Tax Alert

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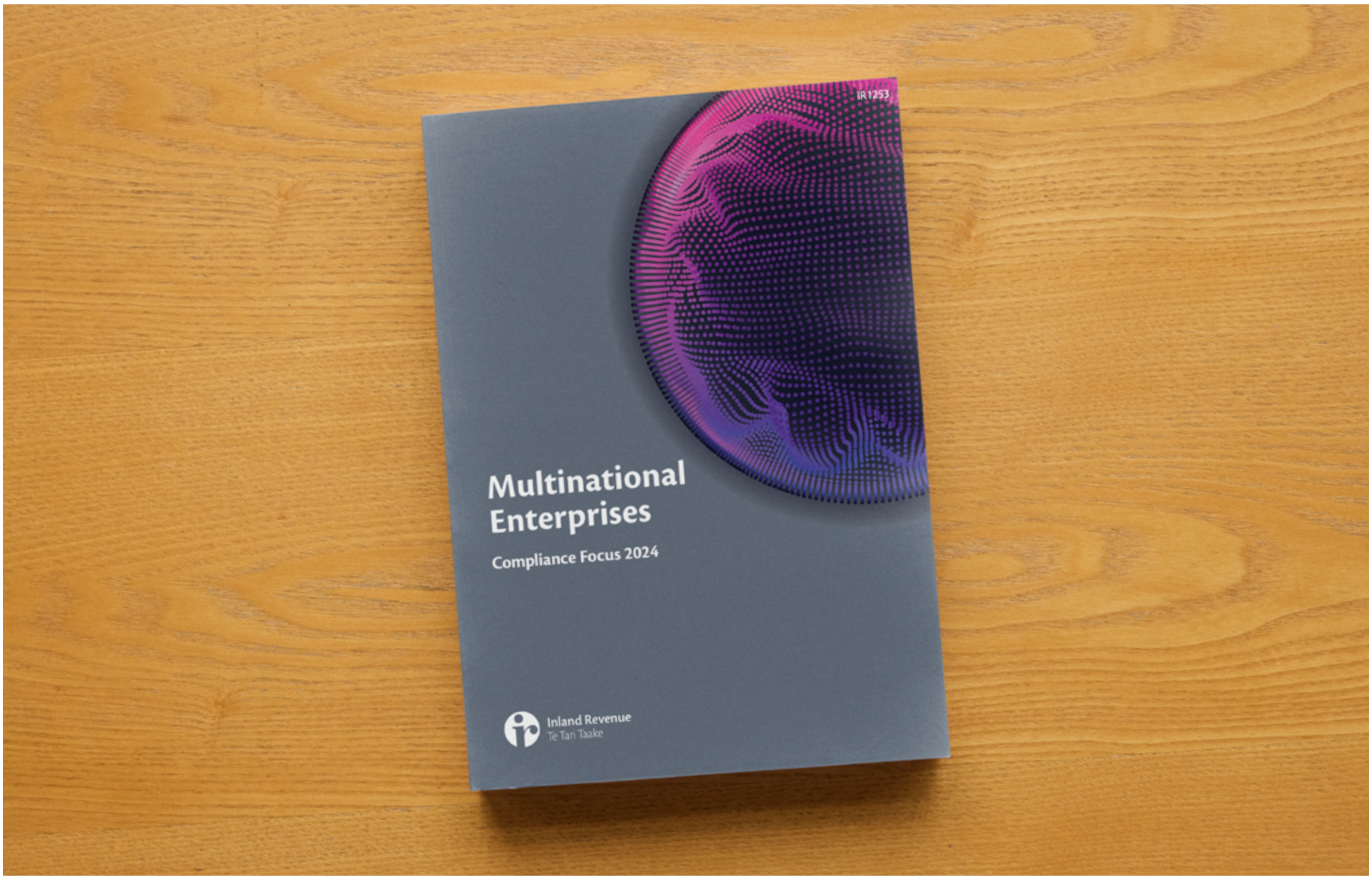
Inland Revenue's compliance focus document for multinationals refreshed

By Viola Trnski and Robyn Walker



Inland Revenue has refreshed its Compliance Focus Document for Multinational Enterprises ("Document").

Although the Document is targeted at multinational enterprises (MNEs), it will also have relevance for New Zealand-based enterprises expanding offshore and high-wealth individuals with complex affairs.

The Document was last updated in 2019, incorporating Base Erosion and Profit Shifting (BEPS) changes. This time around, the Commissioner acknowledges the impact of the global pandemic and Inland Revenue's business transformation program, which has modernised the Inland Revenue's services and increased analytical capabilities.

> "Through our transformation programme we have also gained a wide suite of sophisticated analytical capabilities which enable us to work more in real-time and to be intelligence-led. These new capabilities coupled with human intelligence allow us to design and deploy effective compliance campaigns, with multi-faceted tailored interventions. This ability to target our interventions to the right customers means we should only be in the lives of those customers who are deserving of further inquiries and interventions."
>
> — *Inland Revenue*

To read between the lines...Inland Revenue are back! In the broader context of increased audit activity, the Document serves as an excellent and timely reminder for MNEs to make sure their tax affairs are in order, including robust documentation and processes as well as an effective tax control framework.

The Document reinforces Inland Revenue's "right from the start" approach, to collect the right amount of tax, at the right time, through the right channels. Inland Revenue is continuing to focus on prevention in the MNE landscape, which means prioritising their work based on tax risk and materiality and being pragmatic and proportionate in reaching solutions to problems.

The scene is set with an overview of New Zealand's tax take and the last five years (since the last iteration of this Document was published) before detailing Inland Revenue's compliance framework and outlining our international obligations, New Zealand's international tax strategy, and the role of the Competent Authority.

There is also a summary of the results of last 10 years of international questionnaires completed by MNEs.

The Document is substantiated with discussion on 10 "key factors" that influence MNE compliance:

1. Strengthening legislation
2. Increasing tax transparency
3. Improving corporate tax governance
4. Providing practical guidance / increasing certainty
5. Reducing compliance costs
6. Enhancing intelligence and analytics
7. Extensive monitoring and targeted enforcement (including audits and litigation)
8. Expediting resolution of international tax disputes
9. Building international tax capacity
10. Expanding the tax treaty network

These 10 pillars reflect how Inland Revenue supports MNE compliance, while also setting expectations for MNEs around best practice for their tax affairs.

The Document also includes a number of helpful graphics and checklists, such as calculating top-up tax payable under the Pillar Two rules, a tax governance checklist and maturity model, a return of risk indicators which may prompt Inland Revenue to ask for additional information (including a new risk indicator around cross-border associated party transactions), Top 10 BEPS Risks, a Tax Risk Barometer, and specific Transfer Pricing tax governance questions.

Areas of focus

There are a number of issues on Inland Revenue's radar. Some of the key focus areas, according to the Document, are outlined below.

For inbound MNEs

Inland Revenue will continue monitoring inbound MNEs (i.e., overseas headquartered with operations in New Zealand) via the International Questionnaire. It is currently issued to just over 800 foreign-owned MNEs with an annual turnover of more than NZD$30 million. This information is enhanced with CbC reports, summaries of cross-border tax rulings, and information from the Overseas Investment Office and New Zealand Customs.

Based on the intelligence gathered, Inland Revenue then develops campaigns based around specific issues and sector risks. This involves further in-depth reviews of certain MNEs which, in some cases, may lead to an audit.

The introduction of anti-BEPS measures has reduced some of the more aggressive tax arrangements, such as high levels of debt financing, favourable terms and conditions for loan agreements with associated parties, and the use of hybrid instruments and hybrid and branch mismatch arrangements. However, Inland Revenue will continue to monitor for these risks as well as compare aggregated and "average" data from other MNEs completing the International Questionnaire and doing business in New Zealand to identify any significant outliers. Continued BEPS risks include the avoidance of PE status, inappropriate apportionment of branch profits, mispricing debt instruments, circumventing withholding taxes, excessive interest deductions, profit stropping, and misuse of low and no tax jurisdictions.

Inland Revenue has outlined the focus areas of their BEPS campaigns to date, which include a focus on distributors and wholesalers, financing, and the Covid-19 wage subsidy.

For outbound MNEs (i.e., New Zealand headquartered MNEs with overseas operations)

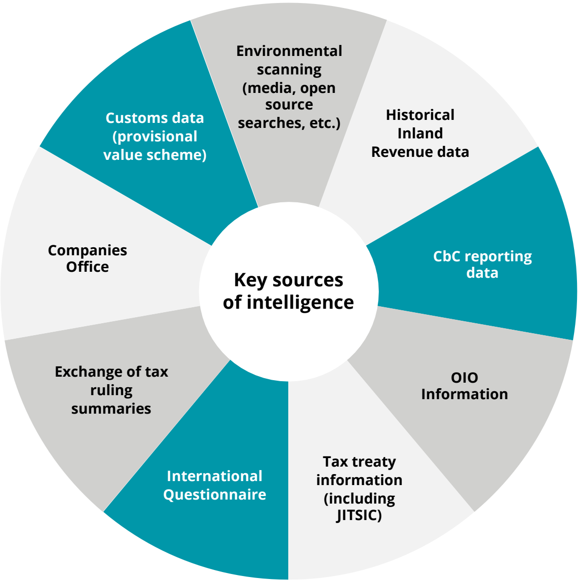
New Zealand headquartered MNEs do not receive the International Questionnaire, however, Inland Revenue will continue to monitor transactions and financing arrangements, including through CbC reports. Inland Revenue will also look to support New Zealand outbound MNEs who are required to comply with Pillar Two requirements with the Domestic Income Inclusion Rule.

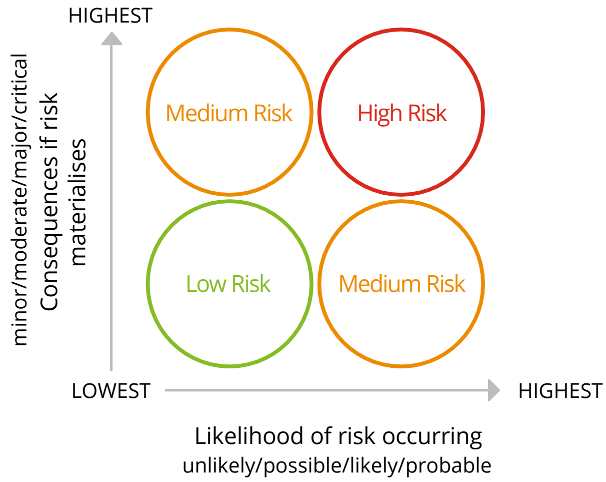
Areas all MNEs should focus on

There are a range of areas that all MNEs should ensure they address. These include transfer pricing and corporate tax governance and documentation, performance benchmarking, global mobility and permanent establishment issues, intangibles, cross-border related party transactions, and tax accounting.

Inland Revenue's intelligence, analytics, and risk framework

An interesting addition to the Document is the section on "Enhancing intelligence and analytics" which outlines Inland Revenue's key sources of intelligence and how risk is assigned and managed in an MNE context. The following diagrams are taken from the Document.





 **Low risk** – accept and monitor

 **Medium risk** – pay close attention in case of further deterioration

 **High risk** – address with appropriate interventions, immediate priority given to critical-level risks

A wide range of factors are taken into account, including:

- MNE history and ownership
- Industry type and relevant commercial practices
- Extent and complexity of cross-border transactions
- Key performance indicators.

Takeaway

This refresh of the Document should put MNEs on notice that Inland Revenue is maintaining a focus on large corporations and cross-border activity, including transactions and financial arrangements.

More broadly, the Document serves as a helpful tool that summarises a range of important resources and issues in a user-friendly way. MNEs doing business in New Zealand should keep this Document handy for reference, and outbound companies will also find the updated Document useful for navigating the new Pillar Two rules and other changes coming up, as well as learning about the focus areas for Inland Revenue going forward, and what their expectations are around governance and documentation.

If you have any questions about the Document, the ever-changing international tax landscape, or how to strengthen your MNEs tax governance framework, please reach out to your usual Deloitte advisor.

Contact

Viola Trnski
Consultant
Tel: +64 9 956 9755
Email: vtrnski@deloitte.co.nz

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Home to work travel – a reminder about FBT

By Robyn Walker

Since Fringe Benefit Tax (FBT) was established 40 years ago, the workforce has evolved, more employees have started working from home and the types of vehicles being driven have materially changed. Despite this, the FBT rules have remained static.

While there are murmurings that the new Government intends to undertake a review of FBT, any potential changes to the treatment of motor vehicles could be years away. With this in mind, Inland Revenue have released draft guidance to 'remind' taxpayers of how the current FBT rules apply to travel by motor vehicle between home and work. This guidance updates and refreshes guidance from 2004.

Home to work travel is viewed as being inherently private in nature, the consequence being that (unless a statutory exemption applies, such as the work-related vehicle exemption) any home to work travel prima facie results in a fringe benefit being provided to the employee. The question therefore is, are there situations where home to work travel should not be subject to FBT? Over the years there have been a number of cases which have tested the boundaries resulting in four case law exceptions being established:

1. A vehicle is necessary to **transport equipment or instruments** that are essential to the employee's work between the employee's home and workplace.
2. The employee's work is **itinerant**.
3. The employee responds to **emergency calls** at home and their responsibility for the outcome begins before they leave home.
4. The employee's **home is a workplace** (or base of operations). To satisfy this exception, the employee must meet specific criteria. It is not sufficient that work is carried on at home (even if it is a condition of the employee's employment contract).

Each of these tests is explained at length in the draft statement, with the upshot being that falling into the exemptions is not a simple feat, and they really are the exemption rather than the norm. For example:

- Any equipment being transported must require a car because of its bulk or its value, sensitivity or other characteristics making it impractical to transport without a car. So, an employer requiring employees to take laptops or sensitive information home each night as part of a business continuity plan would not be sufficient.
- An itinerant worker needs to use their home as a base of operations and the nature of the job must require travel as an essential part of performing employment duties.
- Employees who need to travel between work and home at nights or weekends to carry out specific tasks are not exempted.
- Choosing to work from home does not affect whether a person's home is their workplace as personal choice has never been a basis for creating a home workplace.
- To have a home workplace there must be a requirement due to the nature of the work itself to do the work in two (or more) locations.
- There must be sound business reasons for working from home (which apply to all employees in the role), a significant amount of work must be carried out at home, there must be significant storage of business goods or equipment and space set aside, and the activities of the employee at home must be closely integrated with the business.
- An employee taking home a vehicle for security reasons or for charging (in the case of an electric vehicle) will be insufficient to satisfy the case law tests.

With Inland Revenue having a renewed focus on ensuring taxpayers are complying with tax laws, the draft statement is a timely reminder that employers should be checking to ensure FBT rules are being correctly applied to all motor vehicles and that any reliance on exemptions is consistent with Inland Revenue's guidance. Now could be a good time to undertake an independent review of FBT, for more information please contact your usual Deloitte advisor.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Loss carry-forward rules under a new spotlight

By Emma Marr and Patrick McCalman

Inland Revenue have released draft guidance on how they'll interpret the new loss carry-forward rules that have been in place since 2020 (known as the Business Continuity Test). The draft interpretation statement focusses on the anti-avoidance rules that were not covered in their first interpretation statement, IS 22/06 released in 2022, so the new guidance is welcome, albeit not without room for improvement.

First, a recap of the loss carry-forward rules. Prior to the 2020/21 income year, selling more than 51% of the shares in a company with tax losses meant that the losses were forfeited. This had a negative impact on (among other examples) growing companies seeking to raise capital, and tax advisors and businesses had been asking for years for the rules to be relaxed. In 2020, in an effort to stimulate growth and innovation, the Business Continuity Test (BCT) was announced as part of a COVID-19 relief package. This test enables losses to be carried forward if there has not been a "major change", other than a "permitted major change", to the business. The 2022 interpretation statement, IS 22/06 outlined a wide range of changes that a business could make that Inland Revenue considered would be acceptable under the new rules.

The new draft guidance – Income tax -arrangements involving tax losses carried forward under the business continuity test – gives more context and guidance for how the rules can operate, and emphasises the need for commerciality in any arrangement that relies upon the BCT to access losses.

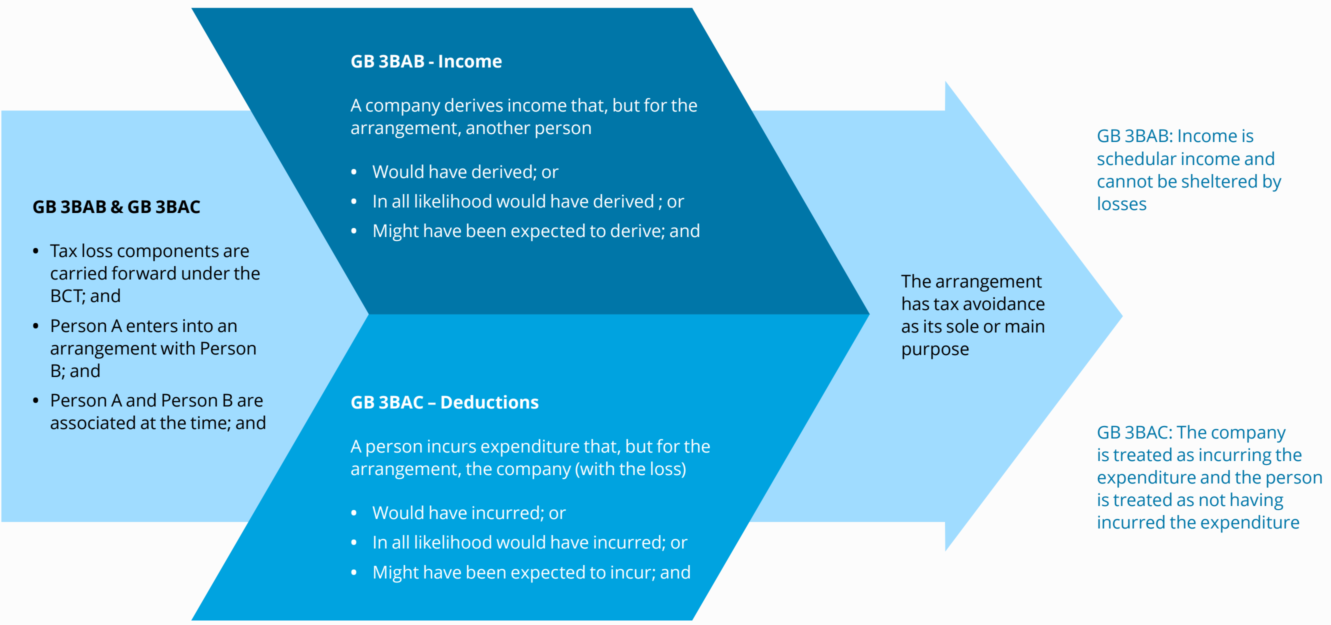
How the anti-avoidance rules work

There are three specific anti-avoidance rules that apply when a company carries a tax loss forward under the BCT:

1. GB 3BA: Prevents a company entering into a pre-emptive arrangement, including changing the nature of its business, within two years prior to a shareholding change, in a way that enables the company to use the BCT, if the purpose of the arrangement was to defeat the purpose of the BCT.
2. GB 3BAB: Prevents an arrangement to inject income into a loss company, with the main or sole purpose of tax avoidance.
3. GB 3BAC: Prevents an arrangement to remove deductions from a loss company, with the main or sole purpose of tax avoidance.

Fundamentally, the anti-avoidance rules counteract arrangements that enable a person, other than the loss company, to enjoy the benefit of the losses, when they would otherwise have been prohibited from doing so.

The second and third anti-avoidance rules, preventing income and deductions being added to or removed from the loss company, work in very similar ways:



The rules in effect unwind the tax advantage obtained, either by moving the deduction back to the profit company or treating income in a loss company as schedular income and therefore unable to be offset against losses.

Situations where the BCT legitimately applies could have a wide range of facts. Based on the draft guidance we consider there is a relatively low threshold for when the avoidance provisions may potentially apply. It is easy to imagine that if, for example, two businesses are combined to form a new business (by one company acquiring another), that costs or revenue may move from one company to another with the aim of achieving business growth and resilience. Afterall, if there was no need to change either business, there would have been no commercial reason for the acquisition. The key point to takeaway is that the commercial rationale must be demonstrable to support any arrangement that meets the criteria outlined in the legislative tests. If there is only a tax advantage to be gained, the anti-avoidance provisions will likely apply.

Examples and commercial application

In the draft guidance, Inland Revenue provides several examples of how it considers the rules should be interpreted, including instances when the anti-avoidance provisions will apply. One example discusses cost recharges within in a group of companies. Inland Revenue accepts may be appropriate, but requires that this be priced in a supportable, commercially acceptable way. This highlights that Inland Revenue will require parties to demonstrate that intergroup transactions are commercial and robust. The draft statement also emphasises the need to consider the Parliamentary contemplation test. This test applies specifically to anti-avoidance analysis, looking at both the purpose of the loss rules, which limit the ability to carry-forward tax losses, as well as the BCT, which enables the carry-forward of tax losses.

We consider that in at least one instance, the draft statement prioritises the former above the latter. Example 6 in the draft guidance illustrates what Inland Revenue views as an inappropriate movement of income from a profitable company to a loss company (considered to be anti-avoidance) – due to its length we don't replicate the example here. Inland Revenue objects to the fact that "Profit Co received the benefit of Loss Co's loss but did not to any extent suffer the burden of that loss when it was incurred."

We would suggest that the BCT was designed to allow just this circumstance – a new shareholder, which may be a new company, will indeed be able to use losses that it did not suffer the burden of, in a very wide range of circumstance that were clearly contemplated by the BCT, and this was in fact a reason for its introduction.

While the draft guidance is helpful; we consider a wider range of circumstances could be described as "commercial" than is demonstrated in the statement. Further, based on the examples included, it seems to us that Inland Revenue is setting a very low bar as to what is artificial. In challenging economic times, when companies may well have accrued losses and find themselves with an appetite to find new business partners to make their businesses sustainable, it would be useful to see Inland Revenue giving more emphasis to the purpose of the BCT in the final version of the statement, as well as including more examples of commercially acceptable business changes that may involve moving income or expenses between companies.

It's also important to remember that the general anti-avoidance provision, section BG 1, can still apply, even if the specific anti-avoidance provisions in section GB 3BA, GB 3BAB or GB 3BAC do not.

Conclusion

It would be fair to say we have not observed, in the mergers and acquisitions (M&A) space, a large number of transactions in which a buyer or a seller placed a lot of value on losses that could be carried forward under the BCT. This could be due to uncertainty in how the rules would be applied. They are relatively new and there hasn't been a lot of experience in formally testing how the rules are applied by Inland Revenue. As advisors and taxpayers see more activity in this space and test more scenarios with Inland Revenue, the rules may become more widely understood and used.

In releasing guidance on the anti-avoidance provisions, we now have relatively comprehensive commentary from Inland Revenue on the full BCT rules, which is a helpful step forward. Whether this will lead to an uptick in the use of the BCT and valuation of losses when companies are being acquired remains to be seen.

Finally, as a note of caution given the low bar that Inland Revenue seem to be setting as to when an arrangement is artificial, companies using the BCT test would be well advised to ensure that they are actively considering the commercial arrangements between group members when BCT losses are in existence to ensure that the use of those losses is not at risk under the specific anti avoidance provisions.

Please contact your usual Deloitte advisor for to discuss the BCT rules or other M&A issues further.

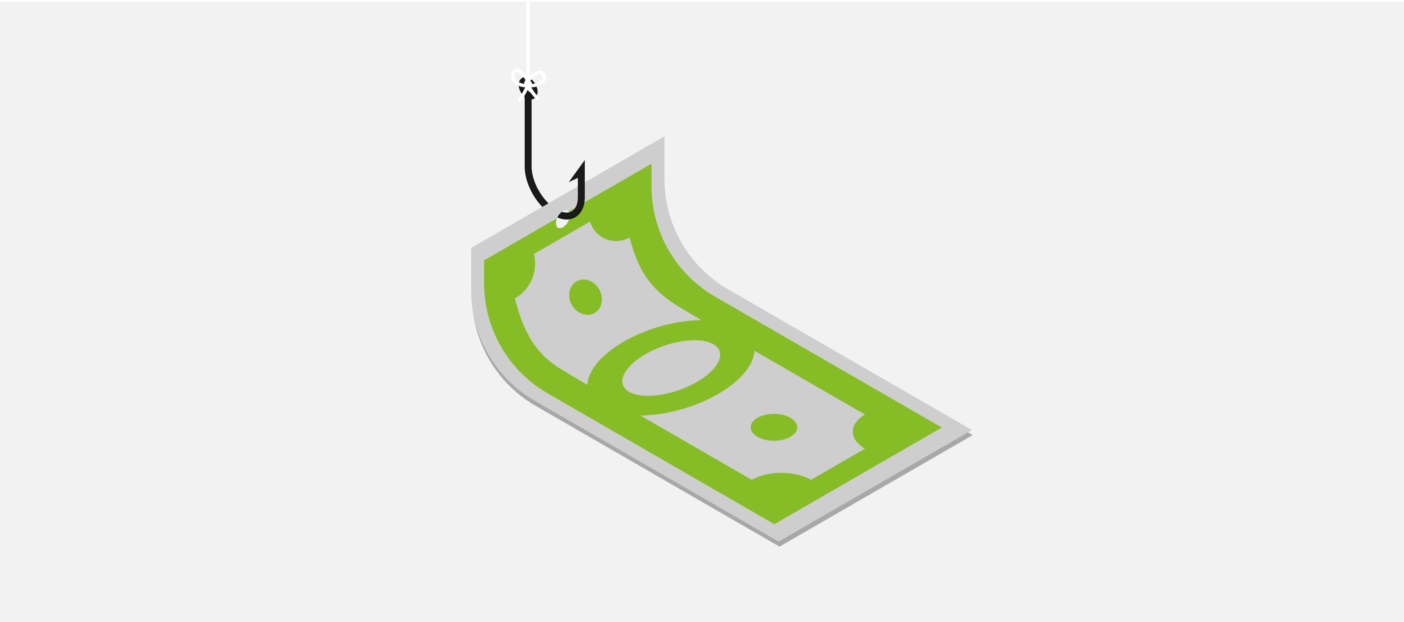
Contact

Emma Marr
Director
Tel: +64 4 470 3786
Email: emarr@deloitte.co.nz

Patrick McCalman
Partner
Tel: +64 4 495 3918
Email: pmccalman@deloitte.co.nz

Business income and charities, you're not off the hook just yet

By Hiran Patel and Ben Smith



Is your charitable entity earning business income?

If so, Inland Revenue has released guidance around the extent to which this business income should be treated as exempt.

Registered charities in New Zealand largely enjoy the benefits of both business and non-business income being exempt from income tax in New Zealand. While great in theory, further work is required by charities wanting to reap the benefits of a full tax exemption.

The latest Inland Revenue interpretation statement issued in September 2024 on the charities business income exemption provides guidance and some useful examples for what comprises "business income" for a charity, and how the exemption is intended to apply in different scenarios. If a charity's charitable purposes are not limited to New Zealand, then apportionment between business income directed towards charitable purposes within NZ and overseas may be required, resulting in tax implications for the charity.

Benefits of charitable status

Income derived by a charity will generally fall into one of two buckets, being "business income" or "non-business income". Both types of income can be exempt from income tax, although business income is subject to additional restrictions. The restrictions could result in all, some, or none of the charity's business income being exempt.

A significant portion of New Zealand registered charities may only derive "non-business income" meaning no further consideration is required as to whether their income might be taxable. However, for charities that derive "business income", further thought should be given to where the charity's charitable purposes are undertaken before the charity can enjoy the full benefit of a tax exemption.

When does a charity have business income?

Registered charities can derive income from a variety of sources. Whether the amounts are business income depend on the nature of the charity's activities and what type of business activities it might carry out. It is a question of fact as to what income arises from a charity's business activities as opposed to non-business activities.

Without going into detail on when a charity might be conducting business activities, Inland Revenue's statement notes that the object of a charity's business may be directed towards charitable ends instead of pecuniary gains. However, this does not prevent the charity from being deemed to carry out business activities. The interpretation statement provides the relevant principles to consider for charities in determining whether they have a business activity.

How the business income exemption applies

Once a charity has established that it is deriving business income, to be able to rely on the business income exemption the following conditions need to be satisfied:

- That it is a registered charity under the Charities Act 2005;
- It carries out its charitable purpose in New Zealand; and
- No person with some control over the business is able to direct or divert any of the business income towards a person or purpose other than one of the charity's charitable purposes.

It is a question of fact as to whether a charity carries out its charitable purpose in New Zealand and to the extent it carries out any of its charitable purpose outside New Zealand, then a reasonable apportionment basis must be determined to split the business income between exempt and taxable. Similarly, a reasonable apportionment of expenditure incurred in deriving the business income must be made between expenditure to the extent it is incurred in deriving assessable income vs exempt income.

Territorial restriction

The statement confirms the Commissioner's view that a charity carries out its charitable purpose in New Zealand if:

- any of its purposes are required to be carried out in New Zealand; or
- any of its purposes are not required to be carried out exclusively outside New Zealand; and
- the charity at least in part carries out its purpose in New Zealand.

A charity's rules and where its purpose is carried out is relevant to determining whether this is in New Zealand, however this is a question of fact.

Where charitable purposes are not limited to New Zealand, there needs to be a reasonable basis for splitting business income to charitable purposes in New Zealand, and those overseas. No apportionment is required if a charity's charitable purposes are limited to New Zealand.

The statement provides some useful examples of acceptable apportionment methodologies and clarifies that whatever basis is chosen, while it does not need to be exact, it must be reasonable. Once a reasonable basis has been established (provided there are no material changes to the charity's business from the prior year) the same approach can be used for each subsequent year.

The apportionment methodologies mentioned in the statement include:

- Splitting income based on the level of support, such as donations, provided to each purpose (within New Zealand and outside New Zealand);
- Allocation based on apportionment analysis undertaken for other parts of the Income Tax Act 2007, such as whether the entity has qualified for donee status in the past;
- Split based on historical purposes and where funds have previously been directed.

Apportioning different types of income towards different purposes

For charities that have a partial overseas charitable purpose, the statement also covers situations where a charity allocates different types of income towards different activities both within and outside New Zealand. The Commissioner considers that where a charity's trust deed or other rules restrict the business income towards a charitable purpose in New Zealand, this will be appropriate application of the territorial restriction.

Another situation the Commissioner considers appropriate would be where there is appropriate tracking of its business income to demonstrate it is restricted to charitable purposes in New Zealand.

A word of warning – the mere existence of both non-business and business income does not mean apportioning the non-business income towards overseas charitable purposes and the business income portion towards New Zealand purposes would be a reasonable approach. There must be sufficient ring fencing or tracking of the business income and how it is applied, which can be demonstrated to Inland Revenue if required to justify such a position.

Review of charities on the horizon

The interpretation statement is a welcome clarification of existing rules that apply to charities, which have been in place for a number of years. If your charity has business income requiring apportionment, it is likely you also have an obligation to file income tax returns. While this may sound daunting, your Deloitte tax advisor can assist with getting you registered for the right tax types and provide assistance with filing returns and correcting any prior year errors.

We also understand Inland Revenue has been directed to add a review of the tax rules for charities to their tax policy work programme (which is expected to be released in late 2024). So, while we have received clarification on the business income exemption, there might be a shake up to charitable exemptions in the future.

Contact

Hiran Patel
Director
Tel: +6 4 831 2432
Email: hiranpatel@deloitte.co.nz

Ben Smith
Consultant
Tel: +64 4 470 3571
Email: bensmith@deloitte.co.nz

Trouble navigating amalgamations? Now's your time to comment

By Viola Trnski and Emma Marr

Inland Revenue has released three draft guidance documents – totalling at just over 100 pages – for public consultation on how the tax rules apply to amalgamations:

- General income tax, GST and FBT implications of company amalgamations (General Guidance)
- Treatment of pre-amalgamation tax losses (Losses Guidance)
- Calculating available subscribed capital (ASC) (ASC QWBA)

Background

The amalgamation rules in the Income Tax Act 2007 outline the tax treatment and provide certain tax concessions for amalgamations between New Zealand resident companies that derive taxable income.

Good tax policy should not be "grit" in the wheels of productivity and investment, nor should tax implications dictate or drive otherwise sound commercial decisions. To this end, the tax treatment of amalgamations tends to reflect the treatment of amalgamating companies under the Companies Act 1993 (Companies Act).

Broadly, the Companies Act provides that the company that exists after the amalgamation (Amalgamated Company) inherits the assets, rights, liabilities and obligations of the company (or companies) that ceases to exist following the amalgamation (Amalgamating Company). Likewise, the Losses Guidance statement mirrors the general tax rules that allow for a company to carry forward and share a loss with other companies in the same group. The ASC QWBA clarifies the interpretation of amounts in the ASC calculation.

Inland Revenue's work programme for 2023-24 noted a need for guidance on the amalgamation rules for compliance and education purposes, to refresh and update existing guidance, and because "customers sometimes find the amalgamation rules difficult to follow". The General Guidance and Losses Guidance are wholly new interpretations from Inland Revenue, while the ASC QWBA updates and replaces an earlier QWBA.

The draft guidance documents do not depart significantly from the current practice, nor do they delve into particularly complex or uncertain fact scenarios. Rather, the items provide clarity and explain how the rules should apply, interspersed with a number of examples that illustrate the rules in practice. As you can imagine, the tax issues for amalgamations can get very complex and so any guidance from the Inland Revenue on these issues is welcome.

What do the draft guidance documents cover?

General Guidance

The General Guidance walks through subpart FO of the Income Tax Act 2007 which deals with the tax consequences of amalgamations. The guidance document provides a handy summary table of all the subpart FO provisions as well as twenty-one examples illustrating the rules.

It also discusses how other tax rules apply to amalgamations, including dividend implications, interest deductibility, imputation credit accounts, tax credits attributed to Controlled Foreign Companies (CFC) income, provisional tax, and non-standard balance dates.

Guidance is provided on FBT and GST implications, such as applying the de minimis threshold, close company implications for FBT, mixed-use assets, bad debts, and GST registration.

Losses Guidance

The Losses Guidance outlines the treatment of tax losses that exists before the amalgamation. For post-amalgamation losses, the general tax loss rules apply (as previously outlined in IS 22/07 Company losses- ownership continuity, sharing and measurement)). Broadly, the Losses Guidance concludes that:

- For the Amalgamated Company: tax losses can be inherited by the Amalgamated Company if continuity tests are met and all the amalgamating companies, including the Amalgamated Company (unless it was only incorporated on amalgamation) were at least 66% commonly owned from the start of the income year that the tax loss component arose until the date of the amalgamation. The Amalgamated Company, for the purpose of determining ownership and continuity, is treated as existing as the Amalgamating Company, rather than existing separately.
- For the Amalgamating Company: tax losses can be used in the pre-amalgamation part year (i.e., before the date of amalgamation in the part of the income year that ends with the date of amalgamation) if continuity and commonality requirements are met. Tax losses can also be carried forward if continuity requirements are met and all amalgamating companies are at least 66% commonly owned. For attributed CFC or Foreign Investment Funds net losses, 100% ownership is required.
- For non-amalgamating group companies: tax losses can be shared if the amalgamating companies, and the company that incurred the loss, meet commonality requirements.

Losses must be used in the order they arose. Amalgamated companies can elect the order in which they use losses where the losses were incurred in the same tax year. Sixteen examples in the guidance document illustrate these rules.

ASC QWBA

The ASC QWBA combines two existing QWBA's (QB 13/02 and 14/05) which cover the "subscriptions" amount in the ASC calculation. The ASC of a company can be returned to shareholders tax-free in certain circumstances, rather than being treated as a (taxable) dividend. For the purposes of this ASC QWBA, the term "Amalgamating Company" also includes the Amalgamated Company.

The ASC calculation has four components; however, the focus of the ASC QWBA is on "subscriptions" and "returns" because these amounts are specifically modified in an amalgamation by the legislation.

Inland Revenue summarises the legislative rules around measuring ASC on amalgamations, which effectively ensure that ASC is not counted twice when companies amalgamate, and ASC is preserved when appropriate. This means that:

- Consideration received for shares issued by an Amalgamating Company that are directly or indirectly held by another amalgamating company is excluded. This is to prevent the double-counting of capital that has been introduced by underlying shareholders.
- Shares of the Amalgamating Company must be "of an equivalent class to the class" of shares in the Amalgamated Company. To determine whether this is the case, shareholder rights, rights to be paid profits, and rights to the distribution of assets should all be considered.
- Shares in the Amalgamated Company are excluded (as because an Amalgamated Company is also an Amalgamating Company for the purposes of calculating ASC, they will be double counted).

The ASC QWBA also confirms that the "returns" amount will increase if an Amalgamating Company shares in an Amalgamated Company are cancelled on amalgamation. The Amalgamated Company's ASC per share will reduce by the "returns" amount. The guidance document includes three examples to illustrate these rules.

Deloitte comment

Amalgamations are a useful way of tidying up a group structure, and the tax rules are generally well understood by those who frequently advise on amalgamations. The three draft items provide useful and comprehensive guidance on how the tax rules apply to company amalgamations.

As can be expected, the tax rules for amalgamations ensure that tax obligations match the purpose of the amalgamation regime – one company ceases to exist and another company assumes all of its tax attributes and obligations. The tax rules are designed to enable this to happen smoothly, while removing possibilities for an amalgamation to be used to reduce a tax liability or obtain some other tax advantage. If you would like to discuss the tax issues surrounding amalgamations, please contact your usual Deloitte advisor.

What next?

Consultation on the draft guidance documents is open until 1 November 2024. The publications detail the process to provide feedback. Inland Revenue officials will then consider the feedback received and iron out any remaining details and interpretive issues with submitters where appropriate. Following this, finalised items will be published, reflecting Inland Revenue's view on the amalgamation rules going forward. The finalised ASC QWBA will update and replace the existing guidance from the date the finalised guidance is published.

Contact

Viola Trnski
Consultant
Tel: +64 9 956 9755
Email: vtrnski@deloitte.co.nz

Emma Marr
Director
Tel: +64 4 470 3786
Email: emarr@deloitte.co.nz

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Indirect Tax

2025 ITR World Tax Highly Regarded Practitioner

Jeanne du Buisson
Indirect Tax

2025 ITR World Tax Highly Regarded Practitioner

Bart de Gouw
Transfer Pricing

2025 ITR World TP Highly Regarded Practitioner

Melanie Meyer
Transfer Pricing

2025 ITR World TP Highly Regarded Practitioner

2025 ITR World Tax Women in Tax Leader

Patrick McCalman
Tax Controversy

2025 ITR World Tax Highly Regarded Practitioner

Campbell Rose
Tax Controversy

2025 ITR World Tax Highly Regarded Practitioner

Greg Haddon
Tax

2025 ITR World Tax Notable Practitioner

Bruce Wallace
Tax

2025 ITR World Tax Notable Practitioner

Thomas Pippos
Tax

2025 ITR World Tax Notable Practitioner

The International Tax Review (ITR) Asia-Pacific Tax Awards 2024* rankings were recently announced and Deloitte is extremely proud to announce that we have been named as the New Zealand Tax Firm of the Year for the second consecutive year.

In the wider Asia-Pacific region, Deloitte was also the winner of:

- Tax Firm of the Year
- Transfer Pricing Firm of the Year
- Global Executive Mobility Tax Firm of the Year
- Indirect Tax Firm of the Year
- Tax Compliance and Reporting Firm of the Year
- Tax Innovator of the Year
- Tax Technology Provider of the Year

2025 ITR World Tax Rankings

ITR World Tax ranks firms in tiers for each country, with tier-one being the highest ranking. Deloitte New Zealand is ranked as a tier-one firm for both general corporate tax and transfer pricing.

2025 ITR World Tax Leaders

ITR also undertakes market research on leading tax advisors.

Deloitte New Zealand has a number of world-leading tax practitioners, with the following partners receiving ITR rankings for the 2025 year:

New Zealand National Tax & Business Advisory Leader Bruce Wallace comments:

"We are extremely proud of our continued recognition by ITR in these awards. This recognition is testament to the huge efforts of our team in their pursuit of excellent client service and making an impact that matters for our clients. A big thank you to all of our clients, our team, and ITR for the recognition".

*The ITR is one of the world's most influential tax professional journals. It manages 3 annual tax awards globally: Asia-Pacific, EMEA (Europe, Middle East and Africa), and Americas Tax Awards.

The awards are nominated and reviewed based on four core dimensions: scale, innovation, complexity, and impact. The ITR professional research team conducts comprehensive market research and produces results.

Snapshot of recent developments

Tax legislation and policy announcements

Information release: Budget 2024

On 12 September 2024, Inland Revenue released the Budget 2024 tax policy documents.

Information release: Tax Administration (GST Adjustment Rules) Modification Order 2024

On 17 September 2024, Inland Revenue published documents relating to the Tax Administration (GST Adjustment Rules) Modification Order 2024.

Refunds of FamilyBoost tax credits

The Tax Administration (Direct Credit of FamilyBoost Tax Credit) Order 2024 came into force on 1 October 2024. The Order specifies 1 October 2024 as the due date on and from which a FamilyBoost tax credit may be refunded by direct credit under section 184A of the Tax Administration Act 1994 to a bank account nominated by the taxpayer entitled to the refund.

Inland Revenue statements and guidance

Case Summary: High Court finds remediation work on rental property capital in nature

On 27 August 2024, Inland Revenue published a case summary of Lawrence v Commissioner 2024 NZHC 905. The High Court found in favour of the Commissioner of Inland Revenue who disallowed deductions claimed for remediation work on a rental property because the payments were capital in nature.

Draft Interpretation Statement: Income Tax and GST – forestry activities registered in the Emissions Trading Scheme

On 28 August 2024, Inland Revenue issued PUB00452: Income Tax and GST – forestry activities registered in the Emissions Trading Scheme and an accompanying fact sheet. The draft considers the tax consequences of receiving, selling and surrendering emissions units (NZUs), as well as the tax treatment of specific transactions involving NZUs.

Submissions close on 8 October 2024.

Commissioner's Statement: Withholding obligations arising in relation to transfer pricing arrangements

On 30 August 2024, Inland Revenue issued CS 24/02: Withholding obligations arising in relation to transfer pricing arrangements. The Statement sets out the Commissioner of Inland Revenue's position and operational approach on the withholding obligations that may arise in relation to transfer pricing arrangements. The position and operational approach remains unchanged from current practice.

This Statement also confirms how the transfer pricing rules in subpart GC of the Income Tax Act 2007 interact with the dividend rules in subpart CD when determining the withholding obligations that arise under part R for payments made under a transfer pricing arrangement.

Draft Questions We've Been Asked: Income tax – Short-stay accommodation

On 2 September 2024, Inland Revenue issued PUB00487: Income tax – short-stay accommodation which includes five pieces of updated draft guidance on income tax and short-stay accommodation (including a reading guide which covers what changes have been made and why).

The updates are mainly to reflect legislative changes, including the new online marketplace rules.

However, there has been a change in the Commissioner of Inland Revenue's view concerning the depreciation of mixed-use chattels. The relevant formula no longer overrides the general permission, meaning further apportionment may be required to account for private use.

PUB00487a: Income tax – Which rules apply if I rent out my home, part of my home, or a separate dwelling on my property as short-stay accommodation?

PUB00487b: Income tax – Which rules apply if I have dwelling I sometimes rent out as short-stay accommodation and also sometimes use privately?

PUB00487c: Income tax – How do the mixed-use asset rules apply if I provide short-stay accommodation?

PUB00487d: Income tax – How do the standard tax rules apply if I provide short-stay accommodation?

PUB00487e: Income tax – If property held in a trust is rented out for short-stay accommodation, who declares the income and what deductions can be claimed?

Submissions close on 25 October 2024.

2024-25 Tax Counsel Office Public Guidance Work Programme

On 2 September 2024, Inland Revenue issued the 2024-25 Public Guidance Work Programme.

Tax Information Bulletin: Vol 36 No 8 September 2024

On 2 September 2024, Inland Revenue published TIB Vol 36, No 8, September 2024 which includes:

New legislation

- SL 2024/154– Order in Council Double Tax Agreements (Slovak Republic) Order 2024
- SL 2024/153 – Order in Council Double Taxation Relief (Austria) Amendment Order 2024

Legislation and determinations

- DET 24/03: Determination under section RD 11(3) of the Income Tax Act 2007 of the amount of tax for a payment of a main benefit

Interpretation statements

- IS 24/05: Employer obligations for employee share scheme benefits paid in cash
- IS 24/06: PAYE – How an employer funds the tax cost on an employee share scheme benefit

Commissioner's statement

- CS 24/01: Determining the "market value" of shares that an employee receives under an employee share scheme

Standard practice statements

- SPS 24/01: Requests to change a balance date
- SPS 24/02: Extension of time applications from customers without tax agents

Technical decision summaries

- TDS 24/15: GST – payment for participation in religious practice
- TDS 24/16: Look-through company election

Inland Revenue: Credit transfers

On 3 September 2024, Inland Revenue announced they have reviewed credit transfer requests after receiving a high volume of web messages. They remind customers:

- Inland Revenue will transfer the credit after they have processed the return. Inland Revenue does not require a web message asking for the same transfer.
- If an amended return has been filed, the transfer will happen after the amendment has been proposed.
- If the available credit is more than the amount requested to be transferred, Inland Revenue need a current bank account to refund the remaining balance to.

Inland Revenue: Labour weekend shutdown for system updates

On 4 September 2024, Inland Revenue announced they have scheduled a system update over Labour weekend. This means myIR, Inland Revenue phone services including self-service options, and gateway services will not be available between 5pm on Friday 25 October 2024 and 8am on Tuesday 29 October 2024 (possibly earlier; Inland Revenue will advise if so).

Product Rulings: WorkRide Limited

On 9 September 2024, Inland Revenue published BR Prd 24/02 and BR Prd 24/03. The Arrangement is WorkRide's provision of self-powered commuting vehicles (Equipment) to the employees of WorkRide's customers, where the employees agree to a temporary reduction in salary in return for the temporary lease of Equipment and the opportunity to own the Equipment at the end of the lease period.

The Arrangement allows for an optional instalment-based payment structure for certain employers (Employers). BR Prd 24/02 covers arrangements where the WorkRide Salary Sacrifice Agreement is used. BR Prd 24/03 covers arrangements when the Employer's own Salary Sacrifice Agreement is used.

The rulings cover the period 27 June 2024 until 26 June 2027.

Inland Revenue: 2025 Individual income tax – early returns

On 17 September 2024, Inland Revenue removed the processing hold on early IR3s, IR3NRs and automatic assessments for the 2025 tax year.

Customs: Consultation on fees and levies for goods

Customs and MPI are undertaking public consultation on proposed changes to fees charged to clear goods at the border. Proposals being consulted on include:

- moving from per document to per consignment charging for low-value goods (valued $1,000 or less)
- introducing differential charges for high-value air and sea consignments (valued over $1,000)
- discontinuing one export-related fee
- introducing a commercial vessel charge to recover the cost of managing commercial vessels
- bringing transhipped goods and empty containers within the scope of the charging regime
- moving to full cost recovery for clearing low value air cargo
- recovering the cost of clearing low value goods arriving by international mail, and
- adjusting fee levels so that Customs' goods management activities are financially sustainable.

Consultation is open until 31 October 2024. Feedback can be provided by email.

International Tax Updates

New Zealand and South Korea Agree to Update Tax Treaty

On 4 September 2024, the South Korean Ministry of Foreign Affairs published a joint statement that New Zealand and South Korea have agreed to update their countries' income tax treaty.

Filing of Tax Returns in India for Non-Residents

India's income tax law requires disclosure of income for the year ending 31 March 2024 to be returned on 31 October/30 November.

Recently, India's tax rate on royalty and fees for technical services income for non-resident taxpayers (those without a permanent establishment in India) has been raised from 10% to 20%. With the 10% rate increase, positions for non-residents have been impacted. Further, an obligation of filing tax returns for non-residents is triggered in other situations such as:

- Claiming treaty benefits on income earned from India
- Earning business income from India
- Dividends and Interest from Indian companies, etc.

If you have operations in India or are otherwise affected by this change, we recommend getting in touch with your usual Deloitte advisor.

OECD updates

Determining the Price of Minerals: A Transfer Pricing Framework for Lithium

On 12 August 2024, the OECD published a report which applies the mineral pricing framework to identify the primary economic factors that influence the price of lithium and ensure that developing countries are able to tax lithium exports appropriately.

Inclusive Framework members make further progress in addressing harmful tax practices

On 27 August 2024, the OECD announced that as part of the Forum on Harmful Tax Practices (FHTP) of preferential tax regimes, conclusions on six regimes have been reached as part of the implementation of the BEPS Action 5 minimum standard on harmful tax practices.

Country-by-Country Reporting – Compilation of 2024 Peer Review Reports

On 16 September 2024, the OECD published a compilation of six years of annual Country-by-Country peer reviews.

Pillar Two Subject to Tax Rule signed

On 19 September 2024, the OECD announced that the Pillar Two Subject to Tax Rule (STTR) was agreed on a consensus basis by members of the OECD/G20 Inclusive Framework on BEPS, who also adopted an elective Multilateral Convention to Facilitate the Implementation of the Pillar Two Subject to Tax Rule (STTR MLI) to enable swift implementation of the rule.

The STTR ensures a minimum level of taxation on relevant cross-border payments and is designed to prevent circumstances where income is either taxed at very low rates or not taxed at all due to differences in tax regimes between countries.

Members of the Inclusive Framework that apply nominal corporate income tax rates below 9% to income covered by the STTR have committed to incorporate the STTR into bilateral tax agreements with members of the Inclusive Framework that are developing countries when requested to do so.

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

Deloitte.

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Tax Alert at **deloitte.co.nz**

Queries or comments regarding Tax Alert including joining our mailing list, can be directed to the editor.

Amy Sexton

+64 (9) 953 6012

asexton@deloitte.co.nz

Auckland
Deloitte Centre, Level 20, 1 Queen Street,
Auckland, 1010
+64 (0)9 303 0700

Hamilton
Deloitte House, 24 Anzac Parade,
Hamilton, 3216
+64 (0)7 838 4800

Christchurch
151 Cambridge Terrace, Christchurch Central,
Christchurch, 8013
+64 (0)3 363 3800

Auckland – North Shore
Level 2, 55 Corinthian Drive, Albany,
Auckland-North Shore, 0632
+64 (0)9 303 0700

Rotorua
Level 2, 1176 Amohau Street,
Rotorua, 3010
+64 (0)7 343 1050

Dunedin
Otago House, 481 Moray Place,
Dunedin, 9016
+64 (0)3 474 8630

Tauranga
Unit E, 120 Hamilton Street,
Tauranga 3110
+64 (0)9 303 0700

Wellington
Level 12, 20 Customhouse Quay,
Wellington, 6011
+64 (0)4 470 3500

Queenstown
Level 2, 10 Memorial Street,
Queenstown, 9300
+64 (0)3 901 0570