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Tax Alert

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Close company current accounts in the spotlight

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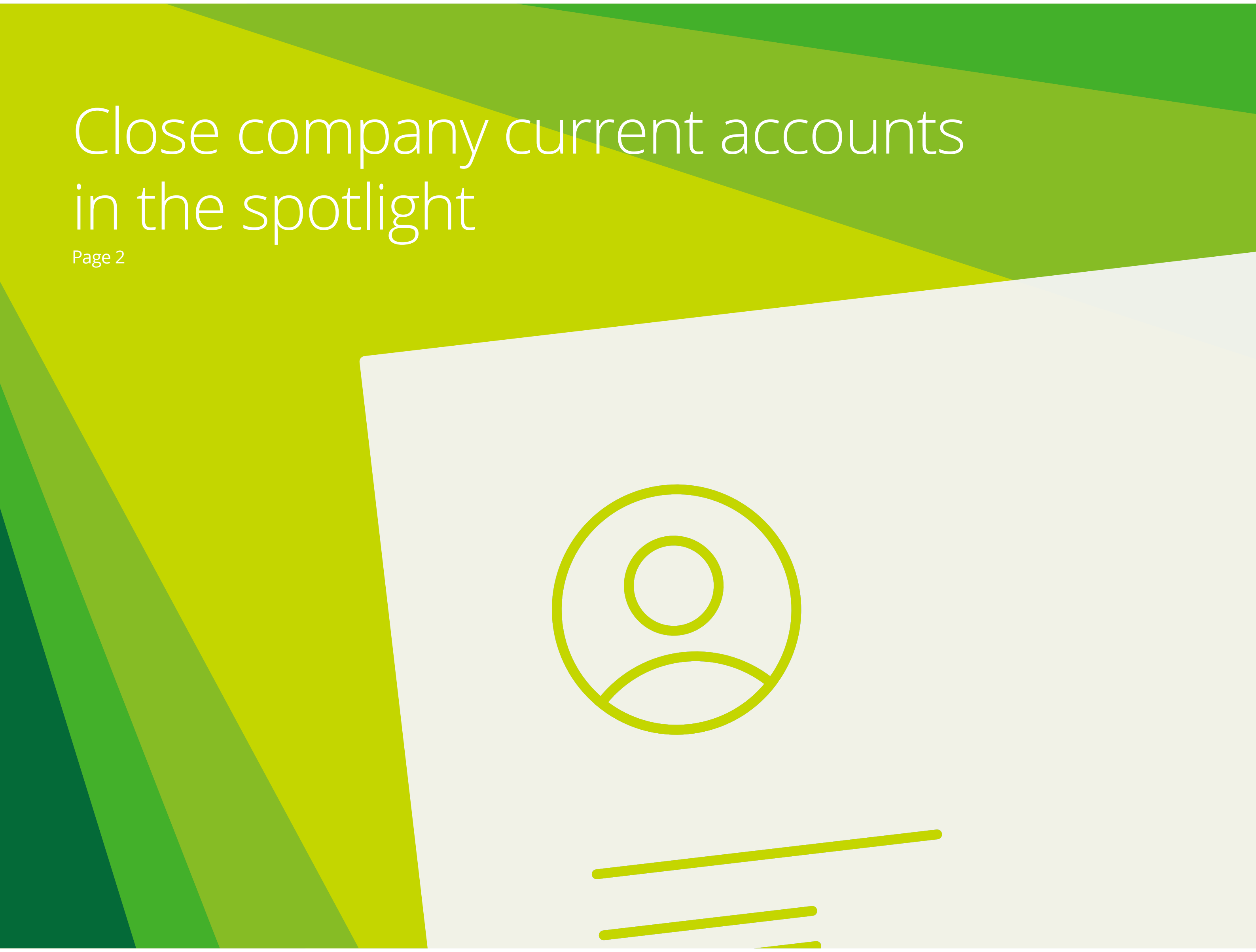

Close company current accounts in the spotlight

By Robyn Walker

Shareholders in close companies could expect to receive more scrutiny after Inland Revenue released new guidance to clarify how tax rules apply to overdrawn shareholder loan account balances (current accounts). The draft interpretation statement (available [here](), with a shorter factsheet [here]()) is open for consultation until 2 August 2024.

This latest guidance follows on from Inland Revenue's focus on [personal services income]() earned through companies and is possibly also connected to the views of the Minister of Revenue, Hon Simon Watts, who has emphasised that compliance with tax rules will be enforced across all taxpayers irrespective of size or scale.

The Interpretation Statement doesn't break any new ground, instead providing a comprehensive summary of how a number of tax rules apply when amounts are outstanding between a company and its shareholders, ensuring there is no doubt as to what the tax rules are. Topics covered in the draft statement include:

- The application of the dividend or the fringe benefit tax (FBT) rules where no or low interest is charged on the overdrawn balance.
- Where interest is charged, how the interest should be accounted for in their respective income tax returns.
- Whether shareholders have any withholding or information reporting obligations relating to the interest they pay (if any).
- Implications where a shareholder is relieved from repaying the overdrawn balance.

The implication of the above is that now is a good time for close companies to ensure their housekeeping is in order and that shareholders are not "living off the company" without appropriate consideration of the tax consequences.

What is a close company?

A close company is one where there is a close degree of connection between the company and its shareholders, meaning there is a greater likelihood that the affairs of each may be interlinked, for example by the shareholder(s) taking drawings to fund personal expenditure.

From a tax perspective, a close company is defined as a company with five or fewer natural persons or trustees who hold more than 50% of the voting interests or market value interests in the company. All natural persons associated at the time are treated as one person (for example spouses).

What are the rules?

The essential rule to be aware of is that if a shareholder has an overdrawn current account (i.e. the shareholder draws or borrows more money from a company than it loans in), interest should be charged by the company at the [prescribed interest rate] (currently 8.41%) and if it is not, then there could be a dividend or an FBT liability.

There are options available to close companies and shareholders to eliminate overdrawn current accounts through the allocation of dividends or shareholder salaries (which will be taxable in the hands of the shareholders). In many instances, shareholders may use current accounts during the course of a year before determining a (taxable) salary or dividend amount once the profitability of the company has been determined after the end of the financial year. Using a current account provides some flexibility to allow a company to either repay amounts previously loaned by the shareholder to the company or represents an advance by the company to the shareholder.

When is there a dividend?

An overdrawn current account represents the use of company property by a shareholder and the use of those funds is prima facie a dividend unless a market interest rate is charged on the loan. The amount of dividend arising from an overdrawn current account is calculated on a quarterly basis and is normally treated as being paid 6 months after the company's year-end. A repayment of an overdrawn amount may be able to be retrospectively applied in some circumstances.

When is FBT payable?

FBT can be payable when there is an interest-free or low-interest loan and the shareholder is also an employee (i.e. a working owner). An overdrawn current account is an employment-related loan for the purposes of the FBT rules (meaning it is a classified rather than unclassified benefit). When a company provides certain benefits to shareholder-employees there is a choice whether to apply the FBT or dividend rules, however, this optionality does not apply in respect of loans. However, as with dividends, in certain instances it is possible to retrospectively clear the overdrawn account to prevent the fringe benefit arising.

What if interest is charged?

Aside from retrospective crediting of amounts, dividends and fringe benefits can be eliminated by agreeing that the prescribed interest rate will be charged on overdrawn current accounts. The charging and payment of interest has other consequences, including that the shareholder has an interest expense and the company has interest income. In most instances, the shareholder won't be able to claim interest deductions. The shareholder may have obligations to withhold RWT (unless they fall under de minimis rules or the company has RWT-exempt status), and in some circumstances a requirement to report interest detailed under the [investment income reporting rules].

The company receiving interest income will be taxable on this income and will need to consider how the income should be spread under the financial arrangement rules.

What if a debt is forgiven?

If a company forgives the debt owing under a current account, further consequences will arise, and in most instances the shareholder will be deemed to have received a dividend of the amount forgiven and it will be necessary to undertake a base price adjustment (BPA) under the financial arrangement rules for both the shareholder and the company.

Sounds complicated?

Inland Revenue has written over 40 pages about overdrawn current accounts, so it is clear that they want to see the rules being applied correctly. The draft statement includes several useful flowcharts and examples to help explain how the tax rules should be applied. Given the fact specific nature of some of the rules, taxpayers should be considering how the rules apply to their individual circumstances to ensure their tax positions are correct. To the extent that it is apparent that rules have not been followed correctly, taxpayers should be making voluntary disclosures to put things right.

For more information, please contact your usual Deloitte advisor.

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Defined terms:

FDR method – The fair dividend rate (FDR) method deems 5% of the opening market value of FIF investments to be taxable with adjustments for "quick sales" which is a technical term for shares that are both bought and sold during the same year.

CV method - The comparative value (CV) method taxes the actual annual economic return from FIF investments including unrealised gains, realised gains and dividends.

39% trustee rate – will this mean more PIEs?

By Troy Andrews and Vinay Mahant

Any proposal to increase tax rates is sure to promote discussion. The legislative journey that has ultimately resulted in an increase to the trustee tax rate from 33% to 39% from 1 April 2024 has been no different. Although the change means there is now alignment with the top personal tax rate, a misalignment remains as companies and portfolio investment entities (PIEs) continue to be taxed at a maximum rate of 28%. While company tax is arguably just an interim tax until profits are distributed to shareholders, investors in PIEs have a permanent tax benefit.

While a 5% tax rate differential already existed between the trustee and top prescribed investor rate (PIR) for PIE investors, this has more than doubled to a headline 11%. With trusts commonly used for holding investment portfolios and their prevalent use in New Zealand for asset protection purposes, the immediate reaction may be to shift to investing via PIEs. It is important to understand that there are pros and cons with the tax settings of different investment decisions rather than the tax rate differential being the only driver. With this in mind, we have set out below some points that should be considered as part of the investment decision-making process in the context of the trust rate change and PIEs from a tax perspective.

What do I need to consider?

A key benefit of the PIE rules is that tax is capped at 28%. This is in line with the fact that the regime is intended to be concessional to promote and encourage savings (note that most, if not all, KiwiSaver schemes have elected to be PIEs). PIEs are taxed in a similar way to direct investments in New Zealand fixed income and New Zealand equities and are generally viewed as being more efficient from a tax perspective for investors with a tax rate above 28% for these investment classes. However, this is not always the case in the context of Foreign Investment Fund (FIF) investments.

Many trusts and individuals have the advantage of flexibility as they can choose to calculate FIF income under either the "Fair Dividend Rate" (FDR) or "Comparative Value" (CV) method, whichever is the most beneficial. For example, the FDR method could be chosen in years where the returns from international equities are greater than 5% and the CV method could be chosen when returns are less than 5% or where the value of equities declines. This option is not available to a PIE, which must use FDR regardless of how the overall market is performing.

It is also worth noting a benefit to the FDR method for many investors can be an outcome of no FIF income arising in the year an investment is acquired/made. There is essentially a "holiday" for tax purposes if an investment is made after the start of the year (i.e., there is an opening market value of nil) and is not also sold in the same year (if it was sold, a quick sale adjustment occurs). This can be a strategic difference between direct investment where investors are likely to be allowed a "holiday", whereas many PIE funds generally don't get this benefit as they undertake a different form of the FDR calculation (often called the periodic or daily method) where the 5% deemed return is calculated on the average balance for that period (normally a day).

The above highlights how the increased tax rate differential resulting from the trustee rate change should not immediately signal a structural change to investments. As the tax settings at play could lessen or even outweigh the 11% headline rate differential, it is important that these are considered before decisions are made. It is also important to understand that while it can be material, tax is just one of many factors that should be considered when reviewing the overall effectiveness of an investment and an investment structure (e.g. factors such as management fees charged/asset performance should also be considered).

For completeness, PIE and company/shareholder misalignment issues are known to Inland Revenue who have stated that they will monitor the effect of the trustee rate change including monitoring structural changes that are made by taxpayers.

Please contact your usual Deloitte advisor if you have any questions or would like to discuss the broader impact the trustee rate change may have on your trust.

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FBT and the bike exemption – Frequently Asked Questions

By Robyn Walker

It's been over a year since an exemption from fringe benefit tax (FBT) for employer-provided bikes, e-bikes, scooters and e-scooters used for commuting to work was added to tax legislation. Based on the frequency of questions received, this is a benefit that many employees are in favour of and are contemplating, particularly as part of sustainability policies. However, many seem uncertain about how the exemption works.

In this article, we work through some of the frequently asked questions on this topic.

We also provide a reminder on the FBT exemption for public transport.

What is the bike exemption?

The exemption was added to legislation without public consultation, so there is little background information to the legislation. The legislation states that a vehicle that an employer provides to an employee for the main purpose of the employee travelling between their home and place of work is not a fringe benefit if the vehicle is a bicycle, an electric bicycle, a scooter or an electric scooter (for the purposes of this article, they'll be collectively referred to as bikes). The legislation provides the ability for the Governor-General to set a maximum bike value, but to date, this has not been used.

The FBT exemption applies only to the value of the bike and does not apply to accessories, such as safety equipment (helmets, lights) or waterproof bags and clothing.

Can an employer just give an employee a bike?

Provided the employee is intending to use the bike mainly for commuting to and from work, then an employer can provide a bike with no FBT cost. The employer should seek some sort of confirmation/assurance from the employee that the bike will be put to the intended purpose. Inland Revenue has released additional guidance that suggests that such a benefit should only be provided periodically (e.g., once every five years, being the estimated useful life of a bike). This is to mitigate the risk of inappropriate behaviour, such as employees receiving and then on-selling bikes.

Why would an employer give an employee a bike?

In many instances, an employer wouldn't actually just provide employees with bikes, instead, they would enter into a salary sacrifice arrangement, whereby employees who want a bike agree to a reduction in salary equal to the cost of the bike. This approach is favoured because it allows for equality between employees, as some employees may already own bikes, some employees may live too far away to contemplate commuting by bike, some employees' circumstances may mean that commuting by bike may be unsuitable, and some people may just not want a bike. A salary sacrifice arrangement means that employees who do want a bike are not better off than other employees.

Having a salary sacrifice option may allow some employees who couldn't otherwise afford the upfront cost of purchasing a bike to now be able to consider owning a bike.

What is a salary sacrifice?

While salary sacrifices are common in other countries, they're not particularly common in New Zealand. Conceptually a salary sacrifice is where an employee agrees with their employer to reduce their pre-tax salary or wages in return for benefits, which may be subject to different tax obligations. The relevant tax obligations of the benefit would depend on the scenario and the nature of the agreement between the employer and the employee.

There are no specific New Zealand tax laws in relation to what constitutes a 'valid salary sacrifice', however, there are tax rules that exist to ensure there are no tax benefits from salary sacrifices in certain circumstances. For example, tax exemptions for certain work-related meals or employee accommodation will not apply when the employee would be entitled to a greater amount of employment income, should the employee choose, or have chosen, not to receive the benefit of the expenditure. There are no such restrictions on the use of the FBT exemption for bikes.

Determining whether a salary sacrifice is 'valid' turns on ascertaining the nature of the agreement between the employee and the employer, this is an objective analysis.

The validity of salary sacrifices is governed by case law, the leading case being Heaton v Bell, a House of Lords decision where the employee was able to use a car provided the employee accepted "an amended wage base." In Heaton v Bell, the majority found that the arrangement was not a salary sacrifice after determining that the true nature of the arrangement was a deduction from the employee's net wage rather than an actual reduction of the employee's gross wage.

The court said the reason the case became so difficult was because of the employer's failure to make plain the nature of the agreement with the employee, there was a lack of documentation and contradicting documentation existing, namely a pay slip showing a deduction from the employee's gross wage in the employee's payslip for the use of the car. The payslip suggested the deduction was a payment for the use of the car each week by the employee rather than a reduction to the gross wage of the employee.

The majority In Heaton v Bell also considered the employee's ability to receive the "sacrificed" part of their salary as money suggested there had not been a genuine reduction in the employee's salary. It follows that for a salary sacrifice to be valid, the agreement with the employee must not allow the employee to revert to the non-reduced salary within the period covered by the agreement.

There are a number of other cases on the topic, with the key takeaways from the case law for a salary sacrifice to be valid:

- The employee must agree contractually to reduce their gross salary or wages.
- The salary sacrifice must be articulated as a reduction to the gross salary or wage of an employee. If there is a deduction from an employee's gross wage it will not be a salary sacrifice.
- The employee must have no right under the agreement to receive the relevant part of their salary in money instead of the benefit.
- The employee's salary should not depend on the use of the benefit.
- The form of the documentation is important, the nature of the agreement as a salary sacrifice where the employee is agreeing to a reduced wage must be made clear.

If the salary sacrifice is phrased as a deduction rather than a reduction, further issues will arise. If it is a deduction, the arrangement may be treated as a loan which the employee is paying back through deductions and, while the FBT exemption will still apply to the provision of the bike, the employee's 'payment' for the bike will come out of after-tax income and result in no tax benefit. FBT could also be applied to the 'loan' from the employer and the employee.

Deloitte can assist with the development of a 'valid salary sacrifice' arrangement. It pays to get advice to ensure that everything is documented appropriately to avoid a Heaton v Bell outcome.

How does a salary sacrifice work?

If an employee is required to effectively pay for the bike through a salary sacrifice, the existence of the FBT exemption means that an employee may effectively obtain a bike at a significant discount. To put this into an example, consider an employee earning $60,000 who wants to purchase a bike costing $5,000:

Bike purchase without salary sacrifice	
Gross earnings	***$60,000***
Tax	***($11,020)***
After-tax earnings	***$48,980***
Purchase of bike	***($5,000)***
Remaining income	***$43,980***

Bike purchase with a $5,000 salary sacrifice	
Gross earnings	***$55,000***
Tax	***($9,520)***
After-tax earnings	***$45,480***
Purchase of bike	***Nil***
Remaining income	***$45,480***

In this example, the effective cost of the $5,000 bike to the employee is only $3,500 and the employee is $1,500/30% better off compared to if they purchased the bike themselves. This example does not consider whether the employer is able to negotiate a bulk purchase discount. In some examples we've modelled, employees may be able to effectively purchase a bike at a 50% discount.

Can employees be reimbursed for the cost of their bike?

There is not perfect symmetry between FBT and PAYE rules, so if an employee receives a reimbursement there is no tax exemption available. It's important to ensure that bikes are provided through the FBT rules, which means that the employer should be the party that is legally purchasing the bike at the outset.

Can the employer own the bike?

Absolutely, an employer could choose to own a fleet of vehicles which are made available to employees for commuting. However, this also means the employer will remain liable for insurance, and any ongoing maintenance costs and will need to consider whether there are any health and safety obligations etc. Employers will also need to monitor the use of the bikes to ensure they are mainly used for commuting.

Where to start?

There seem to be many employers who are considering implementing bike purchase schemes. However, it can also seem like a lot of work to get one off the ground and it's not clear how to get started in developing an efficient scheme.

For some employers, it may be an employee-led initiative, driven by employees who have heard of the tax exemption and who are ready to make the move to commuting by bike. In other cases, the employer may initiate the process.

While there is no right or wrong way to go about it (other than in relation to tax), it's worth considering:

1. **Developing a proposal:** prepare a document explaining why the employer should implement a bike purchase scheme. NZTA Waka Kotahi has some great resources here (note this pre-dates the existence of the new FBT exemption).
2. **Surveying employees:** How much uptake is expected, and, consequently, what is the expected cost of the scheme? Generally, a salary sacrifice will be over a 12-month period, so the employer faces an upfront funding cost but has this repaid through lower salary costs over the same period.
3. **Choose a supplier(s):** There is an intermediary service which reduces the administration (WorkRide has received product rulings from Inland Revenue), but employers can also work directly with bike stores to purchase bikes. This could take the form of a supply agreement with negotiated discounts based on a bulk purchase, or purchases on a case-by-case basis (ensuring that the employer is purchasing the bike to fall within the FBT regime). Have a chat to a bike store about what types of bikes they currently or can offer to suit the different needs of employees. An employer who operates in multiple locations may want to choose a preferred supplier in each location.
4. **Develop policies and processes to implement the plan:** For example, consider safeguards such as an upper bike cost, limits on who can participate, restrictions on salary being sacrificed below minimum wage, and bonding policies. Decide whether the employer will contribute anything towards the upfront cost of accessories (as the tax exemption only applies to the bike itself and not associated safety equipment).
5. **Pay attention to details:** The case law around salary sacrifices show that tax benefits can be lost if arrangements are not implemented properly or there is poor documentation in place. Ensure appropriate employment clauses are put in place and everyone understands what is being agreed to. Deloitte can assist with this.

What is the public transport exemption?

The FBT rules also provide an exemption for employer provided public transport which is mainly for commuting between the home and workplace. This exemption exists to encourage more sustainable commuting options and put public transport on an even footing with on-premises car parks (which are also exempt from FBT).

The issues associated with this FBT exemption are similar to those canvassed above in relation to bikes, with one of the biggest issues being how to have the benefit provided by the employer (and subject to FBT, but exempt) rather than a reimbursement or allowance (subject to PAYE, and not exempt from tax). The provision of public transport to employees has the potential to be a logistical problem, however solutions are emerging, such as Auckland Transport's Fareshare which allows employers to easily subsidise 25%, 50% or 75% of an employees public transport fare.

What next?

The FBT exemptions represents an opportunity to realise the wider societal benefits of an increased mode-shift by employees out of cars and onto bikes (or into public transport). While there are a number of complexities to work through, these are not insurmountable.

If you want to understand how Deloitte can help with the implementation of a bike purchase scheme please reach out to your usual Deloitte advisor.

**Deloitte is not affiliated with WorkRide or Auckland Transport Fareshare.*

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FBT on work related vehicles… a refresher

By Robyn Walker, Viola Trnski and Sam Hornbrook

Utes have long been part of the tax debate, most recently with National delivering on its election promise to scrap the previous Government's Clean Car Discount scheme (also dubbed the "Ute Tax" as it charged a levy on high-emitting vehicles, including utes).

Before this – and perhaps still today – there was a perception that utes receive a tax break. The kernel of truth behind this belief is the work-related vehicle fringe benefit tax (FBT) exemption. This exemption specifically excludes "cars" and is primarily the domain of work vans and utes.

Despite the uptake of EV's, as a country our heart still lies with utes, which have continued to top car sales charts year after year. The question remains whether there is a tax exemption incentivising the growing number of double-cab utes on New Zealand streets.

In this article, we explain the difference between a car, a ute and a work-related vehicle, as well as how the tax exemption applies.

What is subject to FBT?

A motor vehicle fringe benefit arises when an employer makes a motor vehicle **available** to an employee for their private use, in connection with the employment relationship. It is irrelevant whether a vehicle is actually used (unless a specific exemption applies).

The exemptions are:

- Work-related vehicle (WRV) exemption
- Emergency call exemption
- Business travel exceeding 24 hours exemption

Here we are focusing on the WRV exemption.

What is a work-related vehicle?

The WRV definition has several layers to it, which can confuse.

A vehicle is only exempt from FBT on days that it satisfies **all** of the WRV criteria; FBT will apply on any days the criteria are not satisfied, most notably the prohibition on private use.

A WRV is a motor vehicle that:

1. Prominently and permanently displays on its exterior the employer's identification (e.g. it is branded/features logos, and the branding is permanent, i.e. they cannot be magnets); **and**
2. Is not a "car"; **and**
3. Is not available for the employee's private use, except for private use that is:
    - Travel to and from their home that is necessary in, and a condition of, their employment; or
    - Other travel in the course of their employment during which the travel arises incidentally to the business use.

A "car" means a motor vehicle designed exclusively or mainly to carry people; it includes a motor vehicle that has rear doors or collapsible rear seats. Most motor vehicles will be cars, however, if a car has had its rear seats removed or permanently bolted down (meaning it is not used mainly to carry people), then the vehicle will not be a car for the purposes of the WRV exemption.

Inland Revenue's view in relation to double-cab utes is: "This vehicle is designed equally for carrying people and for carrying goods. The front half of the ute comprises the cab which has two rows of seats for carrying people. The back half of the vehicle is the tray, which is used for carrying goods. This vehicle is not a car."

So, is a sign-written double cab ute automatically exempt from FBT?

No. There is a common misconception that all utes are exempt from FBT. However, a sign-written ute can qualify for the WRV exemption, if private use is restricted to home-to-work travel and any incidental private use which occurs while the vehicle is being used for business purposes (for example stopping at the supermarket on the way home).

To qualify for the WRV exemption an employer should have a private use restriction in place, ideally a letter issued to the employee or a specific clause in an employment agreement.

Compliance with the private use restrictions should be regularly checked by the employer; Inland Revenue recommends checks are done every quarter and could include checking petrol purchases and logbooks.

As the WRV exemption applies on a daily basis an employer can allow private use at certain times and pay FBT on those private use days. For example, an employer may restrict private use Monday to Friday and allow private use on Saturday and Sunday; in this case the employer would pay FBT for 2 days each week (regardless of whether the vehicle is actually used by the employee on the weekends).

Can any ute use qualify?

One of the WRV criteria mentioned above is that the travel between home and work must be "necessary". What does this mean? Essentially, this is looking at why the vehicle is provided. Inland Revenue's interpretation statement on FBT on motor vehicles sets out the Commissioner's view:

> *"The definition of "necessary" suggests there must be a direct or needed relationship between the employee's travel to and from home and their employment. This may not necessarily be "essential", but must certainly be "required or needed" in their employment …. If the travel is not necessary in the employee's employment, then the travel will be subject to FBT. For example, if a receptionist is given a vehicle to travel between home and work, the employer would not be entitled to the benefit of the private use exclusion in s CX 38(3)(a), because the travel to and from home is not necessary to the receptionist's role."*

Whether something is "necessary" will depend on the facts and circumstances of a particular situation. While conceptually it may be reasonable to say that a receptionist has no need to be provided with a ute, the receptionist may have a requirement to regularly pick up work supplies on the way to or from work, or there may be a requirement for a vehicle to be taken home due to a lack of secure parking at the workplace.

What if you've been doing it wrong?

Tax rules are usually very specific, and if you're not clear on the details it can be easy to get it wrong. It's quite common to hear things like "my accountant said we should get a ute for the business because there is no tax" with no knowledge of the additional criteria. As outlined above, it's not as simple as just buying a ute: all the WRV criteria need to be satisfied on every day of the year in order for the ute to fall outside of the FBT net. If your ute isn't permanently and prominently sign-written, the ute isn't "necessary", or you don't have a private use restriction in place, then the ute is subject to FBT.

If FBT hasn't been paid in the past, the first step is to get your FBT positions correct going forward. The next step is to make a voluntary disclosure to Inland Revenue in relation to the past error. If a voluntary disclosure is made prior to Inland Revenue auditing a business any shortfall penalties will generally be remitted in full.

If you're uncertain about how FBT applies to your vehicles, please get in touch with your usual Deloitte advisor.

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It's not too late to consider FBT attribution

If your business has paid FBT at the flat rate of 63.93% on all fringe benefits for the 2023/24 FBT year, its not too late to consider whether there are any FBT savings available from undertaking an FBT attribution – which can lower your FBT cost to rates which match the tax rates applying to your employees. A Notice of Proposed Adjustment (NOPA) can be filed to amend a previously filed tax return within four months of filing. Talk to your usual Deloitte advisor if you want to learn more about this process.

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Understanding the GST treatment of subdivision projects

By Sam Hornbrook and Mirei Yahagi

Subdivision projects involve dividing a piece of land into multiple lots or properties for sale or development. Understanding the GST treatment of these projects is crucial for property developers as it impacts the GST treatment of the property on acquisition, the ability to claim GST on development costs, and the GST treatment upon completion and sale of the subdivided lots.

In November 2023, the Inland Revenue issued a draft Questions We've Been Asked (QWBA) to address the complexities surrounding the GST rules in subdivision projects. This draft guidance aimed to provide clarity on when a subdivision project qualifies as a "taxable activity" for GST purposes. For further discussion on the draft QWBA. The final QWBA guidance has now been released by the Inland Revenue. This final guidance includes some important changes from the draft version, which we have outlined below.

What is a taxable activity?

In order to register for GST, a taxpayer is required to have a "taxable activity". The key element of the legislative definition of taxable activity is: "any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club". Any initial or preparatory steps taken in a subdivision project can also form part of the taxable activity.

In relation to subdivisions, many aspects of the definition are satisfied, however a key question is whether the activity is sufficient to be considered continuous or regular. It can be difficult to work out whether a subdivision project is a continuous or regular activity because activities involving land usually involve a lot of work, time, and cost, but the number of supplies made is often low.

If the activity is continuous and regular the taxpayer can register for GST, if it is not, GST registration is not possible. This can have a material impact on cashflow when undertaking a development and ultimately impact on whether GST needs to be charged when the subdivided land is sold.

Key changes in the final QWBA

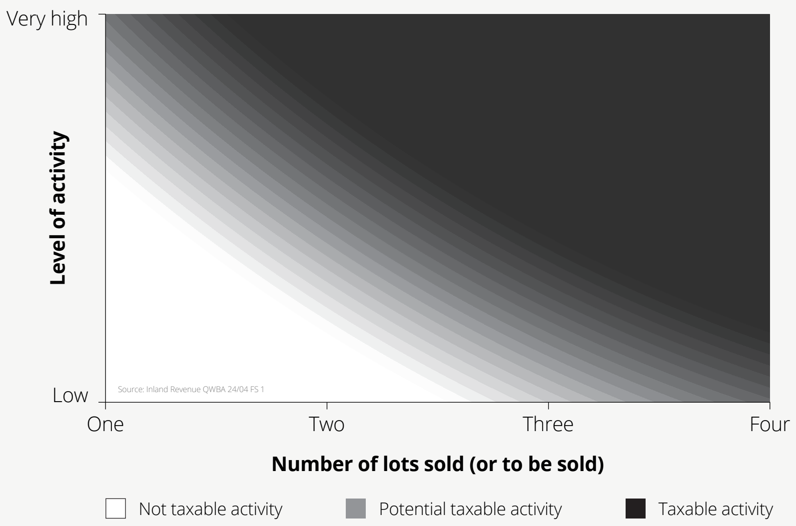
The changes made by Inland Revenue between the draft and final guidance aim to provide further clarity and guidance for taxpayers.

1. Two-Step Test:
   - The focus has shifted to a two-step test for determining whether a subdivision project qualifies as a taxable activity for GST purposes.
   - The first step is the number of lots created and sold, and the second step is the level of activity involved in the project.
   - The more sales made, the lower the scale of activity needed for the activity to be considered continuous and regular, therefore supporting that a subdivision project is a taxable activity.
2. Clarification on "continuously or regularly":
   - Inland Revenue now makes its view of the meaning of "continuously or regularly" clearer.
   - The guidance reflects that although there may be a fair amount of activity involved by the taxpayer, if only one supply is made, it is unlikely to be continuous or regular. Therefore, it is important to note that the number of supplies made over time is one of the key factors to supporting whether there is a taxable activity.
3. Clarification in relevant and not relevant factors:
   - The "time and effort" factor now provides additional information about what is and is not relevant when determining whether there is a taxable activity.
   - If a taxpayer is putting in minimal time and effort then this may be one of the factors that indicates the activity is not continuous or regular, but this fact on its own is unlikely to impact the conclusion of having a taxable activity (or not).

4. More details provided about when a taxable activity begins:
   - The guidance now discusses preparatory steps and clarifies that the preparatory steps to the commencement of a taxable activity can form part of the taxable activity (but on its own is not sufficient for a taxable activity).
   - Makes references to the new disclosure requirements in section 61B of the Tax Administration Act 1994 (TAA) if the taxpayer acquired land with the intention of using it to make taxable supplies (note, to date the Inland Revenue has not released the disclosure form required).

5. New examples providing additional scenarios:
   - Additional examples have been added to provide greater clarity over some of the more grey areas rather than focusing on clear examples.

6. A fact sheet summarising the QWBA aimed at taxpayers involved in subdividing activities has been added, including:
   - A helpful diagram illustrating that Inland Revenue generally considers that if a subdivision leads to the creation and sale of four or more lots, it will be a taxable activity, unless the level of work involved is very low. If the subdivision leads to the sale of two or three lots, it will be important to consider the amount of activity involved to subdivide and sell the lots – see below:



   - Inland Revenue notes that the above same approach will generally apply to other activities involving land development activities, but the same criteria are unlikely to apply to other types of activity.

Conclusion

The final guidance from Inland Revenue does help provide greater clarity on the GST treatment in subdivision activities but does not have all the answers.

For any developers that have mixed-use developments, or a change in use, additional care should be taken. If a developer originally intended to sell but decides to rent out residential properties (e.g. temporarily), it may lead to GST concurrent use rules and/or change in use adjustments for GST purposes. These scenarios often require careful consideration and expert advice to navigate potential GST complexities, our April 2023 Tax Alert provides further background on these complexities.

We recommend that property developers get appropriate advice to ensure compliance and navigate potential pitfalls in property development activities.

If you have any questions or require further assistance, please do not hesitate to reach out to your usual Deloitte advisor.

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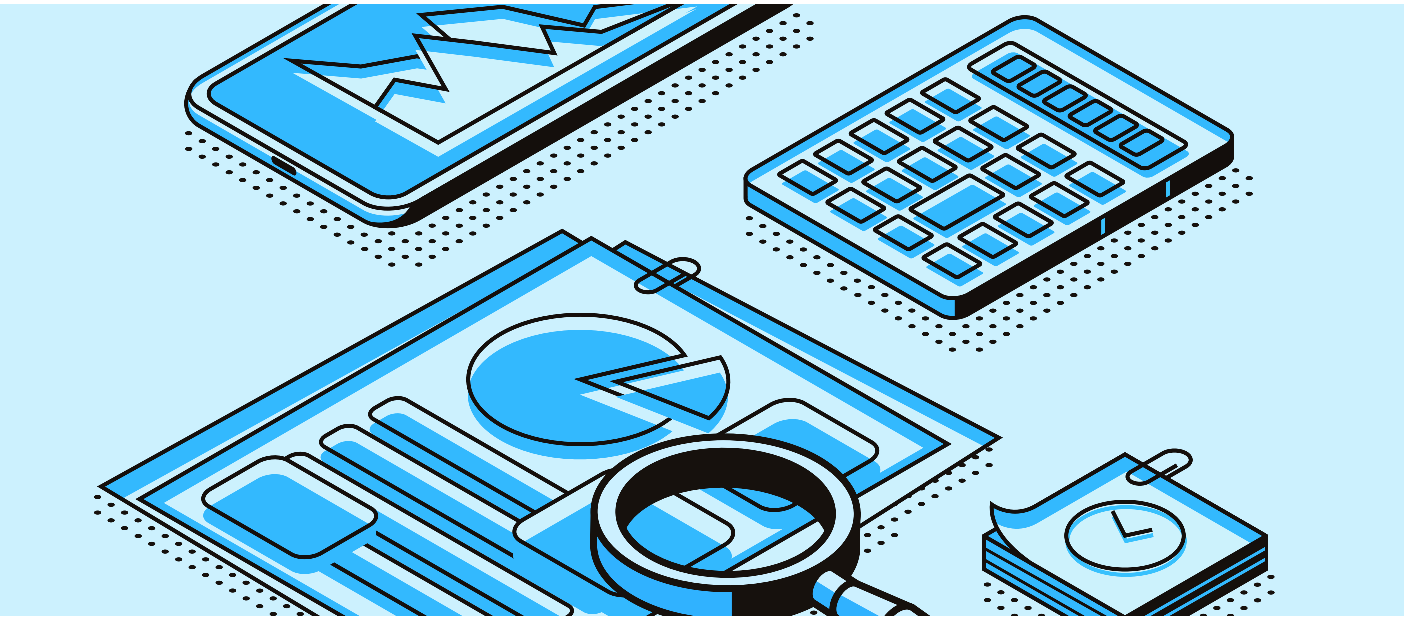
Inland Revenue's 2023 International Questionnaire campaign – are you an audit target?

By Bart de Gouw, Riaan Britz and Tayla Wheeler



Inland Revenue has recently released the findings from its 2023 International Questionnaire, comprising responses from over 800 foreign-owned multinational companies operating in New Zealand. This article summarises the key insights and global trends identified from the questionnaire results and asks one broad question – are you ready for the increased investigative activity expected from Inland Revenue in the coming year?

Data based risk assessment

The questionnaire is described by Inland Revenue as a key part of its annual risk assessment process and the intelligence from the analysis is used to inform key policy and operational decisions. The targeted questions allow for the assignment of risk ratings to companies that deviate from expected norms or standards. The information gathered by the International Questionnaire is used as part of the taxpayer selection process for transfer pricing risk reviews and audits.

The four areas identified by the International Questionnaire that are most likely to cause a higher risk profile are:

- No transfer pricing documentation available to support material cross-border associated party transactions;
- Material transactions with low-tax jurisdictions;
- Structural changes to the business;
- High levels of debt; and
- Transfer pricing method selection and application.

Transfer pricing documentation

The number of companies that do not have transfer pricing documentation is not reported by the Inland Revenue, so it is not possible to determine whether this is a commonly identified risk area. However, good quality and up-to-date transfer pricing documentation is a requirement for multinationals if there are significant cross-border associated party transactions that need to be supported as being at arm's length.

The questionnaire results show that 12% of companies made cross-border supplies to related parties that exceeded 20% of gross revenue. 33% of companies received cross-border supplies from related parties that surpassed the same 20% gross revenue threshold, consistent with the figures from 2022. These respondents were also asked if they prepared transfer pricing documentation. The onus is on the taxpayer to prove that its cross-border associated party transactions are conducted at arm's length, so robust New Zealand-specific transfer pricing documentation remains the most important starting point.

Not having documentation would likely place a company high on the risk radar. Inland Revenue has published transfer pricing worksheets on its website to assist with a self-assessment of compliance risk.

Transactions with low-tax jurisdictions

8% of respondents indicated that the New Zealand entity had over NZD 30 million of expenditure on goods and/or services with associated parties in Hong Kong, Ireland, Luxembourg, the Netherlands, Singapore and Switzerland (countries with low company tax rates and/or incentive regimes that have historically made these jurisdictions more attractive to multinationals). This result is consistent with prior years and represents over 60 respondents who may expect to be on the risk radar.

Structural changes to the business

Moreover, a snapshot of post-pandemic recovery emerges with a mere 3% of respondents indicating material business restructuring during the 2023 income year, aligning with pre-covid-19 reported levels.

The 22 groups that reported they had undergone structural changes in 2023 are likely to be different to the companies that reported structural changes in 2022. Businesses undergoing structural changes should ensure they adhere to the New Zealand restructuring provisions, and again, the preparation of robust documentation is key, noting that the OECD Transfer Pricing Guidelines have a chapter specifically addressing business restructuring.

Thin capitalisation

Consistent with prior results, the majority of New Zealand companies within the sample have low levels of debt, with 63% of companies having a debt percentage of less than 20%. Only 9% of companies have debt percentages where interest deductions could be subject to denial under the thin capitalisation regime.

Also, of relevance is the application of the Restricted Transfer Pricing (RTP) rules. These rules apply to related party inbound debt higher than NZD 10 million and restrictions can be triggered by a New Zealand debt percentage of 40% or greater. 21% of respondents had New Zealand debt greater than the 40% threshold, which can lead to deductible interest on intercompany debt being lower than debt priced on an arm's length basis. We are aware that Inland Revenue is very active in this space, and it is considered that this will remain a focus point for the year ahead.

Many arrangements subject to the RTP rules will have come to the end of their first pricing period in 2023 (the RTP rules first came into effect in 2018 and limit the pricing to a five-year term). Our November 2023 Tax Alert article provides further background on this. Accordingly, we expect many loans will need to be renegotiated. Failure to re-price these loans (and prepare supporting documentation for the tax positions taken) can pose a risk, particularly in a volatile interest rate environment.

Transfer pricing method selection and application

The Transactional Net Margin Method (TNMM) is the primary transfer pricing method used in New Zealand. The Cost Plus method was the second most used method, this is surprising but perhaps is a result of a common error in identifying the method used where the TNMM is applied to a net cost plus margin profit level indicator, but referred to as a cost plus method. In 2023, 44% of respondents reported primarily using the TNMM, a slight rise from 43% in 2022 and 40% in 2021.

Meanwhile, the use of the profit split method remains low at 3%, despite extensive OECD commentary on its application, reflecting the complexity generally associated with this method. Even at 3%, this represents approximately 24 companies out of the sample using this method as their primary method.

Among the 2023 International Questionnaire participants, distributors/wholesalers constituted the largest group (27%) of respondents, consistent with 2022. Inland Revenue's existing transfer pricing simplification measures for small foreign-owned wholesale distributors would generally not apply to these companies as their revenue would be too high (more than NZD 30 million).

In anticipation of more questioning by Inland Revenue, care should be taken in selecting the most appropriate transfer pricing method that produces the most reliable transfer price through application.

What is next for Inland Revenue?

In response to the Government's 2024 Budget, Inland Revenue is gearing up for increased activity and placing a focus on compliance with additional funding allocated towards tax compliance and services to protect the integrity of the tax system, including investigation, audit, and litigation activities. This funding will provide Inland Revenue with greater resources and capabilities to tackle compliance tasks on a larger scale. In the area of transfer pricing, Inland Revenue has appointed new transfer pricing case leads, which underscores the importance of transfer pricing capabilities and resources within Inland Revenue.

If you would like to discuss any of the issues raised above in more detail, please contact your usual Deloitte advisor who will refer you to our specialist Transfer Pricing team.

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OECD Pillar Two rules enacted in New Zealand - navigating the 15% minimum tax for multinationals

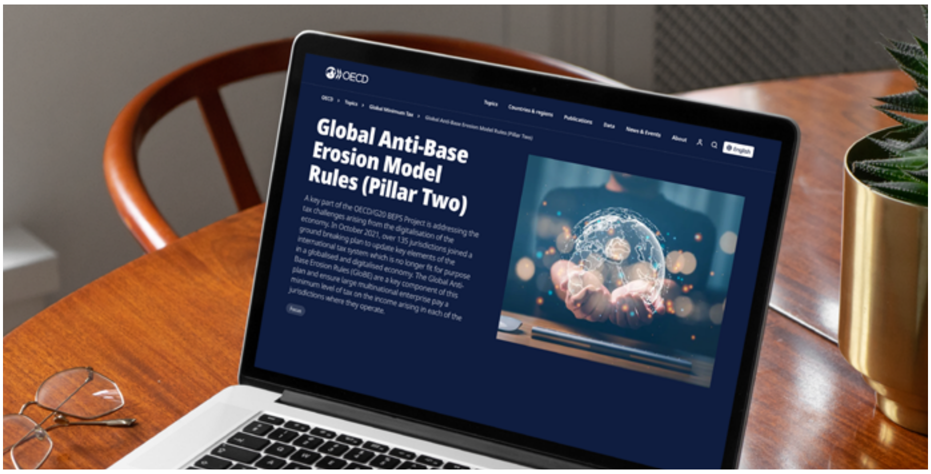
By Annamaria Maclean and Young Jin Kim

The New Zealand Government enacted legislation in March to formally implement the OECD Global Anti-Base Erosion (GloBE) Pillar Two rules. The purpose of these new Pillar Two rules is to ensure that multinational enterprise groups (MNE groups) with global turnover above EUR 750m in two of the four preceding income years, pay at least a 15% tax on their income in each country where that income is reported for financial reporting purposes.

In addition to the 20 to 25 New Zealand-headquartered groups on Inland Revenue's radar, the Pillar Two rules will apply to inbound groups operating in New Zealand (e.g., via a subsidiary, branch or permanent establishment) that meet the global financial threshold of EUR 750m.

The new GloBE rules, as enacted in New Zealand, include:

- The Income Inclusion Rule (IIR) and Under Taxed Profits Rule (UTPR) which are the primary mechanisms of the Pillar Two rules. These rules will apply in New Zealand to both New Zealand-headquartered groups and inbound groups for the income years beginning on or after 1 January 2025.
- The Domestic Income Inclusion Rule (DIIR) which applies to New Zealand-headquartered companies allowing the New Zealand Government to collect top-up tax on undertaxed New Zealand profits that would ordinarily be paid offshore under the UTPR (subject to the level of overseas assets and employees). We note the application of the DIIR has been deferred to the income year beginning on or after 1 January 2026.
- The Qualified Domestic Minimum Top-up Tax (QDMTT) has not been enacted in New Zealand.



For more details about the operation of the rules themselves, our July 2023 article provides a starting point to better understand the operation of the rules.

Next steps

- **Centralised response is likely** – We expect most MNE groups will adopt a centralised approach due to the top-down approach of the Pillar Two rules, meaning any calculations and modelling will likely be performed by the ultimate parent entity or regional head offices for larger MNE groups.

  Taxpayers contemplating the Pillar Two rules in New Zealand (i.e., New Zealand-headquartered MNE groups) should remain vigilant about timelines and compliance obligations for any offshore investments and be ready to respond in a timely manner in certain circumstances. For instance, Belgium has already prescribed a registration deadline for in-scope constituent entities that can be due as early as 13 July 2024 although an extension to this deadline has been announced which is expected to apply to most taxpayers – please refer to our global tax@hand articles for more information about the registration requirements in Belgium and extension to the initial deadline.

  At the minimum, in-scope constituent entities located in New Zealand should understand their domestic compliance obligations and communicate any material ramifications to their management team and/or head office.

- **New Zealand Registrations, GloBE information return (GIR) and multinational top-up tax return** – There are various registration and compliance requirements that may apply in New Zealand. The exact format of the registrations and top-up tax returns has not yet been finalised and further guidance will be provided by Inland Revenue closer to the due date. Based on our domestic legislation, all in-scope MNEs much register with Inland Revenue and file an annual top-up tax return. In addition, in-scope New Zealand-headquartered MNE groups are required to submit the GIR in New Zealand in the prescribed electronic format. We note that penalties of up to NZD 100,000 could be imposed for non-compliance.

- **Financial reporting disclosures** – Taxpayers that prepare IFRS financial statements in New Zealand will also need to consider whether any disclosures of Pillar Two information will be required in the local financial statements. Even if no top-up taxes are expected to arise under the Pillar Two rules, certain disclosures may be required for Pillar Two purposes and auditors may expect documentation or workpapers to be provided to support any disclosures made.
- **Safe Harbour calculations** – As a starting point, most in-scope constituent entities will be best placed to consider whether they meet any of three transitional safe harbour tests, which aim to reduce the compliance burden for MNE groups. Taxpayers that meet one of the transitional safe harbour tests will not be required to prepare full GloBE calculations (which are expected to be complex and time-consuming) for income years beginning on or before December 2026.

  However, if the transitional safe harbour regime is not applied in a jurisdiction in the first fiscal year the rules apply, it cannot be applied for subsequent years. It is therefore critical that MNE groups carefully consider the three applicable tests in the first fiscal year the rules apply.

- **CBCR reporting** – Additional guidance released by the OECD has confirmed that the transitional safe harbour calculations operate through the use of simplified jurisdictional revenue and income information contained in an MNE group's "Qualified CbC Report" and tax information contained in "Qualified Financial Statements". Taxpayers should consider reviewing and solidifying their CbC Reports to ensure they meet the OECD requirements to be "qualified" and are eligible to be used the safe harbour calculations. There is expected to be deeper scrutiny of CbC Reports by tax authorities as they become the source data for safe harbour calculations.

Other global developments

While most of the world's focus on international tax reform has been on the OECD Two-Pillar Solution for the last few years, it may have been easy to miss that a parallel international tax reform initiative is being driven by the United Nations (UN).

Recent developments include the UN issuing a draft Terms of Reference for a UN Framework Convention on International Tax Cooperation. This work appears to cross over with the work the OECD have been driving on BEPS and we are watching with interest given the UN Framework Convention seeks to include priority areas such as the taxation of the digitalised and globalised economy (which the OECD Two-Pillar solution is also looking to address). More information can be found on this in our global tax@hand article.

Final comments

Given the complexity of the new GloBE Pillar Two rules and the significant compliance burden for certain in-scope MNE groups, it is essential that affected taxpayers begin assessing the implications of the new rules and develop a framework to comply with the new rules/financial reporting obligations.

Deloitte has a number of tools and technology solutions that can be used to support our clients with modelling, scenario planning as well as detailed compliance calculations and filing.

Please contact your usual Deloitte advisor if you would like to understand your obligations under the Pillar Two rules further.

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Australia's PepsiCo case. What does it mean for New Zealand?

By David Watkins, Liam O'Brien, Bart de Gouw and Melanie Meyer

The Full Federal Court of Australia (FFCA) has decided (by 2-1 majority) in favour of the taxpayer in the PepsiCo case (PepsiCo, Inc v. Commissioner of Taxation [2024] FCAFC 86), overturning the November 2023 first instance decision which upheld the Commissioner of Taxation's position.

This is a significant case in Australia given the Australian Taxation Office (ATO) focus on intangible arrangements and in as much as it provided the most authoritative judicial analysis to date of both the diverted profits tax (DPT) and 2012 amendments to the Australian general anti-avoidance rules (GAAR) following an earlier series of court decisions on Part IVA that went against the Commissioner.

Case background

The case relates to an exclusive bottling agreement (EBA) involving PepsiCo, Inc (PepsiCo) being a US tax resident in connection with the Pepsi and Mountain Dew beverages, and a separate EBA involving Stokely-Van Camp Inc (SVC) in connection with Gatorade. SVC was also a US tax resident and a member of the PepsiCo group. In this article, references to PepsiCo should be read as also including SVC unless otherwise stated.

In summary, the facts are set out below:

- Parties to the EBA were PepsiCo, another PepsiCo group entity and Schweppes Australia Pty Limited (SAPL);
- SAPL was the sole distributor and bottler of the Pepsi and Mountain Dew beverages in Australia;
- PepsiCo undertook that it or its nominee would sell concentrate to SAPL. In the relevant years, being years ending 30 June 2018 and 2019, PepsiCo Bottling Singapore Pty Ltd (Seller) was the seller of the concentrate to SAPL. The price paid by SAPL to the Seller was agreed per the terms of the EBA. SAPL made a payment (EBA payment) to Seller for the concentrate; and
- PepsiCo granted SAPL a right to use the relevant trademarks and other intellectual property, such as bottle and can design. SVC granted an express license. No amount was expressed to be payable by SAPL for the use of the trademarks and other intellectual property.

Commissioner's position

The Commissioner imposed tax on PepsiCo with respect to a portion of the EBA payment as follows:

- Royalty withholding tax (RWHT) pursuant to section 128B, Income Tax Assessment Act 1936 (ITAA 36); and
- In the alternative, pursuant to the DPT.

2023 decision

In the 2023 judgment, the court upheld the Commissioner's position in respect of the RWHT argument and indicated that if it had not upheld the RWHT argument, it would have upheld the Commissioner's DPT position.

2024 FFCA decision

On 26 June 2024, the FFCA overturned this decision with a 2-1 majority finding in favour of PepsiCo that neither RWHT nor DPT applied to the EBA payment. There were two sub-issues for both matters.

Did section 128B apply to result in a WHT liability?	Majority	Minority
Were the EBA payments made by SAPL in part "consideration for" the right to use intellectual property so that the payments were a royalty for the purposes of section 128B?	No	Yes
Was any such amount income derived by PepsiCo?	No	No
Did section 128B apply?	**No**	**No**

Did the DPT apply to impose a DPT liability?	Majority	Minority
Was there a reasonable counterfactual, so as to identify a "tax benefit"? (section 177CB)	No	Yes
Was there a requisite principal purpose?	Yes	Yes
Did DPT apply?	**No**	**Yes**

Was there a royalty?
There was no express payment for the use of the trademarks identified in the EBA. The majority held:

> *"The ordinary meaning of the language used by the parties therefore suggests that what was to be paid by the Bottler [SAPL] to PepsiCo/SVC...was a price being paid for the concentrate and therefore 'as consideration for' the sale of the concentrate" [13].*

Following a discussion of relevant authorities, the majority concluded:

> *"It follows that the consideration for the purchase of the concentrate was the price the parties stipulated for it in the EBAs. As such, the payments made by the Bottler [SAPL] to the Seller did not include an element which was a royalty for the use of the trade marks (since the payments were not in consideration for the right to use the trade marks)" [37].*

Was there any income derived by PepsiCo?
Although not necessary given the above conclusion, the majority addressed the question of whether moneys had been paid to and derived by PepsiCo. The majority rejected the Commissioner's submission that there had been a direction to pay given to SAPL to pay the amount to Seller:

> *"there can be no payment by direction unless there is an antecedent monetary obligation owed by the Bottler [SAPL] to PepsiCo" [40].*

The majority concluded that there was no amount of income which had been derived or which had come home to PepsiCo.

Did DPT apply?
The DPT sits within the Australian GAAR provisions in Part IVA, ITAA 36.

The majority examined the scheme and concluded that the "commercial and economic substance of the scheme was that the price agreed for concentrate was for concentrate" [82], and for nothing else.

The majority rejected the Commissioner's proposed counterfactuals and held that the counterfactuals did not correspond with the substance of the scheme [86 and 87]. The majority thus held that:

> *"neither postulate is a reasonable alternative to the scheme" [99].*

In the absence of a reasonable postulate, there could be no tax benefit. As a result, the DPT could not be applied.

The minority took a dissenting view that a DPT could be applied if there was a requisite principal purpose.

A full analysis of this decision can be found in this Deloitte Australia tax@hand article.

Implications of the decision – Deloitte Australia comments

This is a significant case given the Australian Taxation Office (ATO) focus on intangible arrangements. This case provides the most authoritative judicial analysis to date of both the DPT and the 2012 amendments to the Australian GAAR following an earlier series of court decisions on Part IVA that went against the Commissioner.

The ATO has not yet announced whether it intends to seek special leave to appeal to the High Court. If leave is sought, the High Court has a discretion as to whether to allow leave. It is public knowledge that another similar case is subject to dispute and may be heard by the courts in due course.

The facts associated with the EBA and the beverage distribution model are likely bespoke to that industry and so it is not clear what wider consequences can be drawn from this decision. However, the issue of embedded royalties is broadly relevant to a wide range of companies and manufacturers.

The ATO has been expressing concerns about royalties, intellectual property matters, and so-called "embedded royalties" over recent years. The ATO is also adopting a position that goes beyond the global consensus with respect to the application of the royalty provisions to software distribution arrangements. Intangibles will remain a key area of focus and likely dispute.

The Australian government has recently announced that Part IVA will be expanded, in particular to deal with cases that also include a foreign tax advantage. More recently, it has also been proposed that a penalty will be introduced from 1 July 2026:

> *"to [large group] taxpayers ...that are found to have mischaracterized or undervalued royalty payments, to which royalty withholding tax would otherwise apply."*

All of these developments create uncertainty for taxpayers. At this stage, however it seems that the following observations can be made:

- The Full Federal Court decision rejects a number of key ATO arguments in relation to royalty related matters.
- In particular, the court rejected that a royalty or an embedded royalty could be extracted out of a commercial arrangement that did not expressly provide for payment of a royalty, and this is the case even where it was clear that there was a grant of a right to use a trademark.
- The court provided the most authoritative analysis of the DPT to date, although it did not consider the relevant exceptions to the DPT (sufficient foreign tax and sufficient economic substance).
- Importantly, the court considered for the first time in detail the operation of section 177CB in Part IVA.
- On a majority basis, the fallback argument of the DPT was not successful. This principally turned upon the interpretation of section 177CB and the extent of "correspondence" that is required as between the substance of the scheme vs. the substance of an asserted counterfactual. The court (majority and minority) adopted a relatively strict application of section 177CB. The application of section 177B in this case was effectively determined by the position taken on the primary argument as to whether there was, in substance, a royalty under the actual arrangements (issue 1).
- Section 177CB is relevant to all applications of Part IVA: the multinational anti-avoidance law, the DPT, and the general operation of Part IVA.
- The transfer pricing provisions in Division 815 were not raised or considered in this case, so it is not clear at this stage whether the "arm's length conditions" analysis would affect the outcome.

What does this mean for New Zealand? Deloitte New Zealand comments

New Zealand groups with Australian subsidiaries (or broader business relationships with third parties in Australia) should monitor the progress of the ATO's possible appeal and/or any ATO interpretive decisions that may be released on the back of the FFCA's decision and be aware of the potential impacts on existing arrangements. Those companies operating in the technology industry should also keep a close eye on whether the ATO's position in Taxation Ruling TR 2024/D1 (when use of copyright under a software arrangement is subject to royalty withholding tax) is impacted.

Although Inland Revenue has not made any public statements, we understand that they are monitoring developments in this area closely. In addition to potentially impacting New Zealand groups with Australian arrangements, the current activity in Australia may also have implications for how Inland Revenue treats similar payments made by New Zealand companies.

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Snapshot of recent developments

Tax legislation and policy announcements

Filing fee increases from 1 July 2024

On 27 May 2024, regulations were amended increasing certain filing fees from 1 July 2024:

- The Taxation Review Authorities Amendment Regulations 2024 increase the fee for filing a notice of claim with a Taxation Review Authority from $410 to $533.
- The Customs and Excise Amendment Regulations 2024 increase the fee for an application for appeal to a Customs Appeal Authority from $410 to $533.

Special report: Deemed rate of return for the 2023-24 income year

On 6 June 2024, Inland Revenue published a special report that sets the deemed rate of return for attributing interest on foreign investment funds at 8.63% for the 2023-24 year, an increase of 0.48% from the previous income year. The rate came into effect on 6 June 2024.

Regulatory impact statement: Crypto-Asset Reporting Framework

On 6 June 2024, Inland Revenue released a Regulatory Impact Statement on the Crypto-Asset Reporting Framework.

Customs fees and charges

On 11 June 2024, the Customs and Excise (Fees) Amendment Regulations 2024 amended the Customs and Excise Regulations 1996 to adjust certain fees effective 1 July 2024.

The inward cargo fee for goods carried on a ship or boat is reduced while the following fees are increased: inward cargo transaction fee for goods carried on an aircraft; outward cargo transaction fee; import entry transaction fee; and export entry transaction fee.

New excise duty rates for alcohol

On 12 June 2024, the Excise and Excise-Equivalent Duties Table (Alcoholic Beverages Indexation) Amendment Order 2024 adjusted the duty rates on alcoholic beverages from 1 July 2024.

Inland Revenue statements and guidance

Closed accounts for deceased customers

On 29 May 2024, Inland Revenue changed how accounts are managed for deceased taxpayers. Inland Revenue advise that when the account is ceased, credits will remain visible on the account for 12 months.

Non-individual IRD number registrations

On 29 May 2024, Inland Revenue detailed the reasons for delays in processing non-individual IRD number registrations. The most common information missing when applying are:

- Supporting documentation
- IRD numbers for all related parties
- For estates - a cover letter explaining why a related party has an overseas address or country on supporting documents

CPI adjustments

On 30 May 2024, Inland Revenue updated three standard-cost amount CPI adjustments:

1. DET 19/01 *Household boarding service providers:* Weekly standard cost (per boarder): $231
2. DET 19/02 *Short-stay accommodation:* Daily standard cost (for each guest): Owned dwelling $61; and Rented dwelling: $55
3. OS 19/03 *Square metre rate for the dual use of premises:* $53.10

QWBA's on the main home exclusion to the bright-line test

On 31 May 2024, IR issued two finalised pieces of guidance about the main home exclusion to the bright line test:

- QB 24/01 addresses which home is a person's main home (where they have two or more homes they use as a residence) for the purpose of the main home exclusion. In summary, a person's main home is the one they have the greatest connection with. This is an objective test and requires an overall assessment of the person's circumstances.
- QB 24/02 details how renting a room to a flatmate for property sold within the bright-line period affects the main home exclusion. In summary, a person can still qualify for the main home exclusion if they rent a room. For land sold on or after 1 July 2024, the main home exclusion applies if more than 50% of the land is used, for most of the bright-line period, for a dwelling that is the person's main home.

Tax Information Bulletin Vol 36 No 5 June 2024

On 31 May 2024, IR issued TIB Vol 36 No 5 June 2024 which included the following.

Case summaries

- CSUM 24/03: Taxation Review Authority (TRA) 007/22 [2024] NZTRA 003
- CSUM 24/04: Commissioner of Inland Revenue v McGuire [2024] NZHC 883

Technical decision summaries

- TDS 24/06: Sale of property and the bright-line test
- TDS 24/07: Suppressed cash sales, GST and evasion shortfall penalties
- TDS 24/08: Employee Share Scheme – right to receive shares

Processing of early individual income tax returns

On 4 June 2024, Inland Revenue announced they will be pausing the processing of early IR3, IR3NR, and automatic assessments of the 2025 tax year as they are updating their system following changes to personal income tax rates from 31 July 2024.

Trust disclosure compliance costs survey

On 5 June 2024, Inland Revenue advised that they are reviewing changes to the trust disclosure requirements and are running a one-off survey to help understand the compliance costs for agents and trustees. The voluntary survey was emailed to 17,000 randomly selected trusts.

Operational statement: Exemption from electronic filing

On 6 June 2024, Inland Revenue issued OS 24/01 which replaces OS 19/01 and sets out the criteria for a person to be granted an exemption from the electronic filing requirement. The position is unchanged but the legislative references and format have been updated.

Draft QWBA: Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the compulsory zero-rating rules?

On 6 June 2024, Inland Revenue issued a draft QWBA which provides further guidance on the meaning of "land" in the context of the GST compulsory zero-rating rules. The draft guidance concludes that supplies of standing timber and other unsevered crops do not wholly or partly consist of land if the agreement is for the sale and purchase of:

- an annual crop produced by the labour of the cultivator; or
- a crop that is produced by the land each year after an initial productive act and the purchaser does not derive a benefit from the further growth of the crop sold.

The deadline for comment is 19 July 2024.

GST – Supplies of properties used for transitional housing

On 7 June 2024, Inland Revenue issued three public rulings considering the GST treatment of supplies of properties by landlords to organisations for use in the Ministry of Housing and Urban Development's Transitional Housing Programme. The items specify when landlords will be subject to GST and when they have exempt supplies.

The Commissioner also issued Operational Position 24/01 which sets out how the technical views in these public rulings will be applied where landlords have taken incorrect tax positions in previous GST periods.

Public guidance work programme updated

On 10 June 2024, Inland Revenue updated the public guidance work programme.

ED0256: Extension of time applications from customers without tax agents

On 11 June 2024, Inland Revenue issued a draft standard practice statement which will replace SPS 09/03. The statement affects customers who are not represented by a tax agent, or whose tax agent no longer qualifies as a tax agent, or tax agents without a current extension of time.

The deadline for comment is 22 July 2024.

Depreciation rate for metal (scrap) recovery plant

On 12 June 2024, Inland Revenue issued DEP112 which sets the depreciation rate for metal (scrap) recovery plant and changes the asset class description. The asset class is now "Scrap metal shredder including sorting plant" under the "Cleaning, Refuse and Recycling industry category". The rates are EUL of 1.5 years, DV of 13%, and a SL of 8.5%

Interpretation statement: Trustee of employee share scheme trust treated as nominee

On 12 June 2024, Inland Revenue issued IS 24/04 which details the tax treatment where an employee share scheme trustee holds shares in a company on the terms of the scheme and is treated as nominee of the company.

The effect (for tax purposes) is to treat the company as holding shares, and issuing and buying back shares, in itself; and to treat the trustee as not holding, and not acquiring or transferring, shares in the company.

This means that, for tax purposes, the company is treated as holding the shares in itself held by the trustee in accordance with the treasury stock rules. This has flow-on effects for the Available Subscribed Capital and how dividends on those shares are treated for tax purposes.

QWBA: Fringe benefit tax – employee share loans and associates

On 12 June 2024, Inland Revenue issued QB 24/03 which answers whether a fringe benefit arises where a trustee of a family trust that is associated with an employee is provided a loan to acquire shares under an employee share scheme.

The answer is no, provided a fringe benefit would not arise if the employee were provided the loan to acquire the shares under the employee share scheme in the same circumstances.

Applications for extension of time

On 17 June 2024, Inland Revenue announced they have simplified requesting an extension of time with a new 'Apply for extension of time' feature in myIR. To access the request, go to 'More' in the Income tax account, then select 'Apply for extension of time'.

After submitting, Inland Revenue will send a notice with the outcome within 15 working days.

More information request letters

On 17 June 2024, Inland Revenue provided an update on 2024 individual income tax 'More information request' letters, which are being issued until the end of July.

Taxpayers must review this letter, add any other income and expenses, and complete the assessment. If the taxpayer does not have an extension of time, taxpayers need to do this within 45 days from the date the letter is issued. Any tax to pay will be due on 7 February 2025.

If the taxpayer has an extension of time, agents have until 31 March 2025, and any tax to pay will be due on 7 April 2025.

Focus on smaller liquor stores

On 18 June 2024, Inland Revenue released insights into its first round of a hidden economy campaign focusing on small liquor stores (there are around 3,000 off-licence liquor stores). During the first stage of the campaign, 220 unannounced visits were made nationwide.

Customers with overdue debt

On 19 June 2024, Inland Revenue announced a move to increase engagement with taxpayers with outstanding compliance obligations by visiting businesses with significant outstanding tax debt that have not engaged with Inland Revenue despite reminders and warning notices.

If taxpayers do not engage and continue to ignore their obligations stronger action may be taken. This includes debt enforcement and/or insolvency proceedings.

Performance Improvement Review of Inland Revenue

On 24 June 2024, the Public Service Commission published Inland Revenue's Performance Improvement Review. The Review found that Inland Revenue is a high-performing organisation that is well-placed to meet growing expectations of the tax system.

Tailored tax code applications paused

On 24 June 2024, Inland Revenue announced they are pausing processing Tailored tax code applications from Monday 24 June 2024 to prevent the need to recalculate and issue a new tailored tax code with upcoming changes to personal tax thresholds. Inland Revenue will restart processing in the week leading up to 31 July 2024.

Technical decision summary: GST registration date (adjudication)

On 28 May 2024, Inland Revenue issued TDS 23/10 which concerned a taxpayer attempting to register for GST with a backdated date of registration. The issue was whether the registration was voluntary or whether the taxpayer was liable to register, and if voluntary, whether Inland Revenue's decision not to backdate the registration was a valid exercise of the Commissioner's discretion under s 51(4)(a) of the Goods and Services Tax Act 1985.

The Tax Counsel Office decided that the application was voluntary because the taxpayer was not liable to be registered and that Inland Revenue had discretion to determine the effective date of registration.

Technical decision summary: Permanent establishment (private ruling)

On 29 May 2024, Inland Revenue issued TDS 24/11 which considered permanent establishment and residency issues for an overseas resident company that established a wholly-owned New Zealand resident company to undertake work in New Zealand. Some of the overseas company's employees would take a leave of absence and temporarily move to New Zealand, and the overseas company would pay the New Zealand company a fee on a costs-plus basis for the services provided on an arm's length basis.

The Tax Counsel Office decided the arrangement did not cause the overseas company and its main customers to be comes "resident in New Zealand" under s YA 1 of the Income Tax Act 2007 as none of the four required elements were satisfied. The company also did not create a "permanent establishment" in New Zealand, nor did the arrangement give rise to assessable income.

Technical decision summary: Compensation – capital or revenue nature (private ruling)

On 7 June 2024, Inland Revenue issued TDS 24/12 which determined whether a settlement payment was assessable income. The Tax Counsel Office decided that the settlement payment was not income but an amount of capital nature as it was not for an interruption or impairment to business activities but to compensate for damage to intellectual property.

Technical decision summary: GST – supply of accommodation (private ruling)

On 11 June 2024, Inland Revenue issued TDS 24/13 which concerned an arrangement where a company purchased land with an existing structure, demolished it, and constructed a building.

The building was intended to be used as a hostel but was redesigned to provide residential accommodation targeting long-term stays. The issues were whether the building was a "commercial dwelling" and therefore not treated as an exempt supply, whether the 9% concessionary rate applied to the supply and communal facilities, whether input tax was deductible, and implications when the land was sold.

The Tax Counsel Office decided the building is a "commercial dwelling" and therefore not an exempt supply, that the 9% rate applies in certain circumstances, input tax incurred is deductible, and the supply must be zero-rated when sold (provided the legislative requirements are met).

OECD updates

Fiji and Moldova join Inclusive Framework

On 27 May 2024, Fiji joined the Inclusive Framework on BEPS. On 28 May 2024, Moldova also joined.

OECD releases further guidance on Two Pillar Solution

On 17 June 2024, the OECD released supplementary elements relating to the report on Amount B of Pillar One and guidance to ensure consistent implementation and application of the global minimum tax under Pillar Two.

Additional guidance for the implementation of CbC reporting released

Additional guidance has been released clarifying how to report in Table 1 of a CbC report payment received from other constituent entities to ensure consistent treatment of payments in the payer and recipient jurisdictions in a CbC report.

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

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