Two Rate**
Petrol or Diesel	83 cents	31 cents
Petrol Hybrid	83 cents	18 cents
Electric	83 cents	10 cents

What does this mean and do I need to use these rates?

The Commissioner of Inland Revenue is required to regularly set kilometre rates so that these can be used by self-employed business owners or close-companies to determine available tax deductions for business use of a vehicle (if they chose to use that method). In practice, the same rates are often also used by businesses who reimburse employees who use their personal vehicles for work purposes. Provided reimbursements are made at or below the specified rates, they can be paid "tax free".

Use of these rates is not compulsory. Business owners can instead claim deductions for actual costs incurred, and likewise employers can reimburse employees at higher rates, but records would need to be kept substantiating that the rate of reimbursement is a reasonable approximation of actual costs.

Use of these rates is not compulsory. Business owners can instead claim deductions for actual costs incurred, and likewise employers can reimburse employees at higher rates, but records would need to be kept substantiating that the rate of reimbursement is a reasonable approximation of actual costs.

Given the large increases in fuel prices in 2022, some employees may try to push employers to provide a higher reimbursement. By way of contrast, the tier 1 rate for petrol & diesel vehicles was $0.79 in 2021 and $0.82 in 2020 (when the average cost of regular petrol was only $1.92).

Inland Revenue has stated that the increase in the 2022 rates (from 2021) is due to an overall increase in vehicle running costs, largely due to fuel costs.

What is the difference between Tier 1 and Tier 2?

The Tier 1 rates recognise the fixed and variable costs of running a vehicle and can be used for the first 3,500km of business travel, or the business portion of the first 14,000km of total travel in the vehicle. After these limits, the Tier Two rates apply (these only reflect the variable costs).

We have written several articles in the past on the practical problems with the two-tier kilometre rate method in particular for reimbursing employees and suffice to say these still exist where employees are reimbursed for high levels of work-related travel. If you'd like to refresh your memory on this method, we wrote about the practical issues with the introduction of the two-tier system in August 2018 and updated it with new developments in September 2019.

What do the new rates mean for you?

Self-employed and close companies

If you are a sole trader or qualifying close company and use the kilometre rate method to claim business vehicle costs, this new rate applies for the 2022 year, being the year 1 April 2021 - 31 March 2022, if you have a standard balance date. The increase in the rate will increase the amount of vehicle costs you can claim when you file your 2022 tax return. If you have already filed your 2022 income tax return, and relied on the 2021 kilometre rates, depending on the amount of the difference between the two amounts you may be able to self-correct the difference in your 2023 income return or, if the difference is material, file a Notice of Proposed Adjustment (which is only available within four months after the filing of an income tax return).

Employers

If you are an employer and are reimbursing employees for work-related travel, the increased rates apply to reimbursements made from the date that they were issued – 27 May 2022. If your reimbursement policy states that you will reimburse employees at the Inland Revenue rate, you will need to update the rate you pay as soon as practically possible. When rates are increased, a lag in updating rates paid to employees, while potentially disadvantageous to employees, does not cause a PAYE problem.

If your reimbursement policy states a set rate at which you will reimburse work related mileage, and this is lower than the new rate, you do not need to do anything as the amount you pay will be tax free, but you may get pressure from employees to increase the reimbursement rate.

As noted above, it is not compulsory to use the Inland Revenue rates, any reasonable amount can be reimbursed but documentation will need to exist to support any payments in excess of the Inland Revenue rates if you treat these as not taxable.

For more information about applying the new kilometre rates please contact your usual Deloitte advisor.

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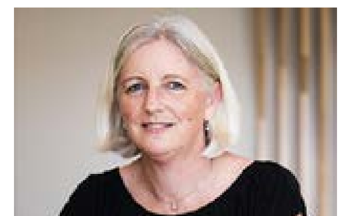

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FAQ’s on the Cost of Living Payment

By Robyn Walker and Amy Sexton

The headline-grabbing announcement of Budget 2022 was a $350 “Cost of Living Payment” (CLP) targeted at an estimated 2.1 million low and middle-income earners who are not eligible for the Winter Energy Payment (WEP). The CLP is estimated to cost $814 million. Legislation was rushed under urgency through Parliament on Budget night to enable the Inland Revenue to use its existing tax administration powers to administer the scheme. The Government announced that the intention of the payment is to “help New Zealanders through the peak of the global inflation storm”.

Here are the answers to some Frequently Asked Questions:

When will the payments be made?

There will be three monthly instalment payments of $116 each (a total of $350). The first payment will be made on 1 August 2022 and the subsequent payments made on the first business day of the following two months (so 1 September 2022 and 3 October 2022). The payments are made at a flat rate and will not be paid for part of a month, if you are eligible during a month, you will get the full payment for that month.

What are the eligibility criteria?

These criteria are not set in legislation but are published by Inland Revenue. On 25 May 2022 the Inland Revenue published the following eligibility criteria:

- A net income of $70,000 or less in the period 1 April 2021 – 31 March 2022 (the 2022 income tax year);
- A finalised income tax assessment for the 2022 income tax year;
- Not receiving a qualifying benefit for the WEP* on the date eligibility is assessed;
- Aged 18 or over;
- Both a New Zealand tax resident and present in New Zealand; and
- Not in prison, or deceased.

*Qualifying benefits for the WEP are: the sole parent support, supported living payment, jobseeker support, jobseeker support student hardship, emergency benefit, emergency maintenance allowance, youth payment, young parent payment, New Zealand superannuation and the veteran’s pension.

How will the Government know whether I earned under $70,000?

The income eligibility will be based on income recorded in a person’s 2022 income tax year finalised individual income tax assessment. To be a “finalised individual income tax assessment” one of the following must have occurred:

- A person has received their assessment from Inland Revenue; or
- A person has been asked by Inland Revenue to provide further information or to confirm details on their assessment, they have done so and this has been confirmed by Inland Revenue; or
- If a person is required to file an IR3 return, this has been filed and processed by Inland Revenue.

The Inland Revenue has advised that for most people income tax assessments will have been finalised before the first payment on 1 August 2022.

The individual income tax assessments (IITA) for the 2022 income tax year are expected to be automatically issued by Inland Revenue between 28 May 2022 and late July 2022 to individuals whose income* information is held by Inland Revenue. If you use myIR you are likely to receive your assessment electronically between 28 May and 4 June 2022. Individuals who receive an IITA will need to check the assessment and advise Inland Revenue if there is any missing or incorrect information, any income over $200 (before tax) is not recorded, changes to contact information, changes to bank account details and of any expenses that you may be eligible to claim against income.

For individuals who are required to file an IR3 return, returns for the 2022 income tax year are required to be filed by 7 July 2022 for most taxpayers (31 March 2023 for those with tax agents).

*This is “reportable income” and includes; salary or wages, portfolio investment entities (PIE) including KiwiSaver, NZ Superannuation, schedular payments, income-tested benefits, interest or dividends, taxable Māori authority distributions and benefits under an employment share scheme.

What if I haven't filed my tax return before 1 August 2022?

The final payment approval date is 31 March 2023, which corresponds to the last date for tax agents to file IR3 returns for their clients. Inland Revenue will automatically check eligibility for the CLP for anyone who has filed their tax return by 31 March 2023 or had an IITA generated by this date.

Inland Revenue has estimated that approximately 25% of individuals will not have an IITA or IR3 return filed by August 2022. Any eligible taxpayers will receive a back payment after the tax assessment has been made.

What happens if I don't currently file an IR3 return or receive an IITA?

A tax assessment is required in order to be eligible. If you have no net income but request an unnecessary nil assessment (a IR3 return or IITA containing no income from any source), Inland Revenue's website state you will still not be eligible for the CLP.

This is an area where we suggested some further clarity was needed as it has been stated that the CLP has been designed so that there is no minimum level of income required before a person is eligible, however, the Supplementary Analysis Report also states that the Government decided individuals need an income assessment to be eligible.

This will not impact you if you're required to file an assessment despite having no net income, such as if you are:

- A parent with no net income but are required to file a return or get an assessment for Working for Families purposes; or
- Self-employed and your allowable deductions reduce your net income to zero.

How is the $70,000 income cap measured?

The maximum income to be eligible for the CLP is $70,000 net income for the 2022 income tax year. For individuals who earn employment income, net income is normally the same as gross income, due to the limited expenses that can be claimed. For business owners, net income is gross income for the period, less business expenses for the period, but before any losses from earlier periods.

Does it matter if my partner earns over $70,000?

No. Eligibility is assessed on an individual basis.

My child is turning 18 in September 2022, will they be eligible?

Eligibility for each of the three payments will be assessed by Inland Revenue at the beginning of August, September and October. So if your child turns 18 in September 2022, they will not qualify for the August or September payment but will qualify for the October payment.

If I go overseas for a short holiday between August and October, will I still be eligible?

Inland Revenue advises that a person must be "both a New Zealand tax resident and present here" to be eligible, based on the information Inland Revenue holds, such as tax residency status, address, and bank account information. It's unclear whether Inland Revenue will be working with New Zealand Customs to see who's gone on holiday; by way of context, a short trip outside New Zealand does not forfeit eligibility for the WEP.

How do I make sure Inland Revenue knows my bank account number?

Inland Revenue has advised that they only hold bank accounts for 79.4% of potentially eligible people and other recipients of the CLP will need to update their bank account details. Bank account details can be checked and updated by logging into myIR. It may also be worthwhile confirming Inland Revenue has your correct date of birth details. To do this you will either need to send a secure web message in myIR or contact the Inland Revenue call centre.

Will I be taxed on the payment?

No, this is exempt income and also will not be included as income for other social assistance purposes.

How is this being administered?

The CLP is administered by Inland Revenue. Because of the verification checks required for each monthly payment, we should expect a drop in service levels from Inland Revenue in other parts of the tax system. Inland Revenue has estimated that 750 staff will be either hired or diverted from other duties to administer the payments.

What if I receive a payment and it turns out I was not eligible?

It is possible that Inland Revenue may determine eligibility from incorrect information, for example, an incorrect date of birth may record a person as 27 when they are actually 17. Inland Revenue has advised that they will only apply resources to identify such cases and recover payments when there has been fraudulent or wilfully misleading information provided.

It is unclear what happens if there is a death and a payment is subsequently made, however, as per above, if there has been no fraud or wilfully misleading information it is unlikely that Inland Revenue will apply resources to recover the payment.

Are there any other quirks to be aware of?

Before each monthly payment, Inland Revenue will recheck eligibility for the CLP, including whether or not an individual is receiving a qualifying benefit (and therefore receiving a WEP). Changes in circumstances, such as coming on or off a benefit will be taken into account during the August to October payment period.

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Tax considerations for residential land owners

By Annalie Hampton, Cindy Dong and Jonathan Doraisamy

Two recent property-related tax changes that are already impacting residential property investors are the extension of the bright-line test to 10 years for existing builds and the elimination of a tax deduction for interest against residential income in certain circumstances. Notwithstanding these recent changes, residential property taxation has been under the spotlight since the bright-line test was first introduced in 2015, as successive governments have introduced measures to attempt to address housing affordability and ensure land speculation is taxed.

Review Your Portfolio

As the dust of these changes settles down, if you are a residential property investor or have plans to start building an investment portfolio it is timely to review how taxation applies to your properties:

- What tax deductions are available for costs incurred;
- Whether a final disposal will result in any tax payable;
- Structuring considerations;
- GST considerations; and
- Compliance requirements.

Tax Deductions

Interest

Several factors will need to be considered in order to determine what interest is deductible in relation to borrowings for residential property including (but not limited to):

- Is the residential property subject to the new interest limitation rules (i.e. does it constitute Disallowed Residential Property (DRP)?)
- Do any exemptions apply? Do the rules apply to the person/entity/group that holds residential property?

If the interest limitation rules do apply:

- *When will the rules apply?* As part of this taxpayers will need to determine when the residential property was acquired, as this will determine if interest is fully non-deductible from 1 October 2021 or whether deductibility will be phased out between 1 October 2021 to 31 March 2025.
- *What interest do the rules apply to?* As part of this taxpayers will need to determine what borrowings relate to DRP, whether any apportionment calculations are required, whether there

is any "new borrowing", and whether any roll-over relief is available. Non-residents also need to consider whether the thin capitalisation rules could have an impact.

Taxpayers will need to be mindful of what record-keeping systems they have in place to keep track of numbers to put through in their tax returns. Inland Revenue has a new section in the 2022 income tax return for disclosure of interest expenses on residential properties.

Other Costs and Deductions

Certain holding costs such as insurance, professional fees, rates and repairs and maintenance may be tax-deductible subject to normal deductibility requirements (e.g. sufficient nexus to income, not being capital or private in nature, etc). It will be relevant to consider the tax deductibility of any costs incurred in complying with Healthy Homes Standards.

Taxpayers should also consider if depreciation is able to be claimed on any buildings. For example, if you are an investor that holds a mixed purpose building on the same title, where part of the building is commercial and part is residential, depreciation may be able to be claimed if the predominant use of the building (i.e. more than 50% of floor area) is used for non-residential purposes.

However, the residential loss ring-fencing or the mixed-use asset rules could also need to be considered as they may restrict the ability to claim deductions.

Income on Disposal

Regardless of the bright-line tests, any time a taxpayer purchases property with a purpose or intention of selling it they must pay tax on the profit unless any of the exemptions apply. It does not matter how long you hold the property. Likewise, for many years we have had rules that tax gains on the sale of land, including residential land that apply to taxpayers (and their associates) with property development, dealing, building or subdivision businesses.

We recommend that taxpayers are clear about their intention when purchasing any property and consider documenting it. If landlords are running a rental at a consistent cash loss Inland Revenue may question whether the property was purchased with the intention of resale, i.e. with a view to deriving a capital gain. Therefore, in considering whether a final disposal of the property will result in any tax payable it is important to consider both the existing land provisions together with the bright-line tests, as the bright-line tests will only apply if the other land provisions do not apply.

Bright-line Test

In considering the application of the bright-line tests, taxpayers also should be mindful of "which" bright-line test applies (2-year, 5-year or 10-year). This will depend on the acquisition date and the type of property, e.g. a new build vs an existing build. Where there are changes in the co-ownership of a property it may result in a 2, 5 or 10-year bright-line period resetting.

Depending on the type of acquisition, the acquisition date for the purposes of the bright-line test can be different. A common example is the difference between a "standard purchase" with a purchase "off the plan" or "subdivided land".

A key observation from advising clients is not to assume the date of acquisition based on common understanding, as applying the "wrong" bright-line test (2-year, 5-year vs 10-year) can result in tax being paid where it is not necessary and vice versa.

The exemptions to the bright-line tests should be considered in ascertaining whether any gains on sale are taxable, including recent changes to the main home exemption and the roll-over relief rules. The roll-over relief rules recognise that transactions that change the "legal owner" of a property without changing the "economic owner" should not trigger a sale under the bright-line test.

If it transpires that the sale of the residential property is taxable under any of the land provisions, including the bright-line test, a taxpayer needs to determine the available deductions, which may include

New Zealanders have long had a love affair with property investment and residential property investment will still make sense for many people. The key takeaway is that taxpayers should review how taxation applies to any residential property investments now so that they are well equipped to comply with their tax obligations and are aware of the tax implications of any future investment or divestment decisions or restructures.

any previously denied interest deductions under the interest limitation and/or ring-fencing rules. The onus of proof is on the taxpayer to sustain any deductions taken.

Investment Structure

If you are a residential property investor or have plans to start building an investment portfolio there are a variety of factors to consider other than tax when determining the investment structure, particularly given the value of property as an asset.

Depending on the intended use, the long-term plan (holding vs disposal), the need for asset protection and any other relevant factors applicable to the investor, the "optimal" type of entity used for holding and funding the residential property will differ and should be considered. Other factors to consider could include the availability of financing (subject to bank approvals), commercial efficiency, commercial reasons for any restructure as well as rules specific to different entities (such as the new trust disclosure rules).

We note that any changes in ownership can trigger unintended adverse tax consequences and tax should be considered prior to any restructuring of existing property holdings.

Goods and Services Tax

Generally, the sale of a residential property (i.e. dwelling) or supply of long-term rental would not be subject to GST. However, if the residential property is part of your taxable activity (e.g. short-term rental, property developer, business of selling residential houses), the GST outcome could be different. Furthermore, there are GST adjustments required when there is a change in the use of the property (e.g. developer originally intended to sell the property but later decides to hold the property and rent it out) and/or use of properties for mixed purposes.

Compliance

Residential property transactions have been a continued focus area by the Inland Revenue. Given the availability of near real-time information on land sales from LINZ and Inland Revenue's new START software, it is easier for Inland Revenue to contact a large number of taxpayers, almost at a "click of a button". We recommend that any property related transactions are proactively managed from a tax compliance perspective.

New Zealanders have long had a love affair with property investment and residential property investment will still make sense for many people. The key takeaway is that taxpayers should review how taxation applies to any residential property investments now so that they are well equipped to comply with their tax obligations and are aware of the tax implications of any future investment or divestment decisions or restructures.

For more advice on these rules please contact your usual Deloitte advisor.

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The disputes resolution process - an amalgamation or real changes?

By Virag Singh and Claudia Layton

The disputes process is an uncertain time for any taxpayer that finds themselves embroiled in a tax dispute, often having to deal with concepts, terms and processes that most will have not previously encountered. The Inland Revenue has recently published an eighty-three page draft Standard Practice Statement ED0240 – Disputes Process (the SPS) for public consultation. The SPS combines SPS 16/05 (Disputes resolution process commenced by the Commissioner of Inland Revenue) and SPS 16/06 (Disputes resolution process commenced by a taxpayer) and sets out each phase of the disputes process, detailing the rights and requirements of both the taxpayer and the Commissioner of Inland Revenue.

The SPS is intended to not only be an amalgamation of the old SPS 16/05 and SPS 16/06, but also incorporates some recent legislative changes and clarifies certain aspects of the policy behind the disputes process. Once finalised, the SPS will replace both SPS 16/05 and SPS 16/06.

Legislative changes

Qualifying taxpayers can have their income tax assessment corrected without issuing a NOPA

A taxpayer whose income consists solely of "reportable income", for example salary and wages and interest income, will be a "qualifying taxpayer". Qualifying taxpayers who consider their pre-populated assessment to be incorrect can provide to the Commissioner information which details why the assessment is incorrect rather than issuing a NOPA.

Requirements of a qualifying taxpayer to correct their pre-populated income tax assessment

With the introduction of the "qualifying taxpayers" concept, the SPS details how

qualifying taxpayers can correct their pre-populated assessment. When a taxpayer considers their pre-populated assessment to be incorrect, the taxpayer must advise the Commissioner of the reasons why the assessment is incorrect and provide, by the taxpayer's terminal tax due date, the relevant information to correct the pre-populated assessment. It is important to note that while a qualifying taxpayer can change their pre-populated assessment, the Commissioner does not have to accept the change if they have reason to believe it is incorrect.

If a taxpayer does not provide the relevant information by their terminal tax due date, the taxpayer is deemed to have filed a return and made an assessment on that date. The taxpayer can still dispute their assessment but will have to issue a NOPA to the Commissioner to do so.

Expansion of the definition of "disputable decision"

A disputable decision is broadly defined to include an assessment and a decision of the Commissioner under a tax law. There are however specific exclusions to this definition. The SPS includes three new exclusions relating to COVID-19 support.

The SPS also reiterates that a decision by the Commissioner not to exercise a discretion under s 113 of the Tax Administration Act 1994 (the TAA) to amend an assessment is not a disputable decision.

While the excluded decisions listed in the SPS cannot be disputed specifically, if the Commissioner issues an assessment based on one of the excluded decisions, the taxpayer can challenge the correctness of the assessment on the basis that the Commissioner's determination on which that decision was founded is wrong in fact or law.

Policy statements

The SPS clarifies existing policy statements that address where the Commissioner is considering prosecution; the validity of a taxpayer's dispute documents; and situations where either the Commissioner or the taxpayer wish to propose another adjustment or, where the Commissioner wishes to propose a fresh or increased liability.

Where the Commissioner is considering prosecution

The disputes process contains provisions compelling a taxpayer to provide certain documents, for example, in respect of an alleged tax liability. Therefore, the Commissioner must use their information gathering and dispute process powers with care to ensure taxpayers' fair trial rights, are upheld throughout the disputes process.

To ensure that taxpayers' fair trial rights are upheld, the Commissioner will advise a taxpayer that the Commissioner is contemplating taking prosecution action against them, they can voluntarily choose to continue with the disputes process; and that exceptional circumstances can exist under s 89K of the Tax Administration Act 1994.

While a taxpayer may choose to continue with the disputes process when the Commissioner is contemplating prosecution, any information in a disputes document that the taxpayer provides (such as a NOPA, Notice of Response (NOR) or Statement of Position (SOP)) could be used against them in criminal proceedings. It is therefore crucial that taxpayer's seek legal advice before deciding to continue with the disputes process (which a taxpayer can discontinue at any stage).

The validity of a taxpayer's dispute documents

The SPS makes it clear that when the Commissioner receives a NOPA, NOR or SOP from a taxpayer, it is only the courts, and not the Commissioner, that can invalidate the document. In the case of a taxpayer's NOPA or NOR, unless it is incomprehensible or provides no argument to which the Commissioner can respond, the document will be accepted as valid.

Where the Commissioner or the taxpayer wish to propose another adjustment or, the Commissioner wishes to propose a fresh or increased liability

Once the disputes process is started, if either party wishes to propose another adjustment, or if the Commissioner wishes to propose a fresh or increased liability after a NOPA has been issued, this must be done by issuing a further NOPA. Neither the taxpayer nor Commissioner can simply include the additional adjustment in a subsequent disputes document for an existing dispute.

Is it better?

Aside from updates for law changes, it's questionable whether the SPS improves the guidance for taxpayers and advisors. In the previous guidance, taxpayers had a single document explaining the disputes process they were in (i.e. a Commissioner initiated or taxpayer initiated dispute), and that guidance was clear and logical to that process; including a helpful summary table setting out the disputes steps and timeframes (including explaining the critical first step of the due date for the NOPA using an example). Now it is necessary to wade through information which is not necessarily relevant to the process you are in, adding stress into a process where is necessary to have a clear understanding of the rules and associated deadlines to avoid falling out of the process and being deemed to accept the other parties' views.

Deadline for comment on the draft SPS is Friday 24 June.

For advice on what these changes could mean for you, navigating the disputes system, or any general tax disputes queries, please contact your usual Deloitte tax advisor.

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OECD Pillar Two: Global Anti-Erosion Model rules for New Zealand

By Annamaria Maclean and Neesha Morar

On 5 May 2022, Inland Revenue released a public consultation paper on [OECD Pillar Two: GloBE rules for New Zealand](). The issues paper asks for submissions on whether and how New Zealand might implement the Global Anti-Base Erosion (GloBE) model rules for a 15% global minimum tax, which were released in December 2021 by the OECD/G20 Inclusive Framework on BEPS.

The issues paper does not seek feedback on the technical detail of the rules on the basis that New Zealand is part of the Inclusive Framework and has therefore already approved the OECD model rules. However, it does ask questions like - should New Zealand adopt the rules, when should the rules be effective from and New Zealand specific tax questions such as whether tax paid by a New Zealand company under the GloBE rules should give rise to an imputation credit?

Recap of proposals

In October 2021, the GloBE model rules (Pillar Two) were endorsed by over 130 countries in the OECD Inclusive Framework, including New Zealand. However, this endorsement did not bind any country to adopt the rules. By approving the Model Rules, Inclusive Framework countries have not agreed to implement the GloBE rules, but rather have agreed that if they implement them, that will be in accordance with the Model Rules.

Broadly, the GloBE model rules apply to large multinational businesses with an annual consolidated revenue of over €750 million.

The income inclusion rule (IIR) is the primary rule and applies on a top-down basis so tax due for foreign subsidiaries and branches is calculated and paid by the ultimate parent company to the tax authority in its own country. The tax due is the "top up" amount required to bring the overall tax on the net income in each country where the group operates up to the minimum effective tax rate (ETR) of 15%.

The undertaxed profits rule (UTPR) is a secondary rule in cases where the ETR in a country is below the minimum rate of 15%, but the IIR has not been fully applied. The top up tax is allocated based on a formula to countries which have adopted the UTPR.

Multinational groups that are within scope will need to perform a ETR calculation for each jurisdiction they operate in to identify whether a top up tax is due.

Suffice to say, the calculation of the ETR is complex! The ETR is largely computed using accounting concepts – comparing tax expense to accounting net profit, with numerous adjustments.

New Zealand-specific issues

The issues paper seeks feedback specifically on the following:

- Whether New Zealand should adopt the GloBE rules, assuming that a critical mass of other countries also does so;
- Whether New Zealand should apply

Practically, we expect that implementing Pillar Two is unlikely to raise significant extra tax revenue for the Government; but it will impose significant compliance costs and added complexity to the international tax rules.

a domestic minimum top-up tax to New Zealand headquartered in-scope multinationals and foreign headquartered in-scope multinationals operating in New Zealand;

- When any adoption should be effective, particularly in relation to the IIR;
- How best to translate the rules into New Zealand law;
- What areas of uncertainty there may be in applying the rules to New Zealand tax law, and how to resolve these;
- Whether tax paid to the New Zealand government under the rules should give rise to imputation credits;
- Feedback on how safe harbours could be designed (which if met would not require the full ETR calculation to be prepared) to simplify compliance; and
- Administrative aspects, for instance return filing and timing of payments.

Comments

Will a critical mass be reached?

While there appears to be sustained consensus amongst OECD countries and support from the current US administration for the Pillar Two proposals, the publicly announced implementation timeframes are ambitious and it currently seems unlikely that countries will be able to adopt the rules to be effective from 2023 as originally proposed.

It is unclear whether EU will reach political agreement on the draft text for an EU Minimum Tax Directive intended to incorporate the Pillar Two rules into EU law.

It is also uncertain whether domestic implementation will pass through the US Congress. On the other hand, the prospect of a proliferation of unilateral digital service taxes being implemented by individual countries may provide sufficient impetus to reach an international consensus, particularly for the US which has a number of tech companies that would be impacted.

Impact for New Zealand

Inland Revenue estimates that out of approximately 1,500 multinational groups that will be within scope of the proposed rules, only 20 to 25 are headquartered in New Zealand.

Practically, we expect that implementing Pillar Two is unlikely to raise significant extra tax revenue for the Government; but it will impose significant compliance costs and added complexity to the international tax rules. However, a key reason for New Zealand to implement the rules is to ensure no New Zealand tax is left on the table i.e. to prevent other countries from taxing New Zealand headquartered multinationals under their own GloBE rules. Further, the Government may see that adopting the rules will signal New Zealand is serious about its role as a "good global citizen" and is addressing concerns that multinationals are not paying a "fair share" of tax.

The New Zealand Government has clearly signalled its preference is to work with the OECD to reach a global solution to concerns about the taxation of multinationals. However, officials have noted that a digital services tax may be back on the agenda if consensus cannot ultimately be reached on the implementation of Pillars One and Two.

For multinationals operating in New Zealand, while the proposed 15% minimum rate may seem low relative to New Zealand's 28% corporate tax rate, the income on which the tax is calculated differs from the taxable income determined for domestic purposes. This may lead to some unexpected results. Further, if other countries decide to adopt a domestic minimum top-up tax, this may mean New Zealand headquartered multinationals doing business in those countries may end up paying more tax in those countries.

Given the ambitious timeframes and the complexity of the proposed rules, we recommend that in-scope multinational groups operating in New Zealand consider how these rules could impact them. If you would like to discuss this further, please reach out to your usual tax advisor.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

Budget 2022

On 19 May 2022, the Minister of Finance the Hon Grant Robertson (the Minister) announced the Government's Budget 2022. Aside from the introduction of the Cost of Living Payments Bill, the Budget also included other announcements that will impact the Inland Revenue.

- From 1 July 2023, child support collected by Inland Revenue will be treated as income and passed on to sole parent beneficiaries. Currently, the State can hold onto child support payments to recoup the cost of welfare.
- Permanent baseline funding has been provided for Inland Revenue's ongoing administration of the research and development tax incentive. This will allow 35-45 IR employees to continue to review RDTI claims. Current funding was due to expire on 30 June 2022.
- Inland Revenue has been provided with additional funding to retain up to 240 FTE employees to continue to support the response to and recovery from COVID-19, including addressing unfiled returns and supporting customers getting tax obligations right from the start.

You can also access our analysis of the impact of this budget on the tax landscape here.

ACC works on bringing the income insurance scheme into operation

On 24 May 2022, the Income Insurance (Enabling Development) Act 2022 (No 26 of 2022) received the Royal Assent. The purpose of the Act is to enable the Accident Compensation Corporation (ACC) to carry out work to bring an income insurance scheme into operation, should it be established under subsequent legislation. Nothing in the Act is intended to limit or affect the scope or design of any scheme that may be provided under such legislation. The Act is effective on 25 May 2022 and is repealed on the close of 31 March 2025.

Law changes on stopping tax evasion on water-pipe tobacco

On 24 May 2022, the Customs and Excise (Tobacco Products) Amendment Act 2022 (No 28 of 2022) received the Royal Assent and enacted changes to the Customs and Excise Act 2018 aimed at preventing millions of dollars in potential tax evasion on water-pipe tobacco products. The Act came into force on 25 May 2022.

Duty on water-pipe tobacco products will now be based on the weight of the product, rather than the previous system where excise was calculated on the tobacco content declared by importers, which Customs was unable to verify. The new excise and excise-equivalent duty rate for water-pipe tobacco is $234.77 per kilogram.

Amendments to the Customs and Excise Act 2018

Section 95A, which relates to the prohibition of certain tobacco products, has been amended. The effect of the amendment is to make water-pipe tobacco a prohibited import. The prohibition does not apply to water-pipe tobacco imported by a person holding a permit issued under sch 3A of the Act or to a person who brings water-pipe tobacco into New Zealand with them (for example, as part of their duty-free allowance), and does not apply to tobacco that enters New Zealand temporarily (for example, as part of an international transhipment).

Deemed rate of return on FIF attributing interests

On 26 May 2022, The Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2021–22 Income Year) Order 2022 (SL 2022/151) was notified in the *New Zealand Gazette*.

The Order sets the deemed rate of return used to calculate foreign investment fund income for the 2021–22 income year under the deemed rate of return

calculation method set out in section EX 55 of the Income Tax Act 2007 (ITA 2007). The Order also sets the deemed rate of return for the 2021–22 income year at 6.01%. The deemed rate of return set for the 2020–21 income year was 4.43%.

Dry autumn in Waikato and South Auckland leads to drought classification

On 18 May 2022, drought conditions affecting the primary sector in the Waikato region and South Auckland (Franklin, Manukau, Howick and Manurewa-Papakura wards) have been classified as a medium-scale adverse event by the Minister for Rural Communities, the Hon Damien O'Connor, enabling a package of support for farmers and growers.

To assist affected farmers and growers, Inland Revenue is exercising discretion to allow late deposits for the 2021 year and early withdrawals from the income equalisation scheme. Taxpayers who have been affected by the drought, missed payment or filing dates, or are struggling to deal with their tax affairs, should contact Inland Revenue.

Customs Refunds and Remissions of Penalties and Interest

On 11 May 2022, The Customs and Excise (Refunds and Remissions) Amendment Regulations 2022 (SL 2022/129) amend the Customs and Excise Regulations 1996 by inserting new regulations 71E and 71F.

New regulation 71E prescribes circumstances in which Customs must refund or remit any interest or penalty payable in respect of certain duty that is not fully paid on or before the relevant payment date. Customs must refund or remit the interest or penalty if the duty payer's ability to pay on time is (or was) significantly adversely affected by the effects of COVID-19, the duty payer notifies Customs of that fact, and the duty has subsequently been paid (or the chief executive is satisfied that the duty will be paid).

New regulation 71F prescribes the circumstances in which Customs must refund or remit any interest or penalty payable in respect of duty relating to fuel that is not fully paid on or before the relevant payment date. Customs must refund or remit the interest or penalty if the duty payer's ability to pay on time is (or was) affected by the effects of the reduction in fuel duty rates that came into effect on 15 March 2022, the duty payer notifies Customs of that fact (and provides certain evidence), and the duty has subsequently been paid (or the chief executive is satisfied that the duty will be paid).

Both regulations provide for its revocation on 25 March 2023.

Inland Revenue statements and guidance

Determination - National Average Market Values of Specified Livestock Determination 2022

On 27 May 2022, IR published NAMV 2022 - *National Average Market Values of Specified Livestock Determination 2022.* Section EC 15 of the ITA 2007 requires the Commissioner of Inland Revenue to make a determination declaring the national average market values (NAMV) for an income year for each class of specified livestock set out in schedule 17 of the Income Tax Act. The determination published in May each year is now available providing a chart of the average market value per head of every type and class of livestock.

Special Report on fair dividend rate foreign currency hedges

On 29 April 2022, Inland Revenue released a special report Public Act 2022 No 10 - *Fair dividend rate foreign currency hedges*. This provides information on the technical amendments made to the rules for hedging of foreign currency movement in Australian non-attributing shares and attributing FDR method interests (the FDR FX hedges rules) in subpart EM of the ITA 2007 to improve their functionality from a practical perspective and to reduce compliance costs for investors with large numbers of hedges.

Controlled foreign company determinations issued

On 29 April 2022, Inland Revenue issued two Controlled Foreign Company (CFC) determinations, both of which apply for the 2022 and 2023 income years.

- Determination CFC 2022/01, "Non-attributing active insurance CFC status (TOWER Insurance Limited)": CFC 2022/01 applies to TOWER Insurance Ltd and grants non-attributing active CFC status to National Pacific Insurance (American Samoa) Ltd resident in American Samoa.
- Determination CFC 2022/02, "Non-attributing active insurance CFC status (TOWER Insurance Limited)": CFC 2022/02 applies to TOWER Insurance Ltd and grants non-attributing active CFC status to National Pacific Insurance Ltd resident in Samoa.

Determination – Consumer Price Index adjustments

On 9 May 2022, the Inland Revenue published Consumers Price Index (CPI) adjustments to the following determinations:

- The update to OS 19/03 - *Square metre rate for the dual use of premises* shows the square metre rate for the 2021–2022 income year for buildings used partly for business purposes and partly for other purposes. The square metre rate for the 2021–2022 income has increased to $47.85.
- The update to DET 19/01 - *Standard-cost household service for private boarding service providers* shows the annual adjustment for the 2022 income year (1 April 2021 to 31 March 2022) for the weekly standard-cost for each boarder as $207.00.
- The update to DET 19/02 - *Standard-cost household service for short-stay accommodation* shows the annual adjustment to the standard-cost household service for short-stay accommodation for the 2022 income year (1 April 2021 to 31 March 2022) as follows:
  - the daily standard-cost for each guest for an owned dwelling is $55.00, and
  - the daily standard-cost for each guest for a rented dwelling is $50.00.
- The update to DET 09/02, *Standard-cost household service for childcare providers* shows the annual adjustment to the standard-cost household service for childcare providers for the 2022 income year (1 April 2021 to 31 March 2022) as follows:
  - the hourly standard cost is $4.00 per hour per child, and
  - the annual fixed administration and record-keeping fixed standard-cost component is $392 pa for a full 52 weeks of childcare services provided.

Draft Determination – Depreciation rates for hydrofraise rigs

On 9 May 2022, the Inland Revenue published ED00242 - *Tax Depreciation Rates for hydrofraise rigs*. The Commissioner has been asked to consider what depreciation rate should apply for hydrofraise rigs used to build diaphragm (water blocking) type retaining walls. Diaphragm walls are often constructed in wet areas where groundwater will tend to flood an excavated area. The construction of the wall must therefore keep water out, as well as being strong enough to stop the surrounding ground from collapsing into the excavation. Under the "Contractors, Builders & Quarrying" industry category, the following are proposed for the hydrofraise rig:

- An estimated useful life of 10 years,
- A Diminishing Value rate of 20 percent, and
- A Straight Line rate of 13.5 percent

Other components of equipment used for diaphragm wall construction (for example, slurry tanks, other storage tanks, mixing platform and separate pumping equipment) are viewed by the Commissioner as separate items of plant, not covered by the proposed depreciation rate for hydrofraise rigs. Deadline for comment is **17 June 2022.**

Commissioner of Inland Revenue

On 10 May 2022 it was announced that Peter Mersi has been appointed to the position of Commissioner and Chief Executive, Inland Revenue Department. Mr Mersi is currently Secretary for Transport and Chief Executive of the Ministry of Transport, a role he has held since 18 July 2016. He was previously Chief Executive, Land Information New Zealand, and Acting Secretary for Internal Affairs, Department of Internal Affairs. Prior to Mr Mersi's chief executive roles he was a Deputy Commissioner at Inland Revenue and was a Deputy Secretary at the Treasury for seven years.

Mr Mersi holds a Bachelor of Commerce and Administration (Economics) from Victoria University of Wellington. He has been appointed for five years from 1 July 2022.

OECD Updates

OECD: Public comments received on the extractives exclusion under Pillar One Amount A

As part of the ongoing work of the OECD/G20 Inclusive Framework on BEPS to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, the OECD invited public comments on the Extractives Exclusion under Pillar One Amount A to assist members in further refining and finalising the relevant rules. The comments could now be found here.

Taxing Wages 2022

The OECD has released its latest "Taxing Wages" report. This annual study compared how heavily taxed labour income is in different countries. The report is available here. The OECD explains the report as follows:

This annual publication provides details of taxes paid on wages in OECD countries. It covers personal income taxes and social security contributions paid by employees, social security contributions and payroll taxes paid by employers, and cash benefits received by workers. It illustrates how these taxes and benefits are calculated in each member country and examines how they impact household incomes. The results also enable quantitative cross-country comparisons of labour cost levels and the overall tax and benefit position of single persons and families on different levels of earnings. The publication shows average and marginal effective tax rates on labour costs for eight different household types, which vary by income level and household composition (single persons, single parents, one or two earner couples with or without children). The average tax rates measure the part of gross wage earnings or labour costs taken in tax and social security contributions, both before and after cash benefits, and the marginal tax rates the part of a small increase of gross earnings or labour costs that is paid in these levies. Taxing Wages 2022 includes a special feature entitled: "Impact of COVID-19 on the Tax Wedge in OECD countries".

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

Tax calendar

We have now finalised our handy tax calendar. This spans 1 April 2022 to 31 March 2023 and contains key payment dates, tax rates and useful tax facts for easy reference. We have made the decision to not print this year, but instead a soft copy is now available for download here.

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