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Tax Alert

December 2024

Tax and tinsel: A guide to taxing holiday perks

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New Tax and Social Policy Work Programme sets the tax policy scene

By Robyn Walker

For those with an interest in policy development, one of the highlights of any new Parliamentary term is the release of the Tax and Social Policy Work Programme (the work programme). This sets the scene as to what can be expected from the Government when it comes to tax policy development over the following period (typically 12-18 months).

The current Government has been in power for over a year now, so it was with great anticipation that the new work programme was revealed mid-November by the Minister of Revenue, Hon Simon Watts.

With stakeholders and the public in general having long wish-lists for changes to the tax system, it is a process of prioritisations and trade-offs to set the work programme (noting in recent history the work programme has been aspirational and not all items will be completed). The work programme is set based on the priorities of the Government, and while you cannot please everyone, businesses are more likely to look favourably on what is proposed. The overarching priorities for this work programme are stated as being simplifying tax and reducing compliance costs, addressing integrity risks, and improving fiscal sustainability.

The work programme itself is divided into six pillars:

- Economic growth and productivity
- Integrity of the tax system
- Modernising the tax system
- Strengthening international connections
- Social policy
- Other agency work

To show that the Government and Inland Revenue hasn't been sitting idle on tax for the last year, the work programme includes a series of items which have already made their way into legislation in the [Taxation (Annual Rates for 2024/25, Emergency Response, and Remedial Measures) Bill] (we don't discuss those further in this article).

For businesses and accountants, some of the highlights in the work programme are:

- Exploring compliance cost reductions, including improving tax compliance for small businesses
- Fringe benefit tax review
- Reviewing thin capitalisation settings for infrastructure
- Reviewing the foreign investment fund tax rules
- Trust disclosures post-implementation review
- Clarifying the income tax treatment of software development expenditure
- Simplifying the tax rules for non-resident contractors
- Double tax agreement negotiations
- Remedial work programme (this involves committing resources to do maintenance on tax laws when errors or abnormalities are identified)

After a period under the previous Government where there was minimal consultation on substantial tax changes (such as the property tax changes), it is refreshing to see the work programme include a clear commitment to consulting on tax reform: "The Government is committed to transparency through public engagement on the design of tax policy via the Generic Tax Policy Process. Public consultation plays an important role in creating and sustaining a durable and widely accepted tax system."

Essentially, the aim of this Government is to keep tax uncontroversial with minimal "surprise" announcements of unexpected tax policies. One item on the work programme which has not yet been mentioned is "reviewing elements of charities and not-for-profits." What precisely this means is not clear, but there have been extensive comments made by the Government that it is looking at whether certain tax exemptions remain appropriate. On 3 December 2024 the Minister of Finance was [quoted] saying "…what essentially we're doing is looking to see if there are any loopholes that are being exploited that would allow entities that are structured as charities to avoid tax they should otherwise pay… You can expect me to make announcements at the Budget." With the promise of details in Budget 2025, but also the commitment to the Generic Tax Policy Process, the expectation is that there should be some consultation, either before or after the Budget to ensure any proposed changes are appropriately targeted.

Overall, the Government should be commended for having committed to a work programme which is materially focused toward improving the economy, including enhancing productivity through stripping out compliance costs. With the Government having established itself as having a focus on targets and delivery, it seems likely that the remainder of this Parliamentary term will remain busy on the tax front, with the main focus being to improve on what we already have.

Future editions of Tax Alert will continue to keep you updated on all the latest tax policy proposals.

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Tax and tinsel: A guide to taxing holiday perks

By Katie-Rose Janmaat, Viola Trnski and Amy Sexton

The festive season is upon us! Time for giving, sharing, and navigating the tax treatment of Christmas-related expenditure.

While the work Christmas party and gift-giving bring joy, they can also bring confusion when it comes to understanding the tax implications for both employers and employees. The key tax areas to consider are the FBT, PAYE and entertainment expenditure regimes. The different rules for each of these three tax regimes can seem to overlap and are a common source of confusion. No matter what your business is planning to do for Christmas with/for your employees and clients, it is likely that one of these three tax regimes will apply.

The entertainment expenditure rules limits tax deductions to 50% of costs for certain types of entertainment. The policy rationale for this is that a portion of entertainment expenditure (which is often food and drink related) contains a component of "private enjoyment", even if consumed as part of a work event.

Normally, this type of expenditure will be captured by the entertainment regime, and override the FBT rules, unless:

- The employee can choose when to enjoy the benefit, or the benefit is enjoyed outside New Zealand; and
- The benefit is not received or used during, or as a necessary consequence of, the employee's employment duties.

In these situations, the FBT rules trump the entertainment rules. An example of these contrasting rules would be if you took your staff out for a Christmas lunch, the entertainment rules would apply, but if, instead, you gifted employees a voucher for a restaurant to enjoy when they choose, the FBT rules will apply.

Finally, the PAYE rules will apply to any monetary compensation provided to employees in connection with their employment, think of things like bonuses, gratuities and holiday accommodation provided to employees.

The table below provides a quick summary of the regimes and their tax implications:

Tax Regime	Benefit Characteristics	Tax Implications
Entertainment	• Both a private and a business benefit • Includes recreational events away from business premises, corporate boxes, exclusive areas, pleasure, craft and holiday accommodation • Applies to most food and drink (but there are some exceptions) • Benefits not received during, or as a necessary consequence of, employment duties	• Generally, expenditure is 50% deductible • There are exceptions to this limitation rule, such as light refreshments served on business premises • A supply is deemed to take place for GST purposes on the non-deductible proportion
FBT	• Non-cash benefits provided to employees that can be enjoyed at the employee's discretion and are unrelated to their employment duties • Employer legally incurs the cost	• Expenditure is 100% deductible (subject to overrides, such as if the employees are working on a capital project) • FBT is paid by the employer at the chosen rate and a GST adjustment is made • A de minimis threshold may apply for "unclassified benefits"
PAYE	• Monetary benefits made in connection with employment • Costs incurred by employees that are reimbursed by their employers or funded by an allowance • Includes bonuses, extra pay, employment-related accommodation, and other monetary benefits derived in connection with employment	• Expenditure is 100% deductible to the employer (subject to overrides, such as if the employees are working on a capital project) • PAYE is withheld by the employer at the employee's specified rate

Common scenarios

Let's look at some practical examples that may relate to your business

Costs associated with organising a Christmas party event off premises

Expenditure on food, drink and venue hire will be subject to the entertainment expenditure rules. Incidental costs like crockery, glassware, utensils and hiring waitstaff and/or music are also captured under the limitation rule. Only 50% of this expenditure is deductible.

Staff cash bonuses

Cash bonuses paid by an employer to an employee are taxable under the PAYE rules. These payments are made in relation to the employee's employment and not a payment that is regularly included in the employee's salary and wages (the legislation specifically provides for such payments). A cash bonus should be taxed for PAYE at the "extra pay" rate.

Providing Christmas gifts to employees

Most gifts to employees are subject to FBT, as the benefits from these gifts can be enjoyed at the employee's discretion. Similarly, gift baskets for employees containing food and drink, which could also potentially be considered an entertainment expense, would fall under the FBT rules for the same reason (that is, they can be enjoyed at the employee's discretion).

Note that some benefits subject to FBT may qualify for an "FBT exemption" if certain requirements are met. For example, the de minimis exemption exempt unclassified benefits from FBT provided that:

- The total value of all unclassified benefits provided to all employees is less than $22,500 in the previous 12 months (this amount includes all benefits provided to all employees of associated employers); and
- No employee has received more than $300 of benefits in an individual FBT quarter ($1,200 for annual filers).

Unclassified benefits are those that are not specifically excluded from, or provided for, in the FBT regime. Common Christmas examples include vouchers, gifts, flowers, and non-work-related travel.

Vouchers to employees

If an employer were to give employees vouchers for a store or restaurant as a gift, and the employee can choose when to use the voucher and to whom to use the voucher on, the voucher will be subject to FBT. If the employer were to allow the employee go out for a meal and then reimburse this cost, it would then be subject to PAYE (as it is not a voucher).

Providing gifts to clients and customers

An oddity of the entertainment expenditure regime is that Inland Revenue considers that it applies to the provision of any food and drink, not just food and drink consumed at a function. Inland Revenue has confirmed this with an Operational Position that specifies that if a business provides a client or customer with a gift basket containing wine, cheese, towels, and soap, the tax outcome is that the cost of the towels and soap are fully deductible – but the wine and cheese is only 50% deductible!

From Us to You: Merry Christmas and a Happy New Year!

We hope this article clarifies some of the common misunderstandings that can occur between the different employment tax regimes. If you have any queries about the issues stated, please contact your usual Deloitte advisor.

The Tax Alert Team wishes you all a Merry Christmas and a Happy New Year and hopes you all enjoy a well-deserved break.

We'll be back with our next issue of Tax Alert in February 2025.

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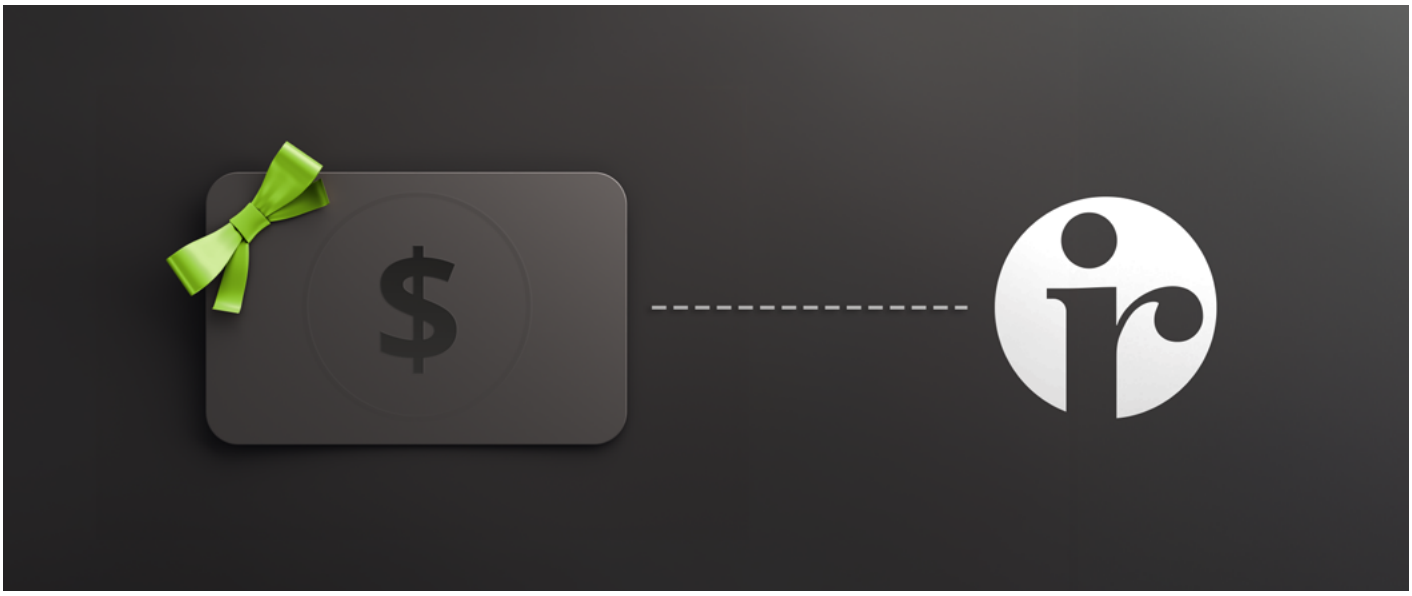
Gift cards and trade rebates: Inland Revenue sparks tax debate

By Viola Trnski, Annalie Hampton and Sam Hornbrook



Inland Revenue has been churning out consultation items in 2024 and with the year drawing to a close there are still some items out for consultation.

One of the more interesting items is the draft Question We've Been Asked: What is the income tax treatment of gift cards and products provided as trade rebates or promotions? (draft QWBA). Following the release of this item, based on the feedback we've received, everyone knows someone or has heard of someone who is benefiting from "free" stuff from a supplier. Inland Revenue has released guidance to set taxpayers on the right path when it comes to giving away (or receiving) gift cards and products. Inland Revenue clearly sets out in the draft QWBA that it is aware of "an increasing practice of trade suppliers providing rebates to their trade customers… that in some instances…are being incorrectly viewed or are being promoted as "tax free" to the trade customers."

What does the draft QWBA say?

In short, where trade rebates are provided in the form of gift cards or products (as opposed to a traditional price discount rebate), they are income to the recipient for tax purposes, and therefore must be returned as such. In practice, trade rebates are provided to encourage customer loyalty, and historically have been in the form of price discounts. However, Inland Revenue has concerns that there appears to be an increasing practice of trade suppliers providing rebates to their trade customers in the form of products and gift card trade rebates. In addition, some trade customers are then handing these products or gift cards on to their employees.

When a trade rebate is provided in the form of products or gift cards, generally, trade customers (the person/business that buys the goods or services from the supplier) is liable to pay income tax on these. The taxable amount is the face value of the gift card or the secondhand market value of the product if it was sold. An example Inland Revenue uses in the draft QWBA is a microwave provided as a trade rebate. The taxable amount of the microwave is the price the trade customer would receive for the microwave if they it sold, as it is "something of a kind that can be turned into money". This may be the value they are sold for on an online platform rather than the retail value. If the product received will be depreciable property of the trade customer there will be no depreciation loss available on the basis that the customer has incurred no cost to acquire the product.

If products or gifts cards are passed on directly (or indirectly) to employees, they are subject to tax by both the business and the employee. Products that are passed on to employees are subject to FBT, as they are a fringe benefit provided in connection with employment. The tax treatment for gift cards depends on whether the cards are "open loop" (e.g., prepaid card co-branded with a credit card that can be accepted by any merchant) or "closed loop" (e.g., only accepted by a specific merchant or multiple merchants at the same location) cards and whether they are provided to non-shareholder employees or shareholder-employees.

Closed and open loop...?

The draft QWBA distinguishes between "closed loop" and "open loop" gift cards for the purpose of determining whether the amount is taxed under the PAYE or FBT rules, when the gift cards are passed onto employees. Open loop gift cards (which are considered akin to cash) are, according to the draft QWBA, taxable under the PAYE regime. Closed loop gift cards are generally taxable under the FBT rules as an unclassified fringe benefit. There are specific rules that apply to shareholder-employees.

The reasoning behind Inland Revenue's position on open loop cards is that since they are like cash they should be treated in the same way that cash provided to employees would be (i.e. PAYE is payable). While this distinction seems reasonable, it is a departure from existing practice and may cause confusion more broadly (it is currently common business practice to tax certain open loop cards under the FBT rules).

If you currently receive gift cards or products as trade rebates, you should be thinking about the type of gift card or product you receive and the correct tax treatment that follows.

Application of shortfall penalties

The draft QWBA also includes a number of examples that clearly explain that taxpayers will be liable for shortfall penalties in instances where tax is not returned correctly. Shortfall penalties can apply to omitted business income and then again for the non-payment of FBT or PAYE. We expect that Inland Revenue will be taking a closer look at this issue within the trade industries where this practice may be prevalent. Given that guidance has been published, it will be expected by the Inland Revenue that taxpayers will be aware of their obligations around trade rebates and are paying the right amount of tax.

Our thoughts

Commercial implications

The draft QWBA suggests that the correct amount of tax (or any) is not always being paid on trade rebates that have been provided in the form of product or gift cards and serves as a reminder to trade customers of their tax obligations. This is positive news for the trade industry (and in particular, suppliers who are aware of competitors who may be promoting rebate schemes as being free from tax) and will improve the integrity of the tax base as a whole. The expected increased Inland Revenue focus in this area is likely to help even the playing field by reducing unfair pricing, incentives, and competitive advantage that can result when suppliers provide trade rebates incorrectly purported to be tax-free. While it is hard to know exactly how common this practice is, releasing proactive guidance on this issue provides certainty to taxpayers on how the tax rules apply and what Inland Revenue expects. In the broader tax climate, Inland Revenue audit activity is increasing and this draft QWBA serves as a timely reminder to ensure your tax affairs are in order.

It is worth emphasising that this draft QWBA applies to trade rebates, and it is not applicable to ordinary business-to-consumer offers (where gift cards may be provided when spending over certain amounts), and also is not relevant for non-rebate situations; for example a supplier providing a Christmas gift to a customer.

Record-keeping

Businesses that provide or receive gift card and product trade rebates need to think about how they keep and maintain a record of trade rebates (for their own purposes – and in case Inland Revenue comes knocking). A register that includes relevant details, including how the rebate was provided/received and how tax was accounted for, should be maintained, even if not strictly required.

It is best practice that businesses have written policies and procedures for staff to follow in relation to these issues (particularly if they may receive trade rebates without the employer being overtly aware) and that finance and accounting teams are clear on the tax implications. Further, trade rebates should never be treated as "mere gifts", they will always subject to tax, no matter how they are received. Inland Revenue has a specific guidance (IS 23/11) that covers income tax and gifts.

GST

The draft QWBA does not address how GST should be accounted for on the receipt of gift cards and and product trade rebates. However, treating these amounts as income would imply that the trade customer has made a "supply" to the trade supplier for GST purposes (e.g., a supply of a service of agreeing to buy a sufficient amount of product to qualify for a rebate). This interpretation would create a significant amount of confusion and complexity. We therefore expect there will be submissions on this point, as there are separate GST questions that may arise from the proposed income tax treatment.

The deadline for comment is 18 December 2024.

If you have any questions on how these changes will affect you, your business or employees, please reach to your usual

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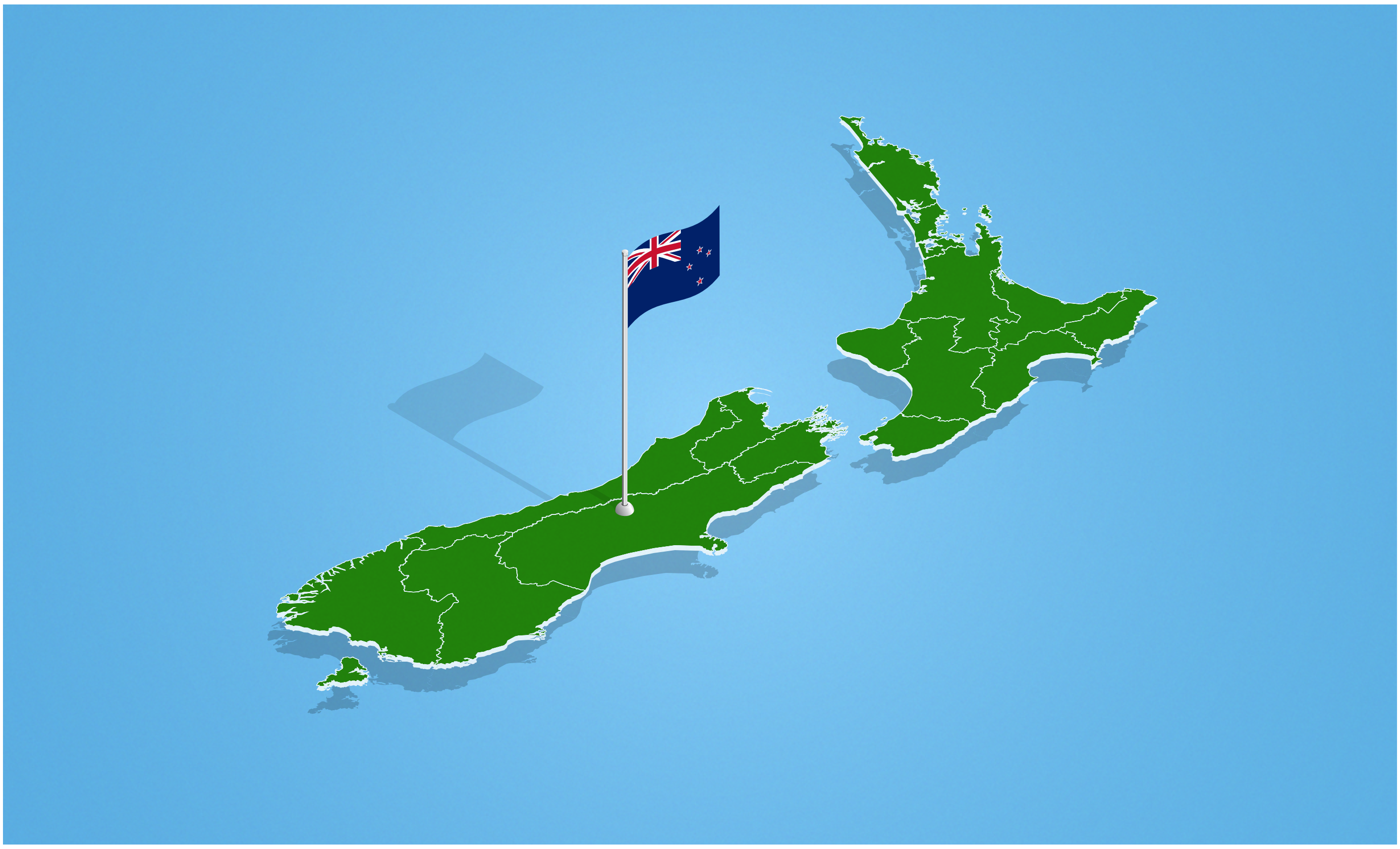
Time for a tax residency refresh: How does it apply to individual taxpayers?

By Jayesh Dahya and Mila Robertson



Understanding tax residence is essential. A person's or entity's tax residence status determines their tax obligations, including whether they are taxed on worldwide income or only on New Zealand sourced income.

In November Inland Revenue released a draft interpretation statements "[Tax residence]" (with accompanying reading guide and three fact sheets) and "[Tax residence - government service rule]" for public consultation.

The documents are a refresh of the 2016 guidance, IS16/03 Tax residence. Included in this refresh are an overview of the tax residency rules for individuals, companies, and trusts. This article focuses on Part 1 only, which is how the tax residency rules apply to individuals, including the government service rule.

The updates for individual residency largely look to simplify the prior guidance but does offer some new material, including examples to clarify issues we see in practice, such as individuals inadvertently electing out of the transitional residence rules (meaning they lose their temporary tax exemption on most foreign sourced income).

Tax residence for individuals

In New Zealand, the tax residence status of individuals is crucial, as New Zealand has a residency-based tax system, as opposed to a territorial tax system. Tax residency therefore determines whether a person is taxed on worldwide income or only on New Zealand-sourced income. The draft statement does not make any substantive changes to the previous guidance in relation to tax residency for individuals and by way of recap the relevant principles and tests are as follows:

Permanent Place of Abode Test

This test is the overarching test for establishing tax residence for individuals and applies “despite anything else”. A person is considered a New Zealand tax resident if they have a permanent place of abode in New Zealand, regardless of other circumstances or even also having a permanent place of abode overseas.

Case law has established that a "place of abode" generally refers to a physical dwelling, such as a house or apartment, that a person has a continuous and substantial association with. It does not require ownership; rented properties, family-owned homes, or properties held in a trust can also qualify as a place of abode. What’s key is that the dwelling serves as a habitual residence, where the individual resides from time to time in a stable and enduring manner.

Assessing a permanent place of abode requires an overall assessment of the circumstances and involves looking at the individual’s family, economic, and social ties, as well as their connection to the property. Specific factors may include:

- Family and social ties: close family members residing in New Zealand, established friendships and social networks can strengthen a person’s association with New Zealand as a primary residence.
- Economic and business ties: New Zealand-based employment, business activities, or property ownership are indicative of a connection that could make the place an enduring residence.
- Intentions and personal circumstances: frequent visits or ongoing commitments to a property in New Zealand, even if living overseas, often signify that the dwelling functions as a “permanent” residence.

Determining if an individual has a permanent place of abode can be complex, hence Inland Revenue devoting 24 pages of the draft statement to this issue.

183-Day Rule

An individual is also New Zealand tax resident if they spend over 183 days in New Zealand during any 12-month period (not an income year or calendar year). Once the 183-day threshold is reached, the individual is deemed tax resident from the first day of presence within that 12-month period and generally has more relevance to new migrants to New Zealand who may not establish a permanent place of abode when they first arrive.

325-Day Rule

To cease New Zealand tax residency, an individual must meet the 325-day rule, which requires them to be absent from New Zealand for more than 325 days in any 12-month period. In addition, they must also relinquish any permanent place of abode in New Zealand. The 325-day rule does not apply to those in New Zealand government service abroad (discussed further below).

What’s New

For individual tax residence, the draft statement includes new content covering:

- A paragraph acknowledging the existence of a domestic law exemption for employment income derived during short term visits to New Zealand – known as the 92-day rule.
- Comments on tax residence requirements to be eligible for Working for Families Tax Credits (WfFTC). As a result of transitional residents [inadvertently claiming Best Start tax credits] when receiving automated Inland Revenue notifications offering “free” money, additional paragraphs have been included to make it clear that claiming WfFTC (specifically Best Start) is treated as an election for the individual and their partner to opt out of being a transitional resident. It has also been made clear that FamilyBoost is not part of the claiming WfFTC regime.
- Additional guidance on the habitual abode test under the double tax agreement (DTA) tiebreaker provisions, noting that the focus is generally on where the person resides during the period of dual residence and in some cases it may be appropriate to consider additional periods that are outside the period of dual residence.

The Government service rule

The “government service rule” previously included in IS16/03 has been removed and a separate statement has been issued.

The draft statement consolidates the changes outlined in Commissioners Statement CS 21/02 where it clarifies that a person leaving New Zealand to take up a position in the service of the New Zealand Government overseas does not need to have been in the service of the New Zealand Government before taking up that position for the government service rule to apply.

What is the Government service rule?

Essentially, individuals who are tax resident under the 183-day rule when they start their service and are working overseas in the services of the New Zealand Government will always remain tax resident of New Zealand. This is even if they no longer have a permanent place of abode and meet the 325-day rule.

Who is covered by the Government service rule?

The government service rule covers the following:

- Employees of Government departments and agencies;
- Members of the New Zealand defence force and police; and
- Employees of another public body if the public body is closely controlled by the Government. This would include most public bodies outlined in the Crown Entities Act 2004.

The government service rule does not include:

- Employees of state-owned enterprises
- Employees of autonomous public entities such as school boards of trustees or tertiary institutions

The government service rule does not apply to an individual’s spouse/partner or child who are overseas with someone in the service of the New Zealand Government. The tax residence status of family members is determined independently.

When does the rule apply?

The following scenario's set out when the government service rules apply.

Scenario	Resident under the government services rule?
Existing New Zealand tax resident employee of the New Zealand Government leaves New Zealand to pursue duties for the New Zealand Government overseas.	Yes, the individual will continue to be considered a New Zealand tax resident.
New Zealand tax resident living in New Zealand accepts a position with the New Zealand Government to pursue duties for the New Zealand Government overseas.	Yes, the individual will continue to be considered a New Zealand tax resident.
Individual (already a tax non-resident), living overseas accepts a position with the New Zealand Government to pursue duties overseas for the New Zealand Government.	No, the government service rule will not apply. The individual will continue to be a New Zealand tax non-resident.
Individual already living overseas accepts a position with the New Zealand Government to pursue duties overseas for the New Zealand Government **but has not ceased to be New Zealand tax resident under the 325-day rule.**	Yes, the individual will continue to be considered a New Zealand tax resident.

The last two scenarios show that the Inland Revenue interpretation of the government service rule can give rise to an odd result, depending on whether the individual takes up employment for the New Zealand Government pre or post meeting the 325-day threshold.

What if there is a Double Taxation Agreement (DTA)?

When an individual is considered a New Zealand tax resident due to Government service and a tax resident of the country they are living in, and there is a DTA between New Zealand that country, the government services article in that DTA needs to be considered.

Generally, New Zealand retains the right to tax the individual's government salary and benefits. However, in some situations the other country may have the sole right to tax the employment income of the individual under the DTA residence tie breaker tests and the individual:

- Is a **national** of the other country, or
- Did not become a tax resident of the other country **solely for the purpose** of rendering government service for New Zealand.

In these scenarios, it will be necessary to consider the circumstances of the individual to determine if New Zealand retains taxing rights.

If there is no DTA, there are potential double taxation issues for the individual.

Deloitte comment

As acknowledged by Inland Revenue, the guidance documents are essentially a refresh of the previous statement with no substantial change in the interpretation of these rules.

In our experience, Inland Revenue are quick to conclude the existence of a permanent place of abode in New Zealand. For example, when there is a holiday home in New Zealand that is regularly occupied through the course of the year. It would be helpful for some additional guidance or examples of how these types of scenario would be interpreted by the Inland Revenue when dealing with individuals who may spend time in New Zealand in holiday homes without any other substantive ties.

Submissions on these consultation documents close on 11 December 2024 and if there are any points you think should be considered, or you have questions about your own tax residence, please contact your usual Deloitte advisor.

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Mix and match: Mixed use rentals

By Susan Wynne and Conrad Winthrop

Source: Inland Revenue

Are you renting out your beach house this summer, or rented out any residential property this year? If so, have you got your tax treatment right?

Inland Revenue has released a draft interpretation statement (the statement) for consultation that outlines the applicable tax rules for taxpayers (other than companies) who derive income from their residential property and what happens when the property use changes. This guidance provides a useful explanation of the tax deduction rules.

However, the 35 pages needed for this guidance illustrates how complex tax rules have become for residential rental properties.

The statement covers the two sets of income tax deduction rules rental property could fall under; standard tax rules, and mixed-use asset rules and explains how these are triggered.

How do I decide which rules apply to my rental property?

The statement sets out a handy flow chart to follow to determine which rules apply.

This flow chart should be revisited each year to make sure there has been no change to which tax rules apply.

Mixed-use asset rules

The mixed-use asset rules apply when certain assets (including residential rentals properties) are used partly to generate income, partly privately by the owners, as well as when a residential rental property is unused for at least 62 days in an income year. These tax rules are therefore likely to catch most short-term holiday homes that are rented out but also used by the owners privately (or empty for more than 62 days). When a taxpayer has a mixed-use asset, they must apportion expenditure related to the asset between private use and income earning use.

A taxpayer can opt out of the mixed-use asset rules if they made less than $4,000 or a loss is made on the property for the year. However, once opted out they may no longer claim any tax deductions for expenditure, but any income received from the property will be exempt income and no income tax paid on it.

Standard tax rules

If your rental property is out of scope for the mixed-use asset rules, standard tax rules apply. Income from the residential property is taxable and taxpayers can only deduct expenses that relate solely to the rental activity. Where interest expense is incurred (i.e., on mortgage payments), this may not be fully deductible if the interest limitations apply (until these interest limitation rules are fully phased out from 1 April 2025, for further explanation on the interest limitation rules, see our earlier Tax Alert article).

Note that both sets of tax rules have restrictions on deductions when a residential property has made a loss (called the residential property ring-fencing rules).

Changing between the two tax rules

The statement also explains how the tax rules will apply if there is a change in the use of the residential rental property, for example from mixed-use to full time rental. This starts to get quite complex, as different income tax deduction rules apply in the different scenarios, the restricted deductions under one set of rules may not be accessible under the other.

Where a residential rental property is a mixed-use asset that makes a loss, then the excess expenses may be "quarantined" and carried forward to future income years.

Similarly, under the standard tax rules excess expenses from a residential rental property may be "ring-fenced" and only used against income from other standard tax rule residential rental properties owned by the taxpayer or carried forward to future income years, depending on whether the properties are held in on a "property-by-property basis" or "residential portfolio" basis by the taxpayer.

It is also important to note that mixed-use asset "quarantined" expenditure cannot be used for an asset that falls under the standard tax rules and vice versa for ring-fenced expenditure.

For example, if in 2024 you determine your property falls under the mixed-use asset rules and has quarantined expenditure to carry forward to a future year, and in 2025 you are in a taxpaying position but determine that the property now falls under the standard tax rules, the quarantined expenditure cannot be utilised by this property until it is mixed-use again.

As we said above, the rules get quite complex.

In summary

Although quite detailed, the statement goes through the requirements under the mixed-use and standard use asset rules step by step with examples that clarify how the tax rules should apply. The statement also highlights the complexities of getting these tax rules right.

For more information on the statement, or how the tax rules apply to your residential rental properties, please contact your usual Deloitte advisor.

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A problem shared is a problem halved — Inland Revenue and MBIEs new information sharing agreement

By Joe Sothcott and Robyn Walker

Sharing is caring, right? At least, that seems to be the sentiment behind the new information-sharing agreement between Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE). This agreement, known as an Approved Information Sharing Agreement (AISA), was released for consultation at the end of October.

So, what exactly is an AISA? Essentially, it's a framework set out in the Privacy Act 2020 that allows public agencies to share information that would otherwise be restricted by that Act. The goal is to create a flexible mechanism to support services by sharing information while being transparent about the types of information shared. In this case, the proposed AISA is between Inland Revenue and the Market Integrity (MIB) and the Business and Consumer (BCB) Branches of MBIE.

Currently, three Memorandums of Understanding allow limited information sharing between Inland Revenue and MBIE. However, the Tax Administration Act 1994 and the Privacy Act 2020 still prevent some information from being shared. That's where the proposed AISA comes in—it aims to help both agencies perform their functions more efficiently and save on costs.

Inland Revenue is different to many agencies in that it has extensive information gathering powers already, so it's worth noting that while Inland Revenue could request this information from MBIE under section 17 of the Tax Administration Act 1994, they prefer not to because it lacks "transparency and public scrutiny." MBIE has less access to information, so it stands to benefit the most from having access to more data from Inland Revenue.

The types of information to be shared and the direction of travel are set out below in this handy table.

Overview of main proposals

Subsections of Chapter 3	Data sharing parties and information flow		
Chapter 3.1 Information sharing between IR and the Companies Office in MBIE			
1. Register information	IR	←	**NZ Companies Office (Companies Office) in MIB**
2. Removal and restoration information	IR	↔	**NZ Companies Office (Companies Office) in MIB**
3. Contact details	IR	→	**NZ Companies Office (Companies Office) in MIB**
4. Large company information	IR	→	**NZ Companies Office (Companies Office) in MIB**
Chapter 3.2 Information sharing between IR and CPIE in MBIE			
5. Information relevant to offences and the imposition of administrative sanctions or penalties	IR	↔	**Criminal Proceeds, Integrity, and Enforcement (CPIE) in MIB**
6. Failed entity information	IR	↔	**Criminal Proceeds, Integrity, and Enforcement (CPIE) in MIB**
7. Information concerning GST tax status	IR	↔	**Criminal Proceeds, Integrity, and Enforcement (CPIE) in MIB**
Chapter 3.3 Information sharing between IR and ITS in MBIE			
8. Information relevant to bankruptcies and company liquidations	IR	↔	**Insolvency and Trustee Service (ITS) in MIB**
Chapter 3.4 Information sharing between IR and business.govt.nz in MBIE			
9. Entity information enabling direct communication with New Zealand businesses	IR	→	**business.govt.nz in BCB**
Chapter 3.5 Information sharing between IR and MBIE's MIB and BCB			
10. Any of the information that can be shared under Categories 1 to 9 for the development of public policy	IR	↔	**MIB and BCB**

The table hints at why the Government would like to implement the AISA. A big reason is phoenix companies—where new companies are set up in the 'ashes' of a financially failing company, leaving prior creditors burnt. The consultation document says that whilst this is a known issue, the scale of the problem is unknown due to difficulties in collecting data.

Other reasons include cracking down on non-compliance—particularly people acting as a company director where they have previously been added to the register of banned directors— and getting important information out to relevant New Zealand businesses.

A key benefit of the AISA is increased cooperation between Inland Revenue and MBIE. It will assist in preventing and identifying offences, ensuring appropriate penalties are imposed. For instance, information sharing between Inland Revenue and MBIE's Criminal Proceeds, Integrity, and Enforcement Unit (CPIE) will help detect and prosecute offences. However, in this case information sharing will only occur if:

- The sharing party has reasonable grounds to suspect that an offence has been, is being, or is likely to be committed, and
- Believes the information is relevant to the other party's ability to detect, investigate, or prosecute that offence.

The AISA also supports the administration and governance of various regimes managed by the two agencies and provides more direct ways to share information. Finally, the consultation document mentions that information can be shared for policy development.

The deadline for submissions is 13 December 2024. The Government is particularly interested in hearing :

- If the issues outlined are of concern.
- Whether information sharing would address the problems.
- Whether there is support for the categories of information proposed to be shared.
- Whether there are sufficient safeguards for the protection of people's information.

Once the consultation is complete, the AISA will undergo further review by the Privacy Commissioner before heading to Cabinet to be passed as secondary legislation via an Order in Council. After implementation, Inland Revenue and MBIE will annually review the AISA's operation and its safeguards' effectiveness.

Please get in touch with your usual Deloitte advisor if you have any questions about the proposed AISA.

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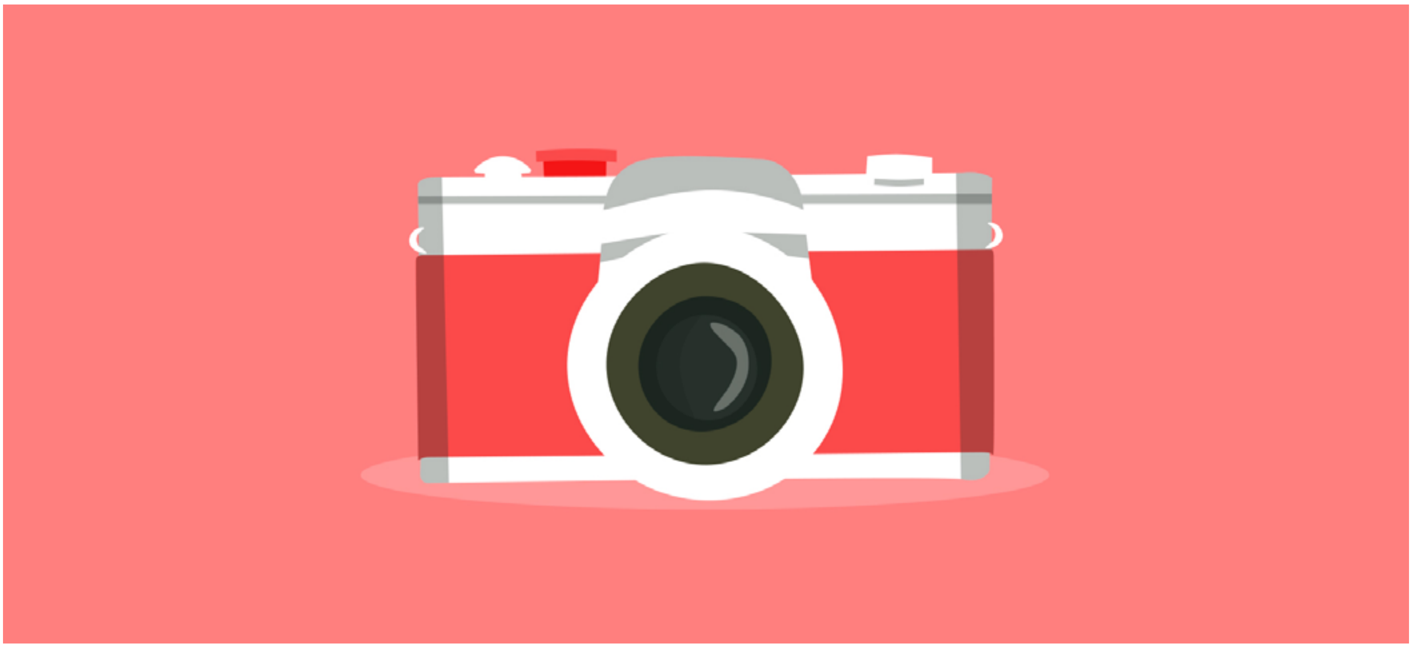
Snapshot of recent developments



Tax legislation and Policy Announcements

Taxation Review Authorities Act 1994 amended

On 23 September 2024, the [Statutes Amendment Bill] was introduced into Parliament. Part 39 of the Omnibus Bill amends section 22 of the Taxation Review Authorities Act 1994. This section empowers a Taxation Review Authority to order that costs be paid to the Crown in certain cases.

Information Release – 2024-25 Annual Rates Bill

On 30 September 2024, Inland Revenue issued an information release for items included in the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill:

- Information Release – Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill
- Information Release – Qualifying recognised overseas pension schemes

Information Release – Tax Administration (Direct Credit of FamilyBoost Tax Credit) Order 2024

On 4 October 2024, Inland Revenue issued an information release for items relating to the Tax Administration (Direct Credit of FamilyBoost Tax Credit) Order 2024.

Information Release – Revenue Portfolio (Budget 2024)

On 7 October 2024, Treasury published its information release package for the Revenue Portfolio for Budget 2024.

OIA release: Charities and not-for-profits overview

On 16 October 2024, in response to an Official Information Act request, Inland Revenue released a redacted overview on the Charities and Not-for-profit organisations provided to the Minister of Revenue to share with other Ministers (all discussion on future policy work has been redacted).

Inland Revenue Statements and Guidance

Inland Revenue: Public guidance customer survey 2024

The Tax Counsel Office and Inland Revenue's Technical Standards Group have released their triennial survey, which can be found here. The survey helps Inland Revenue understand what is working well and what can be improved and takes less than 10 minutes to complete.

Draft Question We've Been Asked: Bright-line rollover relief application to transfers of residential land between associated persons

On 26 September 2024, Inland Revenue issued PUB00489: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?

This "question we've been asked" explains how the bright-line test and rollover relief provisions apply to transfers of residential land between associated persons on or after 1 July 2024. It considers the effect of rollover relief and sets out the criteria that need to be met for rollover relief to apply.

Inland Revenue: FamilyBoost for taxpayers with income from schedular payments

On 1 October 2024, Inland Revenue announced changes in how FamilyBoost income for taxpayers who receive schedular payments is calculated as the current legislation does not work as intended for taxpayers with schedular payments. A remedial law change is planned to come into effect on or before 1 April 2025, until then Inland Revenue will use an exemption under s6E of the Tax Administration Act 1994 to change the calculation.

Tax Information Bulletin: Volume 36 Number 9 October 2024

On 1 October 2024, Inland Revenue issued TIB Vol 36, No 9, October 2024 which covers:

New legislation

- LI 2024/189 Tax Administration (GST Adjustment Rules) Modification Order 2024

Rulings

- BR Prd 24/02 and BR Prd 24/03: WorkRide Limited

Interpretation statement

- IS 24/07: Deductions for parties to employee share schemes

Commissioner's statement

- CS 24/02: Withholding obligations arising in relation to transfer pricing arrangements

Question we've been asked

- QB 24/5: Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the compulsory zero-rating rules?

Technical decision summary

- TDS 24/17: Deductibility of bonus payments

Case summary

- CSUM 24/06: High Court issues a 28-day temporary halt of Commissioner's bankruptcy proceedings pending payment of sum

Draft Commissioner of Inland Revenue statement: Deduction notices

On 4 October 2024, Inland Revenue issued draft standard practice statement ED0245: Deduction notices. The draft guidance explains the Commissioner of Inland Revenue's power to issue a deduction notice to recover outstanding amounts of tax from a third party and provides guidance on how the Commissioner will uses such notices. It will replace SPS 21/01.

Inland Revenue: Southland region and Clutha district medium-scale adverse effect

On 15 October 2024, following the declaration of a medium-scale adverse event for the entire Southland region and Clutha district as a result of challenging spring weather and recent significant rainfall, Inland Revenue made a 'class of case' determination for the Income Equalisation Scheme to allow:

- late deposits for the 2024 year until 1 May 2025
- early withdrawals if the deposit was made prior to the Ministerial announcement on 4 October 2024.

Inland Revenue: Inland Revenue Annual Report 2023-24

On 16 October 2024, Inland Revenue published its annual report. Total tax revenue for 2024 was $115.4b, up from $104.5b in 2023. Of the 2024 tax revenue, 51% was from individuals tax, 25% from GST, 16% from corporate tax and 8% from other tax revenue.

Inland Revenue: 2024 Child support payments – Receiving carers

On 18 October 2024, Inland Revenue confirmed that child support recipients should receive payments from Inland Revenue by the 21st of each month unless the 20th falls on a weekend.

Inland Revenue: Ransomware attacks

On 22 October 2024, Inland Revenue said they have seen a rise in ransomware attacks targeting accounting firms. As part of these attacks, Inland Revenue have seen taxpayers have their myIR accounts compromised. To safeguard against ransomware, Inland Revenue advise:

- ensure that all software is up to date.
- implement strong backup protocols.
- educate staff to recognise phishing attempts — often the entry point for ransomware.
- using the 2-step verification process and regularly testing security systems can also help reduce the risk.

Draft Interpretation Statement: Using the cost method to determine Foreign Investment Fund income

On 22 October 2024, Inland Revenue issued draft interpretation statement PUB00458: Income tax – Using the cost method to determine foreign investment fund (FIF) income. The statement explains when a New Zealand resident investor can choose to apply the cost method to calculate their FIF income on shares held in foreign companies. It includes some examples on when an independent valuation may be required to apply the cost method and how the cost method can be applied.

Inland Revenue: Registration for digital platform information

On 29 October 2024, Inland Revenue announced that platform operators (also known as online marketplace operators) who must collect and report information about sellers on their platforms can now register for a Digital Platform Information account in myIR.

Inland Revenue: Changes to credit and debit card payments

On 30 October 2024, Inland Revenue announced it is changing its third-party vendor used for credit and debit card payments. From 1 November, you can no longer make online card payments using the Inland Revenue website without logging in.

Inland Revenue: Anonymous information leads to Inland Revenue visits

On 31 October 2024, Inland Revenue announced that Inland Revenue staff are making unannounced visits to hundreds of businesses not believed to be meeting their tax obligations as employers. The businesses visited have been identified from the list of nearly 7,000 anonymous tipoffs the Inland Revenue receive each year.

Tax Information Bulletin: Volume 36, Number 10 November 2024

On 1 November 2024, Inland Revenue issued TIB Vol 36, No 10, November 2024 which covers:

New legislation

- SL 2024/172 Tax Administration (Direct Credit of FamilyBoost Tax Credit) Order 2024

Interpretation statement

- IS 24/08: Charities – Business income exemption

Technical decision summary

- TDS 24/18: Restructuring a group of companies

Inland Revenue: IR6 Estate or trust returns

On 4 November 2024, Inland Revenue announced they have become aware of an issue affecting IR6 Estate or trust income tax returns. The issue affects returns that include the allocation of income to beneficiaries and have been filed through gateway services. Please send Inland Revenue a myIR web message to correct the figures if you encounter this issue.

Interpretation Statement: Overdrawn shareholder loan account balances

On 5 November 2024, Inland Revenue issued Interpretation Statement 24/09: Income tax – Overdrawn shareholder loan account balances and an accompanying fact sheet. It discusses common tax issues associated with overdrawn shareholder loan accounts held in New Zealand resident close companies.

Inland Revenue: Media briefing - Use of custom audience lists

On 5 November 2024, Inland Revenue announced the findings of its review into the use of custom audience lists on social media. Inland Revenue announced that due to public concern it will no longer use custom audience lists to reach taxpayers.

Public Guidance work programme (November 2024)

On 6 November 2024, the updated Public Guidance work programme was issued.

Inland Revenue: Filing returns and attachments in myIR

On 12 November 2024, Inland Revenue announced that returns are often filed in myIR with invoices or financial statements attached as 'correspondence'. Return processing can be improved if the right attachment options are used when filing different types of returns.

Inland Revenue: Non-individual IRD number applications

On 12 November 2024, Inland Revenue advised that when applying for a non-individual's IRD, either online or using the IR596, the street address of the place of business (question 5 on the IR596) must be provided. This should be the physical location of the business, not the director's residential address or the tax agent's or any other intermediary's street address. When providing the postal address (question 6 on the IR596), this should be the postal address for the business and not the address of the tax agent or any other intermediary.

Inland Revenue: Focus on overseas student loan and child support debt

On 13 November 2024, Inland Revenue announced it is increasing efforts to gather child support and student loan debt owed by Kiwis living overseas.

Inland Revenue: Land and GST Overview

On 18 November 2024, Inland Revenue's Tax Technical website released a new Land and GST Overview section which complies relevant published guidance documents on one page.

Technical Decision Summary: Restructuring a group of companies (Private Ruling)

On 10 October 2024, Inland Revenue issued TDS 24/18: Restructuring a group of companies. The main issue was whether an amalgamation is a "liquidation" as defined in section YA 1 of the Income Tax Act 2007. The removal of Hold Co from the New Zealand Register of Companies under the Companies Act 1993 on amalgamation of Hold Co and Sub 1, was a "liquidation" as defined in section YA 1, being the "removal of the company from the register of companies under the Companies Act.

Technical Decision Summary: Income Tax and GST deductions (Adjudication)

On 15 October 2024, Inland Revenue issued TDS 24/19: Income Tax and GST deductions. The Taxpayer was found to have been a resident of New Zealand until their date of departure and was not entitled to deduct expenses incurred outside of New Zealand from the date of departure. The Taxpayer was also not entitled to input tax deductions for a specific period. The Taxpayer was also liable for shortfall penalties of not taking reasonable care, reduced for previous compliance behaviour.

Technical Decision Summary: Permanent establishment (Private ruling)

On 12 November 2024, Inland Revenue published TDS 24/20: Permanent establishment. It was determined that the arrangement did not result in overseas resident company being "resident in New Zealand". It also did not create a "permanent establishment." As such, there was no assessable income in New Zealand.

Deloitte Global Perspectives

Deloitte US: Tax policy implications of a Donald Trump presidency

Deloitte US has issued a publication outlining the tax implications of a Donald Trump presidency. There is a particular focus on the future of the Tax Cuts and Jobs Act of 2017.

OECD Updates

Model Competent Authority Agreement published

On 26 September 2024, the OECD/G20 Inclusive Framework published a Model Competent Authority Agreement (MCAA) to facilitate the implementation of its political commitment on Amount B of Pillar One.

Tax Policy Reforms 2024

On 30 September 2024, the OECD published Tax Policy Reforms 2024. It describes the tax reforms implemented in 2023 across 90 jurisdictions, including all OECD countries.

Tax arbitrage through closely held businesses

On 7 October 2024, the OECD issued a working paper exploring tax arbitrage incentives and behaviours in OECD countries, and their implications for tax systems more broadly.

OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors (G20 Brazil, October 2024)

On 24 October 2024, the OECD published the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors.

Tax Administration 2024

On 13 November 2024, the OECD published its twelfth edition of the OECD's Tax Administration Series.

Pricing Greenhouse Gas Emissions 2024

On 14 November 2024, the OECD published Pricing Greenhouse Gas Emissions 2024: Gearing Up to Bring Emissions Down.

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

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