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Tax Alert

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The reality is here – Inland Revenue releases final detail for trust disclosure rules

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The reality is here – Inland Revenue releases final detail for trust disclosure rules

By Veronica Harley

In our [April Tax Alert](), we explained the new rules regarding the minimum standards now required when preparing financial statements for most trusts for the 2021-22 and later income years. But at the time of writing that article, we were still awaiting the final operating statement regarding the finer detail of the tax return disclosure requirements. On 6 April 2022, Inland Revenue (IR) released the final version of its operating statement [OS 22/02]() *Reporting requirements for domestic trusts.* In this article, we pick up the trail and explain the new disclosures that trustees will now need to make when filing the trust tax return.

The real point of these changes is so IR can get consistent data across all trusts which will show how trusts are being used.

This is in no doubt also linked to Revenue Minister David Parker's objective to fill gaps in data inadequacies on how much tax different groups pay and whether trust structures play a part in avoiding tax.

Consequently, IR has not budged to any great degree from the draft statement on the amount of detailed information it wants disclosed with the tax return. The only improvement in the statement from the draft has been to correct the ropey accounting treatment that proposed tax concepts be accounted for in the financial statements and clarify the language used. So what will the new landscape of trust compliance look like? Read on as we set out the key points.

To be clear, the following discusses the rules as they apply to trusts who are active. Beware any non-active trusts that have not filed the [IR 633 non-active trust declaration]() for this year, for even if they technically qualify as non-active, they may be subject to these rules.

Financial statements and what to show when filing disclosure

Our earlier article set out the minimum requirements for financial statements. Having gone to the effort of preparing financial statements to this standard, the accounts are not required to be submitted but must be held by the trustee in case they are requested by IR later. Instead, IR wants certain information copied from the financial statements into its prescribed disclosure forms.

From the profit and loss statement, a new section has been added to the IR 6 (the trust tax return form). The information to be copied for all trusts includes total accounting profit before tax, all tax adjustments (from the separate reconciling statement to taxable income) and untaxed realised gains and receipts. As far as the balance sheet is concerned, the following items must be copied:

- Loans to associated persons excluding beneficiary accounts;
- Land and buildings (must be separately valued);
- Shares;
- Loans from associated persons; and
- "Equity" balances.

Those reading this may be scratching their heads with the constant reference to "equity" in the context of a trust tax return. But we suspect IR want amounts transcribed that will enable data analytics to be run across equity equivalents for both companies and trusts, and so have stuck with the company terminology for this purpose.

IR does explain that for this purpose, "Equity" comprises the net assets of the trust and is to be shown made up of three components:

- Owners' equity (translation: trust corpus);
- Drawings (translation: funds and assets withdrawn from the trust by beneficiaries); and
- Year-end current accounts (translation: closing balance of all beneficiary accounts at the end of the year).

As noted above, land and buildings must be valued separately at either historical cost, tax value (if the assets produced assessable income) or market value. Trustees can use the most recent ratings valuation to apportion the value between land and buildings. The operating statement contains examples of what to do where different properties are valued using different valuation methodologies, clearly intending these values to be used for the purposes of the financial statements.

If the trust has business income or rental income which is not residential rental income, the trustee will need to complete the IR 10 summary of financial statements, in addition to providing the information above in the IR 6. Alternatively, the financial statements can be provided to IR in this case.

Distribution and details of beneficiaries

Previously, only the allocation of beneficiary income and tax credits needed to be disclosed in the IR 6B. Trustees will now need to provide a line-by-line reconciliation from opening to closing balance of every single beneficiary's current account where there has been a movement. The IR 6B (beneficiary details) has been redesigned for this purpose. In the case of a very large trust with lots of beneficiaries, trustees can send in a CSV file. Starting with the opening balance of a beneficiary's current account, one must:

- ADD all distributions made to that beneficiary (e.g. accounting income, capital gains, corpus, provision of trust property at less than market value, debt forgiveness and any other transfers of value that vest in the beneficiary); and
- DEDUCT all drawings (the provision of trust property enjoyed by the beneficiary, cash or other assets paid out and tax paid on behalf of the beneficiary).

The closing balance of all the beneficiary accounts must reconcile to the financial statements.

A big change for trustees will be to consider what non-cash distributions are made to beneficiaries each year, such as the provision of services, interest-free loans, or the use of assets by beneficiaries at no cost, and then decide if it needs to be disclosed. A common example is rent-free use by beneficiaries of a holiday home held in a trust. Technically this is a transfer of value, and therefore a distribution (which is non-taxable) has occurred in this case. It is clear IR expect the financial statements to reflect the value of these distributions, otherwise the accounts will not reconcile. However, if there has been no reduction in the net assets of the trust, the statement explains that trustees can choose to value the distribution as nil. Again quite why

Trustees should immediately review these new rules with their tax advisor. It is inevitable that additional compliance costs will result from these new rules, which for some large trusts with many beneficiaries could be significant. We think for many, this issue has until now flown under the radar.

anyone would choose to value these distributions at anything other than nil if they have a choice is not clear. Regardless, the amount of the distribution (i.e. nil or $value), the nature of the distribution and details of the beneficiary must also be disclosed in the IR 6B. Technically even though nil, this is a "movement" that must be disclosed.

There is a caveat here in that if the non-cash distribution is "minor and incidental" it can be ignored. But unhelpfully, IR have not provided any guidance as to what they intend by this. It likely means one-off use by wider family members that are beneficiaries (a few days here and there). But someone still needs to track this to determine what use there is and then decide if it is minor and incidental. Is this by reference to the market value of the benefit provided or time spent at the property? What might be minor and incidental in the context of one trust might not be for another simply based on the value of property within it. Without any guidance from IR, trustees and advisors are going to have to spend time considering what to disclose.

This requirement is completely impractical in our view and it seems likely IR will receive inconsistent or low-quality data from this endeavour given the lack of guidance. IR have not articulated why they need this information or what the mischief is that they are concerned with. The answer simply appears to be so the Government can learn more about where wealth is held and how trusts are being used and most likely to support future tax reforms.

Settlors, settlements, and those with power to appoint

With effect from the 2022 tax return, trustees will be required to file a new disclosure form (IR 6S) for each settlor who makes a settlement on the trust. Bear in mind that the definition of a settlor for tax purposes is broader than just the person named in the trust deed and will capture deemed settlements. In addition for the 2022 year, trustees will need to make a disclosure providing the identification details (i.e. name, date of birth, IRD Number or Tax Information Number and country of residence) of all historical settlors as well, where these details are reasonably available. There is another new disclosure form (IR 6P) for those with a trust power of appointment. This form will be required for each person that has the power under the trust to appoint or dismiss a trustee, add or remove a beneficiary or amend the trust deed.

Next Steps

There will be the trusts that have not been preparing financial statements at all, but merely filing a tax return. For these trusts, there will be additional work in recreating opening balances and determining the value of assets.

For those that have been historically preparing financial statements, there is new information that will need to be included in the financial statements (if not a simplified reporting trust), such as the need to report certain associated person transactions. Refer to our previous article on these rules.

All active trusts, regardless of size, will need to ensure specific accounts are set up in the financial statements to capture the information to be copied to the IR 6 tax return and IR 6B beneficiary details disclosure forms. Software can help with this. The work involved in providing a line-by-line account of every beneficiary's current account should not be underestimated and could entail a lot of set-up work in this first year of the rules, particularly if the trustee were not aware of this requirement and have not been preparing contemporaneous documentation.

All active trusts, no matter the size will have to monitor and collect information on non-cash distributions (use of trust property, interest-free loans), decide if minor or incidental and decide how to value and disclose. Finally, all active trusts will need to collect identifying details on current and historical settlors, any current and future settlements and information on who has the power to appoint.

Trustees should immediately review these new rules with their tax advisor. It is inevitable that additional compliance costs will result from these new rules, which for some large trusts with many beneficiaries could be significant. We think for many, this issue has until now flown under the radar.

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Tips for managing upcoming provisional tax payments

By Veronica Harley

Now 31 March 2022 has passed, the next major milestone for many taxpayers is 7 May 2022 because this is the due date for the third instalment of 2022 provisional tax for those taxpayers with a March balance date. This year, 7 May falls on a Saturday, so the payments made before the end of the next working day of Monday 9 May will be treated as made in time.

The majority of taxpayers who pay provisional tax use the standard method, which means the final instalment is calculated using the prior year's residual income tax (RIT) plus an uplift factor of 5%. But of course, provisional tax paid based on historical results may not be reflective of the actual results for the 2021-22 tax year. This may give rise to an exposure to use of money interest (UOMI) for some taxpayers. Others may be struggling to manage cashflow in light of the current environment. In this article, we remind taxpayers of the basic rules and explore what options there are for managing provisional tax, cash flow and use of money interest. It focusses on due dates for a standard March balance date, but the comments below will be equally applicable for taxpayers with other balance dates.

Safe-harbour taxpayers

Broadly, taxpayers with a residual income tax liability for 2022 of less than $60,000 will only be subject to use of money interest from the terminal tax date of 7 February 2023 (or 7 April 2023 where tax agent extension of time applies). Provided full payment is made by terminal tax date, no use of money interest is payable. We refer to these provisional taxpayers as "safe harbour taxpayers".

When the UOMI rules were overhauled in 2017, taxpayers could only qualify for safe harbour treatment if all instalments were paid on time and in full (subsequently a $20 tolerance was introduced). It meant that if a taxpayer paid late or short paid an instalment by more than $20, they became subject to UOMI from the third instalment. The good news is that the "pay in full and on time" requirement has been repealed for 2023 provisional tax payments onwards, so from next year. Officials consider that late payment penalties will be a sufficient deterrent to incentivise taxpayers to make payments on time. For now, safe harbour taxpayers will still need to ensure the final instalment for 2022 provisional tax due on 7 May 2022 is paid correctly and on time before the next working day of 9 May 2022.

Other taxpayers

For those taxpayers that are not safe harbour, UOMI applies from the third instalment on the difference between the actual 2022 RIT less the total of 2022 provisional tax paid and will run until the amounts are paid in full. By the way, the UOMI rate for underpayments is set to increase from 7% to 7.28% from 10 May 2022. Conversely, if total provisional tax paid is more than the actual RIT liability for 2022, because the Commissioner's paying rate is 0%, no UOMI will be earned.

If 2022 RIT will be higher than the standard method liability, these taxpayers might wish to make a voluntary instalment over the standard uplift amount up to the actual liability so there will be no shortfall and UOMI is reduced or eliminated.

But what if the 2022 RIT is lower than the standard method liability?

If actual results for the 2021-22 year will be lower, taxpayers may be reluctant to hand over cash to Inland Revenue (IR) only to have it refunded when the tax return is filed. In this case, it is an option to pay the final instalment based on "expected RIT". In other words, taxpayers with more than $60,000 RIT can pay up to the expected liability rather than the higher standard

Traditionally, the primary use of tax pooling was to top up tax shortfalls after the fact. Fast-forward two years into the pandemic and tax agents are now suggesting the use of tax pooling in a much more proactive way. Businesses are looking for sources of funding and are using tax pooling as a cash flow management tool.

uplift amount. The theory is that by the time the final instalment of provisional tax is due, taxpayers should have a good idea of what the actual liability is for this year and make payment to that amount. To the extent the payment made is short, UOMI will be payable on the difference. Late payment penalties should not be charged, but it does pay to notify IR of the intention to pay a lesser expected RIT amount otherwise the IR's computer system will be expecting the full standard uplift payment. Whilst this option has been legislated for and is a perfectly legitimate way of managing the final instalment, our experience is that the IR system is not geared up to recognise it.

In days gone by, we might have used the estimation method in this situation, but today there is a reluctance to file estimates to lower provisional tax liabilities because use of money interest is then charged from the first instalment rather than the third instalment.

For those affected by COVID-19, the standard method and the uplift options may be in excess of their actual 2022 liability. Some taxpayers may be struggling to make an accurate forecast of the 2022 provisional tax because they have been significantly adversely affected by COVID-19. The Government has extended the relief it first introduced in 2020 to give the Commissioner the power to remit use of money imposed on short paid 2022 provisional tax provided certain eligibility criteria are met.

How can tax pooling help with managing cash flow and UOMI exposure

We reached out to Tax Traders, a tax pooling intermediary for thoughts on how tax pooling can assist.

Nicola Taylor, Co-founder of Tax Traders, notes they have seen a shift in the way tax pooling is used by taxpayers since the start of the pandemic. Traditionally, the primary use of tax pooling was to top up tax shortfalls after the fact. Fast-forward two years into the pandemic and tax agents are now suggesting the use of tax pooling in a much more proactive way. Businesses are looking for sources of funding and are using tax pooling as a cash flow management tool, complementing their treasury function in lowering the cost of financing and debt to the business.

Financing tax (paying an interest amount upfront and deferring the payment of tax to a later point in time) remains a competitive option when compared to other sources of funding if a client needs to retain funds in a business. In the face of increasing uncertainty around profits for many businesses, as well as complementary insurance on tax finance fees, financing tax is a great way to reduce exposure to UOMI and penalties, while hedging the risk of having a tax bill in the future. Tax Traders exclusive feeGuard product provides a full refund of finance interest paid on the portion of finance not needed at maturity. This makes the choice to finance risk free. If you need it, you use it, if you don't need it, you get your interest cost back.

Businesses who want to pay their tax on time should still deposit into a tax pool on their relevant provisional tax instalment dates to ensure they have full optionality over these deposited funds. By depositing into a tax pool, businesses retain flexibility over these funds, in that they can withdraw deposits from the pool (subject to anti money laundering (AML) checks) should they need to pull cash back in their business. Nicola notes that many clients took advantage of this under the two major periods of lockdown, and, for some, it was the reason they could stay trading.

When it comes to year-end, Tax Traders' smart tools ensure businesses pay what they need to at each instalment date and will perform any relevant swaps/transfers needed between dates/amounts.

If a business is not wanting to finance or deposit, purchasing tax after the fact still minimises exposure to UOMI and late payment penalties, should a business miss a payment or need to top-up any shortfalls throughout the income year. Businesses can save up to 30% on UOMI through purchasing via Tax Traders, as well as eliminate the late payment penalty applied to non-payment from and after seven days of the original due date of any provisional tax shortfall. This remains a smart option for clients who want to finalise their tax position before outlaying any funds for their tax bill.

Tax pooling is an excellent option to provide clients and offers an array of tax payment options to suit all taxpayers, retaining cash flow flexibility, all while mitigating UOMI and late payment penalties.

For more advice, contact your usual Deloitte advisor.

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Top 10 mistakes businesses make when expanding overseas

By Emma Marr and Lucy Scanlon

If you are planning to grow your business and be successful on the international stage, tax is something you need to get right, wherever you trade. We often talk to business owners who have chosen to fly under the radar, thinking their business is too small for any revenue authority to worry about. But the tax risk only increases the bigger you get, and the more visible you are (not to mention that revenue authorities can always look backwards).

Exposing your business to avoidable international tax risks also has real consequences beyond revenue authorities. If you are planning a significant capital raise or an eventual exit from your business, you can expect investors to conduct some due diligence on how well your business has complied with tax rules. We know from years of experience that it is far cheaper and easier to tackle your international tax compliance right from the start...and that with the right advisor next to you, international tax can be managed both efficiently and effectively. Read on for the top ten mistakes we've seen businesses make when expanding offshore.

1. Not thinking or planning strategically for growth

If you are expanding offshore, you need to think about what success looks like and how to plan for this in your company and group structure, i.e., is your current structure adaptable and flexible enough for the commercial growth offshore? Is your structure fit for purpose? Will the structure work when you are importing or exporting products, when you are providing services internationally, when intellectual property is being utilised internationally, when you have people spending time in other countries, or when you are making and receiving international payments? Does the structure allow for a capital raise, another liquidity event, or the efficient payment of dividends? Have you thought about succession planning? Are there changes you'd been planning to make one day, but haven't got around to yet? The best time to think about this is at the outset of your overseas expansion, but if you missed that opportunity, the second-best time is now.

2. Not getting appropriate advice

We understand why companies do this – you're focussing on building your product, finding an in-market sales team, following up leads, and battling logistics nightmares. Tax falls down the to-do list, and before you know it, the year is over and you didn't think about tax at all. There is the temptation to file your return the same way you did last year but doing that only works if your business is actually the same as it was last year...and if you're growing overseas, it isn't. Start with a gentle conversation with your tax advisor, get an idea of what they recommend, the next steps and estimated costs for advice. Start early and talk to your advisors whenever something changes. Let your advisors take the burden of understanding how the tax rules apply to you in every country you operate in, leaving you to focus on doing what you do best – growing your business.

3. Ignoring the advice you did get, or following the wrong advice

If you've gone to the trouble to get advice, we'd love to see you follow through on it. If you don't know how to, ask your advisor, and keep asking until it makes sense. Getting advice and ignoring it is almost worse than not getting advice at all – if Inland Revenue or another tax authority finds you've underpaid tax and is considering imposing a penalty, you don't have a great case if all the answers on how to do it right are sitting in an unread email in your inbox.

In a similar vein, don't rely on tax advice provided to someone else you know who started trading overseas, advice you got at your last company, or something you read on the internet. If you've seen something similar before, that's interesting and a useful place to start, but it doesn't replace getting your own advice. Tax law changes every year, and your current business is not the same as the last one, or your friend's one. Getting advice specific to your situation is your best bet.

In a similar vein, don't rely on tax advice provided to someone else you know who started trading overseas, advice you got at your last company, or something you read on the internet

4. Overlooking indirect taxes

Your business can create an indirect tax liability, such as sales tax, VAT or GST, simply by selling products or services in another country. The threshold is often lower than it is for creating an income tax liability, and the rules can vary greatly between countries and within a country – every state in the United States has its own sales tax. Sales and value-added tax rules can depend on whether you are selling direct to consumers or to other businesses, the number of transactions and the value of the transactions, and the type of product or service being sold. Customs duties are also an important focus for exporters of products.

5. Not realising you've created a taxable presence overseas

It can be very easy to have enough people or equipment or products on the ground in a country to create a taxable presence. The rules are different in every jurisdiction, so you need to check them for each new country you enter. Having a taxable presence doesn't necessarily mean you need to pay tax – you might just need to register with the tax authority and file returns – but ignoring the problem and waiting for the tax authority to find you can be a very expensive mistake (think late filing penalties, late payment penalties and interest). Having a quick chat with a tax advisor will ensure you are making informed decisions about the best action to take and will be a far cheaper option in the long run, not to mention providing peace of mind that you have your offshore obligations in hand.

6. Ignoring transfer pricing rules

The transfer pricing rules are international rules that require associated parties to pay arm's length or market prices for the associated party cross-border transactions. Transfer pricing is a key focus for every revenue authority and getting the transfer pricing right is critical to managing your international tax obligations. Transfer pricing is really just a set of rules that overlay the commercial operations of your business to make sure each entity, and therefore each country, is getting the right return for what that entity actually does (ideally as part of the structure conversation at number 1). However, more often than not the perception is that transfer pricing is too complex and is therefore avoided for as long as possible, a scenario that never turns out well and invariably leads to paying the wrong amount of tax overseas with detrimental long-term impacts for the profitability of the business. Talking to your advisor about transfer pricing at the outset of the journey to expand offshore is by far a better option than ignoring transfer pricing and hoping it goes away... no matter what size your business.

7. Overlooking the tax effect of having people travel the world

As well as creating a taxable presence for your business (see above), having people travel the world can create other tax issues, both for your business and for your people. Your business might have to register for payroll taxes in other countries, and your people might have a personal tax liability if they spend long enough in another country (noting employees will likely require you to provide the necessary assistance to manage any tax obligations). There are international treaties that can prevent double taxation, but you need to check whether you meet the criteria, and then correctly claim the benefits.

8. Not using tax losses as effectively as you can

It's very common for a company to incur tax losses during the growth phase. The hope is that by carrying forward the losses, the losses can be offset against taxable income as the business becomes profitable. If you are correctly pricing your cross-border transactions, and depending on your business model, you may find you are paying relatively little tax overseas, and most income is made by the New Zealand company, which can use up historic tax losses. We've seen businesses over-report their taxable

income overseas, leaving profits trapped and subject to double tax when they bring them home, while losses sit in New Zealand, unused. Taking the time to think about the overall strategic group structure and the transfer pricing implications upfront, with regular review along the way, can help the losses to be used more efficiently.

9. Confusing a tax group with a reporting group

A business setting up foreign subsidiaries will often prepare group accounts, which makes a lot of sense for shareholders. This doesn't mean it can file a single New Zealand tax return for the whole group. New Zealand companies can be grouped for tax filing purposes, but this requires a specific election and doesn't extend to dual resident companies. This brings us to the next mistake.

10. Not knowing a company can be a dual tax resident

A company incorporated in another country can still be tax resident in New Zealand if it meets one of the three residency tests other than place of incorporation (i.e., its head office, management, or director control are located in New Zealand). In many cases, a newly-incorporated foreign subsidiary with limited functions could be a dual tax resident which means the offshore company will need to file tax returns in both countries. Where tax rates are similar in both countries then generally if a foreign tax credit and/or a loss offset is available tax would only be payable in one country. Where tax rates are different, a tax liability may arise. Either way, there could be a tax filing obligation in New Zealand as well as the country of incorporation.

This list is by no means exhaustive, there are unfortunately many, many ways to mess up tax just in New Zealand, let alone the rest of the world. The good news is there are many tax experts in the world, and we can help connect you with them.

If you want to talk about anything covered in this article, please get in touch with either of us or your usual Deloitte advisor and we can have a chat about how Deloitte can help.

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Claimed government support? What comes next?

By Robyn Walker

In just over 2 years the Ministry of Social Development (MSD) and Inland Revenue (IR) have paid out a staggering $19.28billion and $3.95billion respectively in Wage Subsidies (WS), Leave Support Scheme (LSS) payments, Short Term Absence Payments (STAP), Resurgence Support Payments (RSP) and COVID-19 Support Payments (CSP).

With the final CSP closing for applications on 5 May 2022, the main support options which remain available to businesses are the [small business cashflow loan scheme,](small business cashflow loan scheme) the leave support scheme and [short-term absence payment.](short-term absence payment)

While the money has been dished out to businesses to provide support for them and their employees during the COVID-19 pandemic, receiving the money is not the end of it. Recipients should be ensuring that they understand the obligations which come with each payment, including how they should be treated for tax purposes.

Tax treatment

The tax treatment of each payment is not identical and the outcomes vary depending on whether the recipient is a business, a self-employed individual and whether they are GST registered. The rationale for the income tax treatment is that all the amounts are government grants, so the receipt is not taxable and therefore you can't claim tax deductions when you spend it. The WS, LSS, and STAP are all connected to paying employees and therefore GST is of no relevance. The on-payment of any amounts to employees is taxable in the hands of the employee, and that's why those amounts are taxable when received by a self-employed person (they are the end recipient). The RSP and CSP were paid to businesses to help pay business costs, therefore GST output tax needs to be returned on the receipt, but likewise when the RSP or CSP is spent

Employers:

	Taxable Income	Tax Deductions	GST Payable	GST Claimable
Wage Subsidy	x	x	x	x
Leave Support Scheme	x	x	x	x
Short–Term Absence Payment	x	x	x	x
Resurgence Support Payment	x	x	✓	✓
COVID-19 Support Payment	x	x	✓	✓

Self-employed individuals:

	Taxable Income	Tax Deductions	GST Payable	GST Claimable
Wage Subsidy	✓*	x	x	x
Leave Support Scheme	✓*	x	x	x
Short–Term Absence Payment	✓*	x	x	x
Resurgence Support Payment	x	x	✓	✓
COVID-19 Support Payment	x	x	✓	✓

**Amounts should be included in the IR3/3NR and should be pre-populated in myIR*

If any amounts were received close to a business's balance date (e.g. 31 March 2022), then the full amounts received should not be treated as taxable income in the year of receipt, but the balance of unused funds should be rolled over and used in the subsequent income year.

IR expects all taxpayers to maintain records to show the payments received, what they were applied to and how the amounts were treated in tax returns (i.e. to demonstrate that the non-taxable/non-deductible treatment has been followed). This is also important to demonstrate that amounts have been used for their intended purposes, any excess amounts should be returned to either MSD or IR.

Other Obligations

The WS, LSS, STAP, RSP and CSP have all been "high trust" schemes; this was necessary because the volume of businesses seeking support meant it would be impossible for the government to verify eligibility before making payments.

Recipients of government support should ensure documentation exists and is maintained to evidence how **all** of the eligibility criteria have been satisfied; this is particularly important for wage subsidies where applications could be made on the basis of an anticipated revenue loss. Clear evidence needs to be kept of actual revenue losses, how the losses are attributable to COVID-19, and what steps have been taken to mitigate revenue loss; our previous articles have provided some guidance on this.

Both MSD and IR have teams working on post-claim integrity reviews and are undertaking direct checks with taxpayers. A sample of larger WS recipients have been asked to verify their eligibility for claims made. A number of cases are still being investigated, and as well as having MSD fraud investigators on the case, in some instances, the Police are involved in gathering evidence.

Decisions have been made to lay criminal charges against 15 cases to date, with court proceedings underway for 7 cases.

Amongst other things, IR will be checking to ensure that the benefit of these payments has not been passed through to business owners.

Databases allow the public to search who has received WS, RSP and CSP benefits. As a consequence, it is also possible for the public or employees to lodge complaints that are then investigated. As a consequence of investigations (and self-reviews), a number of repayments have been made, to date over $794million has been repaid to MSD. Businesses can find processes for making repayments on the MSD website.

Having clear documentation of eligibility is important not just If MSD or IR come knocking at your door, but it's also an issue that is regularly coming up in business sale due diligence processes. Having a potential COVID-19 skeleton in your closet could impact on your ability to sell your business at a later date. We recommend that existing documentation is reviewed now to ensure it is adequate.

For more information please contact your usual Deloitte advisor.

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Snapshot of recent developments

Tax Legislation and Policy Announcements

UOMI rates amended

On 7 April 2022, the Taxation (Use of Money Interest Rates) Amendment Regulations 2022 were notified in the New Zealand Gazette and amended the Taxation (Use of Money Interest Rates) Regulations 1998 to increase the taxpayer's paying rate of interest on unpaid tax from 7.00% to 7.28% per annum. The Commissioner's paying rate of interest on overpaid tax remains unchanged at 0.00% per annum.

The regulations apply on and after 10 May 2022.

FBT rate for low-interest loans increased

On 7 April 2022, the Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations 2022 were notified in the New Zealand Gazette. The regulations, which come into force on 1 July 2022, amend the Income Tax (Fringe Benefit Tax, Interest on Loans) Regulations 1995.

The regulations increase the rate of interest that applies for fringe benefit tax purposes to employment-related loans from 4.50% to 4.78%. The new rate applies for the quarter beginning 1 July 2022 and for subsequent quarters.

Consultation – Tax treatment of expenditure on distribution networks

On 12 April 2022, the Inland Revenue published a tax policy discussion document, Tax treatment of expenditure on distribution networks. Officials intend to recommend legislative amendments to change the law to confirm that the component items approach applies to distribution networks from 1 April 1993 (when the current depreciation rules were introduced). The legislative amendments will:

- Define a "distribution network", and
- Provide that for a distribution network:
  - The items of depreciable property are its component items, as identified in a depreciation determination and not the network itself, and
  - That component items are the relevant items of property for determining whether repairs and maintenance expenditure is deductible.

Inland Revenue suggests the proposed legislative amendments are likely to have no material impacts on owners of distribution networks and that the proposed amendments simply confirm that the component approach is the correct approach (despite case law) and thus retains that longstanding practice, which has been, for the most part, consistently applied by owners of distribution networks since 1 April 1993. Deadline for comment is on 25 May 2022.

Consultation – Working for Families Tax Credits

On 20 April 2022, Inland Revenue and the Ministry of Social Development (MSD) launched a public consultation as part of the Government's review of Working for Families (WFF), to understand how it can better meet the needs of families. The review will not affect current WFF payments.

The Government wants to focus on:

- Supporting low-income working families, while maintaining support for beneficiary families;
- Options that focus support to families with the lowest incomes, rather than providing more general support; and
- Making sure families are better off when working more hours and helping with the costs for people in work.

Feedback can be provided to the MSD through an online survey, by email or post. The closing date for submissions is 31 May 2022. Full details of the consultation proposals and how to submit can be found here.

Minister of Revenue Speech – "Shining a light on unfairness in our tax system"

On 26 April 2022, Minister of Revenue David Parker gave a speech at Victoria University of Wellington Te Herenga Waka titled "Shining a light on unfairness in our tax system" which provided comments on New Zealand's tax system. While no specific tax policy announcements were made, the speech provides the Minister's perspective on New Zealand's tax system as well as detailed progress on the development of a "Tax Principles Act" and a high-wealth individual research progress.

Inland Revenue statements and guidance

Outgoing Commissioner of Inland Revenue

Naomi Ferguson's tenure as Commissioner of Inland Revenue is coming to an end, with her final date as Commissioner being confirmed as Friday 27 May 2022 after nearly 10 years in the role. During the last 10 years Naomi oversaw the successful implementation of the START system at Inland Revenue. We congratulate Naomi for her achievements whilst at the helm of Inland Revenue and wish her well for the future. The new Commissioner has not yet been announced.

International Tax Disclosure Exceptions

On 31 March 2022, the Inland Revenue published Determination ITR33 – 2022 International tax disclosure exemptions. Section 61(1) of the Tax Administration Act 1994 requires a person who has control or income interest in a foreign company or an attributing interest in a Foreign Investment Fund (FIF) at any time during an income year to disclose that interest. Section 61(2) allows the Commissioner to exempt any person or class of persons from this requirement if the disclosure is not necessary for the administration of the international tax rules.

QWBA – Can a payment that compensates for the time value of money be taxable income if it is outside the statutory definition of "interest"?

On 4 April 2022, Inland Revenue published a finalised Question We've Been Asked (QWBA) QB 22/01: Can a payment that compensates for the time value of money be taxable income if it is outside the statutory definition of "interest"? The finalised QWBA has not changed from the draft previously issued. If a payment to compensate for the time value of money is outside the scope of the statutory definition of "interest" in the Act, the payment may still be income under a provision other than s CC 4(1) of the Income Tax Act 2007 (which taxes interest).

Consultation – GST –Standard rated services supplied by airport operators to international airline operators

On 5 April 2022, the Inland Revenue published PUB00410: GST – Are certain services supplied by airport operators to international airline operators zero-rated? for public consultation. This draft Questions We've Been Asked (QWBA) discusses the GST treatment of garbage disposal, lighting and security, aircraft parking and terminal services supplied by airport operators to international airline operators. Inland Revenue proposes that these services are standard-rated, not zero-rated. This QWBA reviews the PIB in light of later court cases and changes to the GST Act 1985. The deadline for comment is **17 May 2022**.

COVID-19 Determination – Extension of time for tax pooling (amended)

On 6 April 2022, COV 22/15 - Variation in relation to s RP 17B(4) of the Income Tax Act 2007 to extend the time for tax pooling transfers was amended. To use funds in a tax pooling account to satisfy a tax obligation for the 2021 income year, s RP 17B(4) of the Income Tax Act 2007 requires a transfer request to be made on or before either 75 or 76 days after the terminal tax date. For the 2021 income year, the time within which a request must be made has been extended to the earlier of 183 days after a person's terminal tax date for the 2021 income year or 30 September 2022.

COV 22/15 was amended to clarify that the last date upon which a taxpayer can make a transfer request is 30 September 2022.

COVID-19 Determination – Definition of "finance lease" in s YA 1 of the Income Tax Act 2007

On 6 April 2022, Inland Revenue published COV 22-16 - Variation in relation to the definition of "finance lease" in s YA 1 of the Income Tax Act 2007. This variation applies to lessors and lessees who may have agreed to extend lease terms (or intend to do so) because supply chain constraints resulting from COVID-19 have made it difficult to obtain new assets or replacement assets (e.g. motor vehicles) when existing leases expire. The time period in the definition of "finance lease" has been extended using s 6I of the Tax Administration Act 1994 to allow certain extended leases to continue to be treated as operating leases.

Interpretation Statement – Income Tax – deductibility of costs incurred due to COVID-19

On 14 April 2022, the Inland Revenue published IS 22/01 - Income Tax – deductibility of costs incurred due to COVID-19. This statement considers whether a business may claim an income tax deduction for costs it incurs due to the COVID-19 pandemic.

This IS applies to businesses that have carried on operating during the pandemic, if a business has ceased operating (temporarily or permanently) refer to IS 21/04 Income Tax and GST – deductions for businesses disrupted by the COVID-19 pandemic.

Interpretation Statement – GST and finance leases

On 14 April 2022, the Inland Revenue published IS 22/02 – GST and finance leases. The IS explains how to classify finance leases for the time of supply and value of supply rules. It also explains how to account for GST on finance leases when applying any special time and value of supply rules. The term "finance lease" is not defined for GST purposes, it is a commercial term that describes the lease of an asset for a fixed term when the amounts payable by the lessee relate to the value of the leased goods and not the value of their use. The terms and conditions of a finance lease will vary from lease to lease; accordingly, every finance lease agreement needs to be considered on its own terms.

QWBA – Donations – What is a public fund?

On 14 April 2022, Inland Revenue published Question We've Been Asked (QWBA) QB 22/02 - Donations - what is required to establish and maintain a "public fund"

under s LD 3(2)(d) of the Income Tax Act 2007? A person who donates money to a donee organisation can receive a donations tax credit or tax deduction. A donee organisation includes a "public fund" established and maintained exclusively to provide money for one or more specified purposes within New Zealand. A public fund must be registered with the Department of Internal Affair's Charities Services (if entitled to be registered under the Charities Act 2005) and the name of the fund must be on the list of donee organisations the Commissioner publishes for a donor to receive a donations tax credit or tax deduction.

The QWBA discusses the requirements that, in the Commissioner's view, must be fulfilled to establish and maintain a public fund under s LD 3(2)(d) of the Income Tax Act 2007.

The IS complements IS 18/05 - *Income tax – donee organisations – meaning of wholly or mainly applying funds to specified purposes within New Zealand and* QB 19/10 - *Donations – what is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007?*

COVID-19 Determination – PIE exit rules

On 20 April 2022, Inland Revenue published COV 22/17 - Variation in relation to ss HM 25(3)(a) and HM 72(2)(b) of the ITA 2007 (PIE exit rules). This variation provides extra time under s HM 25(3)(a) of the Income Tax Act 2007 for a PIE to remedy a failure to satisfy the requirements of s HM 14 (minimum number of investors) and s HM 15 (maximum investor interests) before it will lose PIE status, where that failure is due to COVID-19 response measures or because of COVID-19.

The variation applies from **18 March 2022 to 30 September 2022.**

BR Pub 22/01 – 22/05 Income tax – Australian limited partnerships and foreign tax credits

On 29 April 2022, Inland Revenue published BR Pub 22/01 – 22/05. These five Rulings address the ability of a New Zealand resident partner of an Australian limited partnership to claim foreign tax credits for Australian income tax and dividend withholding tax paid by the partnership on Australian source income. The Rulings concern Australian limited partnerships that are corporate limited partnerships for Australian tax purposes and are treated under Australian tax law as companies while in New Zealand they retain partnership and flow through tax treatment.

Pre-population of IR 833 Bright-line residential property sale information return attachment

Inland Revenue has made changes to the IR 833 Bright-line residential property sale information return attachment. This form will now automatically show in a taxpayer's income tax return if Inland Revenue thinks the taxpayer has a bright-line sale. The property information (including title number, address, date of purchase and date of sale) will pre-populate if the return is filed in myIR or through the income tax return gateway service. This form can also be manually added if a sale needs to be declared. MyIR will also show a table of property sales for the sales Inland Revenue has notified the taxpayer about.

New Inland Revenue Calculators

- Property Interest Phasing Calculator – allows you to work out how much interest is deductible if a residential property was acquired before 27 March 2021 and the interest is subject to phasing.
- New build interest apportionment calculator – allows you to work out how much interest is deductible if the property has both a new build and a non-new build and you are required to apportion the interest deduction.

Deloitte Global News and Resources

Technology in Focus

On 30 March 2022, Deloitte Global released Technology in Focus, the third report in our Tax Transformation series. The report taps into insights of 300+ tax and finance leaders globally and examines how technology has ushered in an entirely new age of transparency for the tax function.

The key findings are:

- 70% of the surveyed tax and finance leaders predict revenue authorities will have more direct access to their systems within three years. Businesses will increasingly feel like they are operating in glass houses.
- 86% are implementing a next-generation cloud-based ERP system such as S/4 Hana or Oracle Cloud.
- Tax leaders rank strengthening operational transfer pricing (48%), improving tax data management and governance (46%), and preparing for future digital tax administration requirements for direct tax (45%) as three of the biggest drivers of tax technology investment over the medium term.
- 80% say their function is evolving toward blended operating models which combine outsourcing, in-sourcing, and co-sourcing tax operations, with the precise contours determined by the specific process and geographic location.

ITR M&A Special Focus 2022

Deloitte Global has published an article in the [International Tax Review]() on M&A tax considerations for private equity transactions in the Asia Pacific region, with a focus on key trends, common tax due diligence and tax structuring issues, and the impact of BEPS 2.0.

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