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Tax Alert

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Tax bill has something for everyone

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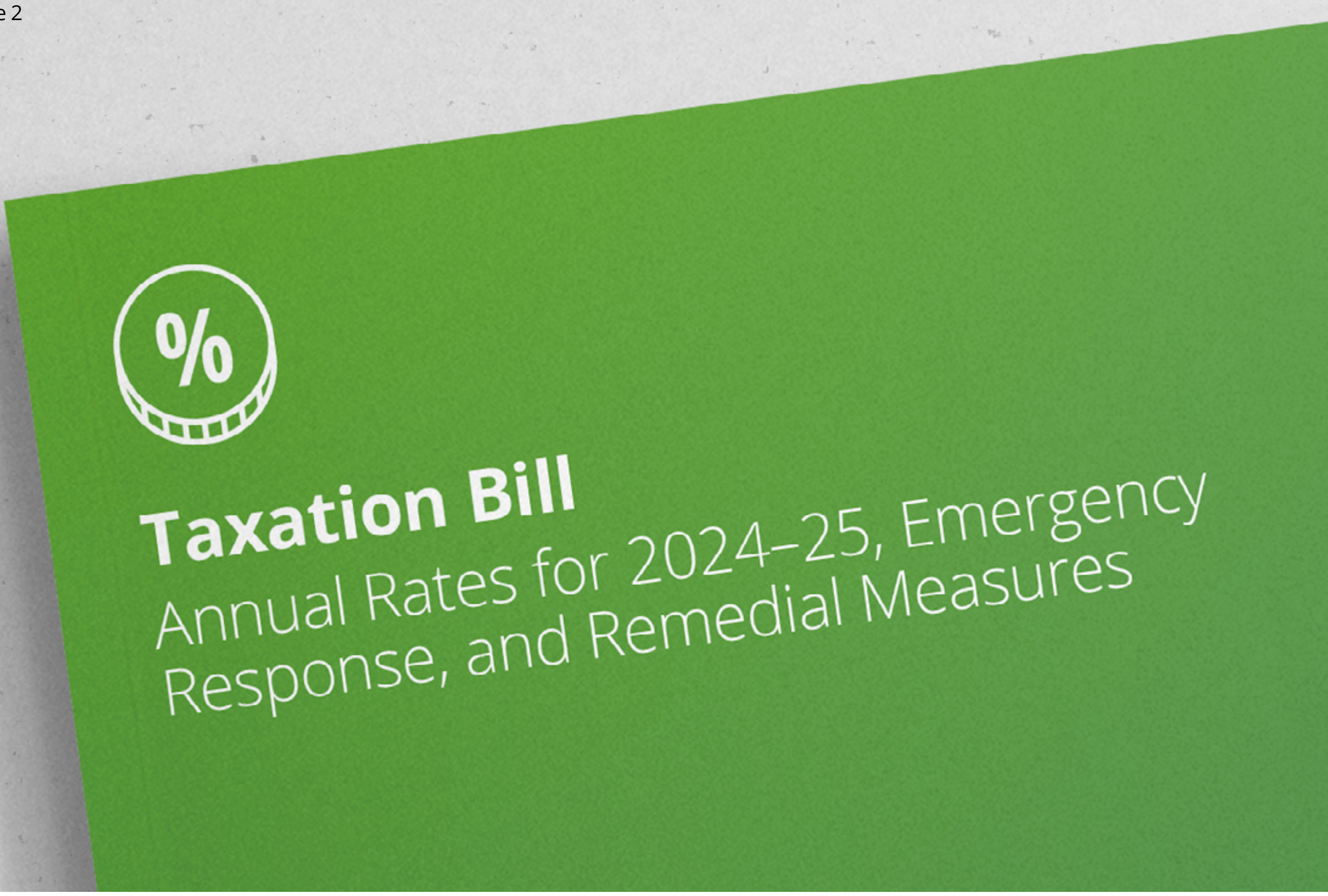

Tax bill has something for everyone

By Robyn Walker

Compared with other areas of law, tax is an area which is always evolving.

In New Zealand it can largely be guaranteed that there will be at least two tax Bills put before Parliament in any given year - an "annual rates bill" and a "budget bill". The Taxation (Annual Rates for 2024-25, Emergency Response and Remedial Matters) Bill ("the Bill") is the latest annual rates bill to land, having been tabled in Parliament on 26 August 2024, read a first time on 29 August and referred to the Finance and Expenditure Select Committee ("FEC") for scrutiny. The FEC have called for public submissions and have set a due date for comment of 9 October. The FEC have a due date to complete its review of the Bill of 28 February 2025. This will allow time for the Bill to complete its remaining Parliamentary processes before being enacted by 31 March 2025.

The Bill itself is less controversial that some of its predecessors as it largely contains taxpayer friendly measures aimed at reducing compliance costs and increasing productivity. For this reason, all Government parties and the Labour Party also voted in favour of the Bill at the first reading, while the Green Party and Darleen Tana voted against the Bill (Te Pati Māori were not present to cast a vote).

During its first reading the Bill was described as a "sensible, common-sense bill" and that is fairly accurate. However, it is also worth noting that the Bill is long, containing over 200 clauses and coming with over 200 pages of commentary. So, interested parties will have their work cut out to review the entire bill prior to the submission due date.

Aside from setting the annual rates of tax (which are unchanged from Budget 2024), the Bill is made up of a handful of substantive policy changes, and then a large number of "remedial" changes (which are largely designed to ensure the legislation works as intended) and an even larger list of "maintenance amendments" (which are largely cross referencing and other minor corrections).

The policy changes in the Bill are proposals to:

- introduce a mechanism that would allow response measures to be activated through an Order in Council when an emergency event occurs
- incorporate the Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard proposal into New Zealand law
- allow a New Zealand borrower paying interest to a foreign lender who did not register a security for approved issuer levy (AIL) on time to retrospectively register the security in certain circumstances
- address issues that affect the transfer of pension funds to New Zealand
- increase thresholds relating to exempt employee share schemes to recognise the effect of past inflation and provide a buffer against future inflation
- allow for the one-off sharing of IRD numbers and contact information between Inland Revenue and the Ministry of Business, Innovation and Employment to encourage uptake of the New Zealand Business Number by unincorporated entities
- allow young people aged under 16 to enrol in KiwiSaver with the agreement of one parent or guardian
- grant six New Zealand charities overseas donee status.

The remedial items contained in the Bill which might be of interest include:

- a number of tidy-ups related to the new GST rules for platforms
- tidying up several matters related to the 39% trustee tax rate change
- clarifying several aspects of the partnership rules, including ensuring that RWT-exemptions and the AIL regime can be used as intended
- tidy-ups to ensure the bright-line test for property sales works correctly
- extending the due date for R&D tax incentive general approvals
- providing a PAYE exempt for employer-funded flu vaccinations (to mirror the outcome under the FBT rules).

For more information on the Bill, or to learn more about making a submission, please contact your usual Deloitte advisor.

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When do I need to pay tax on my share investments?

By Joe Sothcott and Phillip Claridge

Investing in shares has never been more accessible. With the rise of low-cost online investment platforms globally, billions of dollars have flowed into markets as an unprecedented number of investors have taken the plunge into the world of investing.

To assist taxpayers who invest in shares, Inland Revenue has published a draft interpretation statement on this issue for consultation. While focused on individuals who use online share investment platforms, the analysis equally applies to individuals who invest in shares in any other manner (i.e., via a broker).

The statement is not intended to apply to investments in New Zealand managed funds (like KiwiSaver), as those vehicles are typically taxed under the portfolio investment entity (PIE) rules. Shares in foreign companies taxed under the Foreign Investment Fund (FIF) rules are also only covered briefly, however the statement is helpful for investors whose foreign shares are not taxed under the FIF regime.

So, does Inland Revenue say I have to pay tax?

Overall, the draft commentary is unsurprising. Unfortunately, this means the answer is "it depends".

In essence, individuals who invest in New Zealand companies or foreign companies (not taxed under the FIF rules) have taxable income in the following circumstances:

- When they receive dividends; and
- When they sell shares where the shares were acquired for the dominant purpose of disposal or were part of a share dealing business or profit-making scheme.

Let's dig into this further.

Dividends

The starting point is that dividends from both New Zealand and foreign companies are taxable in New Zealand. However, if the FIF rules apply to the shareholding, or you are a 'transitional resident', dividends from foreign companies usually aren't taxable to you.

For New Zealand companies, tax is typically withheld and paid on behalf of the investor, although sometimes a 'top-up' is needed in your own return. This requires looking at what has been pre-populated in your tax return by Inland Revenue or checking with your share platform/broker. You may have a tax liability in your return if tax has not been withheld, or the amount withheld (when combined with any imputation credits) is less than your tax liability in relation to the dividend.

For dividends from foreign companies, usually tax will have been withheld in the other country. Some investment platforms will also deduct New Zealand tax. When completing your tax return, you can claim a credit for New Zealand tax withheld. A 'foreign tax credit' may also be available for the foreign tax withheld. Although Inland Revenue has tried to summarise the rules for foreign dividends in the statement they can be complicated (particularly the treatment of foreign tax credits) and you should seek advice if you are unsure.

Interestingly, Inland Revenue does not comment on dividends from New Zealand exchange traded funds that are 'Listed PIEs' for tax purposes. Individuals don't need to include these dividends in their tax return. However, you can choose to include the 'fully imputed' portion in order to claim imputation credits. Usually, the fully imputed portion (sometimes referred to as the 'taxable portion') is identified in the dividend statements or investment platform statements.

Selling shares

When investors sell shares, any gains they make are taxable in three circumstances:

1. If the investor is in the business of share dealing. This is a high bar, and generally requires an investor undertaking buying and selling activity at a large scale, with regular trading activity, a systematic approach, a significant amount of time and money invested, and with an intention to make profit.
2. The acquired shares are part of a profit-making undertaking or scheme. The draft statement indicates it would be unusual for this to apply in the context of widely held shares acquired through platforms or brokers.
3. If at the time the investor acquired the shares, the dominant purpose of acquiring the shares was to dispose of them at a later date.

It's worth having a closer look at number 3, as this is the circumstance most likely to catch out investors.

Shares acquired for the purpose of disposal

When evaluating an investor's purpose, the factors Inland Revenue considers relevant include:

- The type of share purchased and what rights they give the holders,
- The length of time the shares were held before disposal,
- The circumstances of the purchase and disposal, and
- Whether there is a pattern of purchases and sales suggesting a dominant purpose of sale.

What does this mean practically? Inland Revenue emphasises there are no bright line tests, although shares only held for a few months are likely to be considered purchased for resale. Situations where shares have been acquired to sell later to fund a specific goal — such as a housing deposit —would also be taxable.

The key is the word dominant. When acquiring shares, a taxpayer may have several purposes (or no particular purpose at all), but the onus is on the taxpayer to prove that the disposal of the shares was not the dominant purpose of acquiring the shares. Note, a taxpayer only has to prove that disposal was not their dominant purpose, they do not have to prove an alternative dominant purpose.

The disposal will not be taxable if the shares were acquired with the dominant purpose of, for example:

- Receiving dividend income
- Receiving voting interests or other rights provided by shares
- Long-term investing, growth in assets or portfolio diversification

Investors should, therefore, keep records about the purpose of their share purchases. Inland Revenue recommends that if shares were purchased for different reasons, these should be held in separate accounts.

When share income is taxable, a deduction can be claimed for the cost of acquiring the shares as well as other costs, such as platform or broker fees. If the cost of acquiring the shares is more than the sale price, a loss can be claimed if the shares were purchased with the dominant purpose of disposal or as part of a share dealing business.

FIF rules

Although not a focus, the statement briefly discusses the FIF rules. The rules usually apply to taxpayers who, at any time in the year, own shares in foreign companies costing more than $50,000 in total. This means that tax will need to be calculated using an acceptable FIF method. For most taxpayers, this will be the fair dividend rate (FDR) or comparative value (CV) method. Only income calculated under the relevant FIF method needs to be included in a taxpayers return. Other amounts (for example dividends) are not directly taxed.

Interests in some foreign companies, including many ASX listed Australian companies, are exempt from the FIF rules. If you think you may be subject to the FIF rules, we recommend seeking specialist tax advice.

Deloitte's view

The fact that Inland Revenue has decided to publish this draft statement indicates that increased audit activity in this area is likely. With increased funding and a new compliance focus, investors should anticipate that Inland Revenue could come asking if it seems that shares have been purchased with the dominant purpose of disposal and then sold.

Investors should be aware that Inland Revenue receives a significant amount of information directly from financial institutions under both New Zealand's local investment income reporting rules, and international information sharing arrangements. In addition, the Commissioner of Inland Revenue has wide reaching powers to obtain additional information directly from financial institutions. When combined with advanced data analytics, this may make your activities more visible than you expect.

The draft statement, along with two fact sheets on dividends and taxable share sales and whether the FIF rules apply, are open for consultation until 24 September 2024.

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Fringe Benefit Tax – A trans-Tasman guide

By Robyn Walker and Rhys Cormick

Fringe benefit tax (FBT) can be confusing at the best of times, but when you throw in the mix the need to consider tax rules in different countries there is a greater risk of something going awry. The close economic relationship between New Zealand and Australia has led to a scenario where there are many Australian's preparing New Zealand FBT returns, and also New Zealander's preparing Australian returns. The decision to prepare a tax return for another country's tax rules shouldn't be taken lightly; however, it seems there is a bit of a "she'll be right, mate" attitude when it comes to FBT… because… well, how different could they be?

The New Zealand Inland Revenue has recently started issuing taxpayers with questionnaires with a specific question about whether tax returns are prepared offshore, and we understand a red flag is raised when it comes to New Zealand FBT returns prepared from Australia.

Deloitte New Zealand and Australia have joined forces to provide a high-level summary of how FBT applies on either side of the ditch. If returns have been prepared without seeking professional advice, it is timely to consider undertaking an FBT review to ensure you're paying tax on the right benefits on each side of the Tasman.

Core concepts

Without delving deep into the history books, it seems reasonable to start from the position that FBT in each country has a similar genesis. As we've previously explained, FBT commenced in New Zealand on 1 April 1985, and Australia enacted its FBT rules in 1986. The basic concepts of when the FBT rules apply in each country are extremely similar: there must be a benefit provided to an employee (or associate), by an employer (or an associate, or under an arrangement) and the benefit must be provided in relation to the employment of the employee. However, aside from these basic concepts, the approach to fringe benefits in each country diverges in some significant ways.

In New Zealand, the FBT rules are included within the Income Tax Act 2007, in sections CX 2-CX 39 (what is a fringe benefit) and RD 25-RD 63 (calculation rules). These rules are petite in comparison to the approach in Australia where the Fringe Benefits Tax Assessment Act 1986 is broken into two volumes and runs to a combined 469 pages.

The New Zealand approach is possibly best described as being broad, with a few meaningful exemptions, whereas Australian FBT has many exemptions. This approach also needs to be seen in the context of other differences in approaches to tax, such as:

- Australia allows employees to claim tax deductions for costs associated with earning employment income, whereas New Zealand does not allow any deductions (with an exception for certain types of income protection insurance). The availability of personal tax deductions in Australia has led to allowing FBT exemptions for amounts which would otherwise be tax deductible if incurred by the employee.
- Australia taxes 'entertainment' as FBT, whereas New Zealand deals with entertainment through denied income tax deductions at the business level.
- Australia generally treats all non-cash benefits through the FBT system, whereas in New Zealand benefits could be subject to either FBT or Pay As You Earn (PAYE) depending on the legal form of how the benefit is provided (e.g. expenditure on account of an employee, reimbursements and allowances are all taxed though the PAYE system).
- Australia has rules which facilitate 'salary packaging' which means in many instances a lot of benefits, including vehicles, may fall outside of the FBT regime. This generally does not occur in New Zealand because of the few available exemptions.
- Australia has extensive requirements in relation to reporting the allocation of fringe benefits in respect of an employee to the Australian Tax Office (ATO) via a Reportable Fringe Benefits Amount (RFBA) which is assessed for government benefits and payments. Whereas in New Zealand, no data is provided about benefits (a proposal was made to do this but abandoned in 2013 due to excessive compliance costs).

This guide is indicative only, FBT rules can contain a number of exemptions, exclusions and valuation rules which may alter the conclusion based on your facts, so please seek guidance.

Treatment of common benefits

In New Zealand, anything provided in connection with employment is potentially a fringe benefit, whereas in Australia FBT applies on non-cash benefits, reimbursements and Living-Away-From-Home Allowance (LAFHA). We've set out below a brief summary of how FBT applies on either side of the Tasman for the most common benefits.

	New Zealand	**Australia**
Motor vehicles	FBT is a payable on any day that a vehicle is available for private use (regardless of actual use). The main exclusion is for Work Related Vehicles, and vehicles can also be exempt on days they are used for travel away from home for more than 24 hours or used for an emergency call out. FBT is calculated in the same way for all vehicles (with calculation options). There are no specific exemptions for electric vehicles.	FBT is payable on car fringe benefits (as defined). There are two calculation options, being the statutory formula method and the operating cost method. Cars are a fringe benefit which is frequently salary packaged in Australia.
Car parks	Car parks are subject to FBT but may be exempt under the 'on premises' exemption.	Car parking fringe benefits are subject to FBT. To assess whether a car parking fringe benefit arises, consideration is required for whether there is a commercial car parking station within a 1km radius that charges above the relevant threshold for the year. There are different ways of valuing car parking fringe benefits, including obtaining a market valuation.
Public transport and self- and low-powered vehicles	Specific exemptions exist for the provision of public transport, bicycles and scooters which are provided for the main purpose of travel between home and work.	Public transport and low-powered vehicles for home to work travel is generally subject to FBT in Australia, subject to limited exemptions including the 'minor and infrequent rule' and public transport for police.
Insurance	The provision of insurances, such as life insurance or health insurance, is subject to FBT. Income protection insurance may be exempt from FBT if it is a policy where any proceeds will be taxable to the employee.	As with New Zealand, the provision of insurances such as life insurance or health insurance are subject to FBT. Group insurance policies where the employer is the policy holder and beneficiary may generally be exempt from FBT.

	New Zealand	**Australia**
Health and safety related benefits (vaccinations, eye tests, safety gear etc)	An exemption applies to certain benefits which are provided to manage risks to health and safety in the workplace. What specific items are exempt can vary based on the employer's context.	An exemption applies for work related medical examinations, screening, preventative health care and work-related counselling.
Loans	Loans to employees are subject to FBT where the interest rate charged is below the prescribed interest rate (currently 8.41%). Limited exemptions exist, including for employee share loans, PAYE overpayments, salary advances of $2,000 or less.	Loans to employees are subject to FBT where the interest rate charged is below the statutory interest rate for the year (currently 8.77% for the FBT year ending 31 March 2025). Limited exemptions exist, including the otherwise deductible rule, where the loan is provided for a deductible purpose.
Staff events	'Entertainment' is only subject to FBT where the employee doesn't enjoy the entertainment as part of their employment duties, and they can choose when to enjoy the benefit (e.g., they are given a restaurant voucher). All other entertainment benefits are 'taxed' through the entertainment expenditure rules which deny 50% of the tax deduction for certain costs. FBT may apply to any entertainment which occurs outside New Zealand.	Entertainment by way of food, drink or recreation is considered subject to FBT. Entertainment can be considered under the 'actual' method as a property, residual or expense payment fringe benefit. Alternatively, entertainment can be taxed as a meal entertainment benefit, using the 50/50 method or the 12 week register method. Selecting a method may be dependent on the records available to the employer, and the proportion of employee to non-employee attendees.
Accommodation	Accommodation is not subject to FBT, instead the PAYE regime applies.	Accommodation may be subject to FBT as a housing fringe benefit where it is the usual place of residence of the employee. Exemptions can apply, including where the housing benefit is in a remote area.
Staff discounts and miscellaneous benefits	These are referred to as 'unclassified benefits', and are subject to FBT unless an exemption or the de minimis rule applies. Possible exemptions apply for benefits provided 'on premises', business tools, distinctive work clothing and discounts provided by third parties which are offered to other groups of employees. A de minimis rule may apply when total unclassified benefits over the previous 12 months do not exceed $22,500. The de minimis rule will not apply to any employee who receives over $300 of benefits in any quarter.	Exemptions can apply for property consumed on business premises, as well as reductions in taxable value for in-house benefits.

Calculations and returns

In New Zealand, most employers file FBT returns quarterly, with the FBT year running from 1 April to 31 March. Returns are due on 20 July, 20 October, 20 January and 31 May. Smaller employers have the option of an annual filing. FBT is paid at the flat rate of either 49.25% or 63.93% on all benefits provided in quarters 1 – 3; in the final quarter employers have the option to pay FBT at 63.93% or undertake some form of FBT attribution. FBT attribution allows FBT to be paid at a rate which better approximates the marginal tax rate of the employee receiving the benefit. Details about FBT attribution options can be found here.

In Australia the FBT year runs on the same 1 April – 31 March timetable as New Zealand, however the approach to returns is different. An annual FBT return is due on either 21 May (where self-lodging) or 25 June (when using a tax agent), however instalments of FBT are paid quarterly through the Business Activity Statement based on the level of FBT paid in the prior year or the expected FBT liability. FBT is payable on the taxable value of benefits. The taxable value is required to be multiplied by a gross up rate of 1.8868 or 2.0802 (depending on whether GST input tax credits can be claimed) and then a flat FBT rate of 47% is applied to all benefits. These rates are linked to the top marginal tax rate, therefore to the extent tax rates change, these rates will vary accordingly.

Got questions?

With the number of differences in how FBT operates in each country, it would not be surprising if errors are made. With tax authorities potentially directing more attention to businesses preparing returns offshore, it would be timely to consider undertaking an independent review of FBT. An FBT review can help identify not just instances where FBT has been underpaid, but also instances where FBT is being paid unnecessarily, and, in New Zealand, can provide guidance on options to save FBT through using attribution options.

Please get in touch with your usual Deloitte advisor for more information about how we can help.

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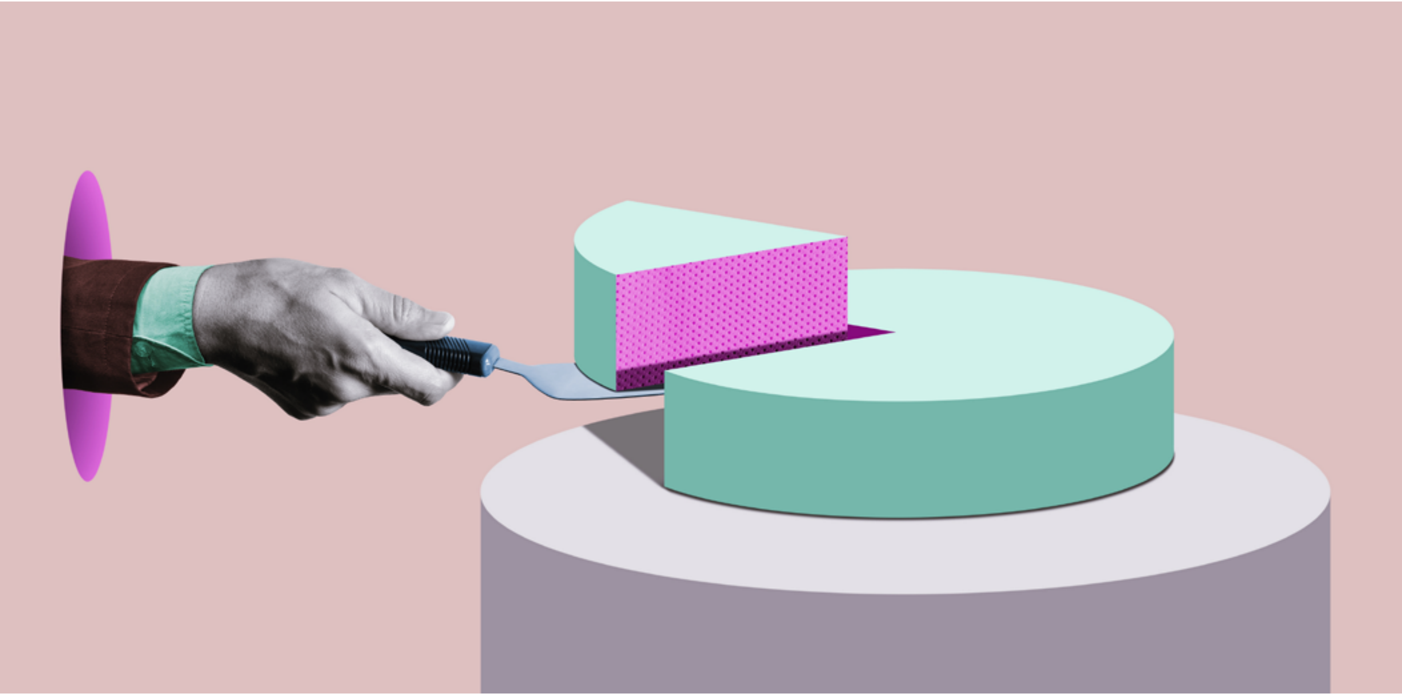
Transfer pricing and dividend withholding taxes

By Bart de Gouw, Young Jin Kim and Jordan Kelly-Houston



On 30 August 2024, the Commissioner released CS 24/02 (the Statement), which clarifies his view on withholding tax obligations when the transfer pricing rules deny a deduction for a payment to an associated person outside of New Zealand.

Ideally, when a taxpayer is a party to a transaction that is a transfer pricing arrangement, an analysis to derive an appropriate arm's length amount for the transaction should be performed. Depending on what type of transaction it is (e.g., a payment of interest, a royalty payment, or a purchase/sale of goods), a taxpayer would determine any withholding obligations, including the impact of any Double Tax Agreements ("DTA") to see if it can provide relief on the rate of withholding. Sounds like a logical progression in the analysis right?

But what happens if you withheld (or did not withhold) non-resident withholding tax (NRWT) on the basis that you were making a payment of interest or purchasing some goods from a non-resident parent, and you later find out that Inland Revenue considers a non-arm's length amount of consideration was paid?

It's a dividend… a deemed dividend

To the extent that a taxpayer has made a payment to a non-resident associated party that is denied a deduction under the transfer pricing rules, the excess is likely to be a considered a deemed dividend under the Income Tax Act 2007 (the Act). So, what then? The devil is in the detail. Let us explain, or better yet, let the Commissioner explain with an example taken from the Statement:

Example 1 – interest payments

A New Zealand subsidiary enters into an agreement to borrow an amount from its non-resident parent. For the year in question, the New Zealand subsidiary pays interest of $1.5m to the non-resident parent. The arm's length amount is $1m, and an adjustment would be made under the transfer pricing rules treating this amount as the amount payable for the purposes of calculating the New Zealand subsidiary's income tax liability.

The excess $0.5m is a transfer of value from the New Zealand subsidiary to the non-resident parent, resulting in a deemed dividend subject to NRWT. Interest NRWT previously paid in relation to this excess amount could be refunded or offset against the dividend NRWT liability provided the applicable provisions in the Act are satisfied.

The above example is fairly common as interest rates continue to be volatile, making it challenging and compliance intensive for multinationals to derive an appropriate arm's length interest rate in respect of borrowing/lending. Importantly, the Restricted Transfer Pricing regime that applies to inbound loans in excess of $10 million principal is unique to New Zealand and may result in denial of interest deductions that are considered arm's length in the lender's jurisdiction. The denied interest is then treated as a deemed dividend in New Zealand and creates potential double taxation and a mismatched characterisation of the nature of the payment.

There are 6 examples in the Statement that may apply to transfer pricing arrangements, but these are not exhaustive. The Commissioner's Statement has some helpful guidance on the impact to the taxpayer where a deemed dividend arises in relation to a transfer pricing arrangement. The guidance clarifies that the dividend will generally constitute a non-cash dividend (the rationale for which is not entirely clear or logical), and relief from NRWT on the deemed dividend may be available, for example:

- Imputation credits may be retrospectively attached to transfer pricing arrangement dividends, pursuant to section OB 62
- A fully imputed non-cash dividend is subject to 0% NRWT pursuant to section RF 10(5B)
- The dividend NRWT liability may also be reduced or removed by applying section CD 42, which allows for dividends to be repaid in certain circumstances if certain requirements are met

If you are seeking relief under any of the sections of the Act described above (or through a provision in a DTA), it is important to note that you will be met with compliance obstacles. The Statement is silent on the more complex aspects that may need to be considered, some of which may not even relate to tax, for example:

- Would a DTA partner accept the recharacterisation of the non-deductible payment as a dividend if it leads to a higher level of NRWT?
- Does a retrospective dividend statement need to be prepared?
- How are deemed dividends disclosed for financial reporting purposes?
- Which party can and should request a refund of over withheld NRWT and how would that party request it?

We recommend getting in touch with your Deloitte advisor if you think there may be any deductions that are at risk of being denied due to transfer pricing as further thought may need to be given to the resulting tax implications (over and above what is expressed by the Statement in CS 24/02).

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New Zealand Transfer pricing update – Spring 2024

By Bart de Gouw, Liam O'Brien, Tayla Wheeler and Cristy Yun

Spring is here, the weather is warming up (or is supposed to be, at least) and so is New Zealand's transfer pricing landscape.

Inland Revenue is gearing up for renewed engagement with taxpayers, Country-by-Country (CbC) Reports are receiving increased attention, small value loan guidance has been updated, the Australian landscape and its impact on New Zealand taxpayers continues to evolve, and as the OECD Pillar One negotiations continue to stutter could New Zealand progress its digital services tax (DST)?

This article summarises key developments that have occurred over the New Zealand winter – the key message here being that the transfer pricing world is not standing still and New Zealand taxpayers should continue to monitor the developments and the potential impact they might have on their businesses.

Additional Inland Revenue transfer pricing resources

As flagged in our August 2024 Tax Alert, the additional Inland Revenue funding for "investment in compliance activities" in Budget 2024 should leave taxpayers and their advisors with little doubt that Inland Revenue is going to become considerably more active in reviewing and auditing taxpayers.

As part of this Inland Revenue has added additional resources to its specialist transfer pricing team. In June 2024, Inland Revenue announced the appointment of four new transfer pricing case leads and is also currently recruiting for another Technical Specialist, to join the existing two Technical Specialists. The inference is that Inland Revenue is clearly gearing up for renewed and increasing engagement with taxpayers. The glass half full view of this additional resourcing in Inland Revenue is that taxpayers can expect existing cases to move towards resolution faster. The glass half empty view is that taxpayers can expect further scrutiny of their transfer pricing arrangements by Inland Revenue and New Zealand taxpayers should be proactively preparing for this additional scrutiny.

Country-by-Country Reports – compliance penalty

A recent change that has flown under the radar relates to revisions to the Tax Administration Act 1994, which have tightened the compliance framework regarding filing of CbC Reports in New Zealand. New Zealand-domiciled large multinational enterprises (i.e., over EUR750 million revenue) (MNEs) must, for income years commencing after 1 January 2025, ensure their CbC Reports are electronically filed in the prescribed electronic format within twelve months after the end of the relevant financial reporting period. Failure to comply means the report may be considered to be not filed or filed late. Higher penalties of up to NZD 100,000 may also be imposed on New Zealand headquartered MNEs for non-compliance with these new requirements.

Inland Revenue is not alone in taking greater interest in the content and format of the CbC Report, given the roll out of the Pillar Two rules globally. The content of a MNE Group's CbC Report will form the basis for the transitional safe harbour calculations under Pillar Two.

Therefore, the objective of the CbC Report has expanded from originally being for 'high-level transfer pricing risk assessment purposes' to potentially impacting the amount of tax paid in a particular jurisdiction (i.e., under the Pillar Two Rules).

It is therefore essential for in-scope MNE Groups to review their CbC Report preparation processes, to ensure adherence with the Pillar Two transitional safe harbour rules and the new New Zealand legislative requirement.

Guidance for small value loans

On 18 July 2024, Inland Revenue published guidance for small-value loans (cross-border associated party loans by groups of companies for up to NZD 10 million principal in total). Inland Revenue considers that 175 basis points (1.75%) over the relevant base indicator is broadly indicative of an arm's length rate in the absence of a readily available market rate for a debt instrument with similar terms and risk characteristics.

It is important that taxpayers consider if there are any readily available market rates for loans within the group before applying the guidance. Similarly, the ATO has also published guidance and the interaction of these with the New Zealand guidance should be considered by taxpayers before locking in an interest rate.

Australian transfer pricing developments (*PepsiCo* and TR 2024/D1)

Regular readers of Deloitte's Tax Alerts will have noted our previous articles regarding Australia's *PepsiCo* case and the Australian Taxation Office (ATO) draft taxation ruling 'TR 2024/D1' and the potential impact of these on New Zealand businesses (see Same old Aussies, always taxing (March 2024) and Australia's PepsiCo case. What does it mean for New Zealand? (July 2024)).

On 9 August 2024 the ATO released a statement stating that it has applied for special leave to appeal to the High Court of Australia in respect of the decision of the Full Federal Court in the *PepsiCo* case.

The ATO statement also noted that it will defer finalising TR 2024/D1 (Income tax: royalties – character of payments in respect of software and intellectual property rights) pending the outcome of the High Court proceedings in *PepsiCo*, but has indicated that the view in the draft ruling remains the ATO's considered view in relation to software arrangements. Of note is that the ATO is progressing the development of practical guidance on how TR 2024/D1 may affect taxpayers, and draft guidance is expected to be released late 2024 for public consultation.

OECD Pillar One and impact on potential NZ digital services tax

In October 2021, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (Inclusive Framework) agreed to the 'Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy'. As part of that statement, in respect of Pillar One, the Inclusive Framework agreed that no newly enacted DSTs or other relevant similar measures will be imposed on any company from 8 October 2021 and until the earlier of 31 December 2023 or the coming into force of the Multilateral Convention. This deadline was subsequently extended to 30 June 2024.

The extended deadline of 30 June 2024 for the Inclusive Framework to achieve consensus on Pillar One has been and gone without agreement. Due to the lack of global consensus, DSTs are back on the agenda in many jurisdictions, with Canada authorising the implementation of a DST as at 28 June 2024 with retrospective effect to 1 January 2022.

As flagged in our earlier article on this issue (Digital Services Tax (June 2024)), the continued lack of consensus on Pillar One between the Inclusive Framework means that the proposed New Zealand DST moves closer to becoming a reality.

If you would like to discuss any of the issues raised above in more detail, please contact your usual Deloitte advisor.

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GST on managed fund guidance is out

By Viola Trnski, Allan Bullot and James Arbuthnott

Inland Revenue has released draft guidance on how the GST rules ought to apply to fund management fees. If this sounds familiar, that's because it is. The issue of how GST should apply to managed investment funds has been subject to numerous rules and scrutiny. So where has Inland Revenue landed and what does it mean for you? We outline the draft statement – and a brief history – below.

Back to the future?

Most recently (and perhaps most memorably) in 2022, the then Government quietly proposed charging GST on all management fees charged to managed funds, including KiwiSaver, which would have raised $225m a year in revenue – but modelling from the Financial Markets Authority suggested the plan could have slashed $103 billion from KiwiSaver funds by 2070. Following fast and fierce backlash, the policy was scrapped within twenty-four hours.

Before that – and what is still currently being practised – is non-KiwiSaver funds generally taking one of two positions, neither of which are legislated but which reflect industry agreement with Inland Revenue on how the GST rules should apply:

- Many larger fund and investment managers typically treated 10% of their services as subject to 15% GST and the remaining 90% as GST-exempt under the existing financial services exemption. The exemption applied due to these managers 'arranging' the buying and selling of investment products.
- Other fund and investment managers applied the 15% GST rate to all of their services. The rationale for this approach was that they provide investment advice and services that are typically subject to 15% GST.

In 2017 Inland Revenue released two draft QWBA's on GST and unit trusts and proposed that fund management fees are exempt supplies as they are financial services, unless those services are outsourced, in which case the outsourced provider was considered to be making GST taxable supplies to the underlying manager. This is a very similar position to where Inland Revenue has landed again in the current consultation draft.

While public consultation continued after the 2017 draft QWBAs, no legislative amendments were proposed by Parliament until the previously mentioned 2022 U-turn. Inland Revenue has now released draft guidance on how the Commissioner interprets the current legislation to apply.

Where the final guidance lands will depend on the submissions received.

What has Inland Revenue proposed?

Inland Revenue's draft statement addresses the GST treatment of fees that relate to managed funds. Essentially, all fees charged in relation to managed funds will either be financial services (normally a GST-exempt supply) or taxable supplies.

Inland Revenue has landed on management fees charged by a manager generally being GST-exempt supplies.

An area of focus for the Inland Revenue's draft guidance is the degree of authority that the manager has to make and implement investment decisions. Broadly, if a manager has full investment authority, Inland Revenue considers the management fees will be an exempt supply of 'arranging' a specified financial services activity.

Whereas, if a manager does not have this full authority, then the management fees are not considered to be arranging financial services and therefore will be subject to GST at the 15% rate.

Following this analysis, Inland Revenue considers that most outsourced services provided by a 3rd party to the underlying manager will be subject to GST at 15%.

The above contrasts to the 2022 legislative proposal, which brought all fees charged by a manager into the GST net, as Inland Revenue is now proposing to exempt most fees charged in relation to managed funds.

So...back to the future?

Whether the final interpretation will take us 'back to the future' to the proposed 2017 approach remains to be seen. Consultation on the draft guidance is open until 25 October 2024. Following consultation with submitters and officials, Inland Revenue will finalise their position.

Once adopted, Inland Revenue's position will become the binding interpretation of their view of the law and all managed investment funds (and outsourced investment management and other service providers) will be expected to apply the guidance in practice. Interpretive issues may still need to be worked out, and the outcome for each fund and different fees will depend on the specific facts at hand.

Now would be a good time for managers to begin considering what impact this interpretation may have on fees charged and the ability to claim back GST on costs.

Our Deloitte indirect tax team and financial services team have specialist knowledge and expertise to help you navigate the new interpretation and understand what it means for your business.

If you have any questions, please get in touch with your usual Deloitte advisor.

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Our tax system: bases and regimes

By Robyn Walker

Is our tax system structured in a way that is suitable for the future? What are our long-term fiscal pressures? Are there alternative ways to design our tax system to address tensions? What are the merits of alternative tax bases and mixes of taxes? Does it make sense to add new taxes or just stick with what we've got?

These are all questions which are proposed to be explored in the next Inland Revenue long-term insights briefing ("LTIB"). Consultation on the scope of the proposed LTIB is open until 4 October 2024.

LTIBs are required under the Public Service Act 2020 and are eloquently described by the Public Service Commission as: "designed to be 'think pieces' on the future, providing information about medium and long-term trends, risks and opportunities that may affect Aotearoa New Zealand. They give effect to the Public Service's stewardship responsibilities and are not government policy."

The proposed LTIB topic will meet the brief specified by the Public Service Act and is sure to provide invaluable information about our tax system. While LTIB's are not political documents (and the topic and work are not directed by Ministers), it is likely that the LTIB will be used for political purposes once it is complete. With wealth taxes proposed by certain political parties in Election 2023, those same parties may be interested in the leadup to Election 2026 in what Inland Revenue conclude about different tax types.

The LTIB scoping document states "[w]e will consider the pros and cons of taxes on payroll (including social security contributions), land, real property, wealth, inheritances or estates, turnover and transactions, and what overlaps and differences there are in these bases versus our existing bases." The scoping document goes on to note that it is desirable to create an opportunity for open discussion of the pros and cons of introducing additional tax bases versus raising rates on existing bases if future revenue needs substantially increase. The scoping document helps set the scene with information about existing tax bases, comparisons with other OECD countries and analysis of New Zealand's demographics.

Some interesting demographic statistics from the scoping document include:

- The current average age of a New Zealander is 38, but by 2073 this is expected to be over 47 years old.
- In 2022 there were 25 people aged 65+ per 100 people aged between 15-64. By 2073 this is projected to be 48 per 100 (or 2.1 working age people for every person aged 65 and over).
- Over 25% of people aged 65+ plus are currently still in the work force.
- The workforce is expected to grow from 2.9 million people in 2020 to around 3.7 million in the early 2070's (the total population is forecast to be 6.6 million).
- The cost of superannuation was 4.1% of GDP in 2020 and this is forecast to increase to 7.5% in 2080, based on current settings.

The decision to look at this topic has merit. That said, the topic chosen has many facets and may consume significant resources to complete properly - the breadth of the topic, and subtopics within, is potentially equivalent to completing a 'tax working group' equivalent process. We'll be watching progress with interest.

After considering feedback on the scoping document, work will be underway on the LTIB. Additional consultation will then be undertaken on Inland Revenue's work and conclusion. Inland Revenue estimates that the LTIB will be finalised and provided to Parliament in mid- to late- 2025 (an ambitious target given the scale of the project).

For more information please contact your usual Deloitte advisor.

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Are you an ethical tax advisor? If not, watch out!

By Viola Trnski and Ian Fay

Out with the old (questionable tax planning), in with the new (ethical standards)

The International Ethics Standards Board for Accountants (IESBA) tax planning project has culminated in a framework of expected ethical behaviours for accountants providing tax planning services and a new Ethical Standard for Tax Planning (the Standard).

In August 2024, Chartered Accountants Australia and New Zealand (CAANZ) announced proposed revisions to the Code of Ethics to incorporate IESBA's suggested changes. These changes will apply to New Zealand members and all other practitioners subject to CAANZ jurisdiction from 1 July 2025.

The Standard applies to 'tax planning services' and related activities. This does not include tax evasion, which is illegal, and covered by existing Code of Ethics standards. Instead, 'tax planning' covers advisory activities that assist an employing organisation or a client in planning or structuring affairs in a tax-efficient manner.

Different sections apply to members in business who perform tax planning activities and members in public practice who provide tax planning services. This distinction essentially separates accountants who perform the in-house tax function of an organisation ('in business') and accountants employed by advisory firms ('in public practice').

The wording of the Standard includes reference to various tests and exercises that members are expected to follow. For example, determining a 'credible basis' for tax planning arrangements and performing a 'stand-back test' on how the arrangement may be viewed in a wider context. There must be a credible basis for an arrangement before a member can advise on it. By contrast, the stand-back test must be considered but does not necessarily preclude advice being given. The Standard also provides guidance on how members can navigate uncertainty, cross-border issues, and 'grey zones'.

New Zealand-specific amendments are proposed to assist members in interpreting these new concepts. For example, it is proposed that 'credible basis' is defined as 'acceptable tax position' under existing New Zealand legislation. The Tax Administration Act 1994 defines 'acceptable tax position' as something that is not an unacceptable tax position, which in turn is defined as being a position that, "viewed objectively…fails to meet the standard of being about as likely as not to be correct".

Is the 'acceptable tax position' bar set at the same height as IESBA's 'credible basis' test? This is one of the submission points that CAANZ are currently consulting on (submissions are due on 7 November 2024). The finalised wording is expected to be published in February 2025.

Depending on what definition is adopted in the final Code of Ethics, questions may follow around the implications of an unacceptable tax position being taken, and whether this will trigger an automatic investigation of the ethical conduct of the accountant involved. The Standard also outlines a number of steps members should take if they witness their employer (if in business) or clients (if in public practice) proposing tax positions which don't have a credible basis.

Are you ready?

Strong tax governance is critical for all organisations, and particularly so in light of the new Standard.

One implication of the Standard is that the accountant in business may need to take an increased amount of personal ownership and responsibility for the tax planning undertaken by their employing organisation. The Standard imposes expected behaviours on individual accountants, regardless of views that senior management or the board may take.

For accountants in business, a strong, effective, and robust tax control framework will play a key role in ensuring that appropriate checks and balances are in place to demonstrate that tax planning activities are undertaken ethically. Further, tax governance demonstrates to external auditors, Inland Revenue, and other stakeholders including shareholders, investors, employees, and professional bodies, that the tax obligations of an organisation are being taken seriously and that controls are being tested and are working as intended.

What does good tax governance look like?

Tax strategy should have sign off from the board and chief executives, there should be responsibility within the organisation for tax and finance functions, appropriate documentation should be in place to manage tax risks and outline how the rules operate in practice, and processes should be continuously tested, with assurance provided that they are working as intended. Accountants in business should have a personal interest in whether the tax strategy aligns with the expectations and requirements of the Standard.

Our October 2021 Tax Alert article sets out a three-step approach to strengthening your tax risk management framework.

Why is tax governance important?

Businesses benefit from strong tax governance by increasing efficiency and certainty while reducing exposure to risk. Being prepared and able to demonstrate strong self-review in case of future audits, transactions, or other circumstances where tax controls may come under increased scrutiny is good business practice.

There are non-financial risks at stake by not having strong tax governance. Getting your tax obligations wrong can wreak havoc on your brand and reputation and result in subsequent financial fallout. IESBA noted increased public scrutiny and awareness around the tax profession as one of the reasons for introducing the new Standard. With increased reporting and broader Environment, Social and Governance (ESG) obligations trending globally, organisations are expected to maintain a 'social license' to operate which requires good governance and goes further than just strictly complying with the law. In the words of the Standard, not only does tax planning have to have a credible basis, but accountants should also apply the stand back test.

I'm not an accountant, can I still give colourful tax planning advice?

Non-accountant tax professionals who work in "public practice" will be covered by the code, however, the standard does not strictly extend to tax advisors who are not governed by a professional body and not in 'public practice'. However, IESBA expects the new ethical code will influence the general behaviour and conduct of tax advisors more broadly, regardless of whether they are strictly subject to the new rules.

Time to brush up on your ethics?

Complementing the introduction of the new Standard is an increase in mandatory ethics training for CAANZ members from 2 to 6 hours per triennium from 1 July 2024. This is the perfect opportunity to brush up on your ethical obligations prior to the new Standard coming in next year.

Finally, as the new Standard demonstrates, the onus on accountants to take responsibility for ethical behaviour is increasing. Exactly what this looks like is yet to be seen, but we expect that once the Standard is incorporated into the New Zealand Code of Ethics, CAANZ and other accounting bodies may take disciplinary action for practitioners who breach the code, including the new Standard.

If you have any questions on the Standard, or would like assistance in strengthening your organisation's tax governance framework, please get in touch with your usual Deloitte advisor.

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Snapshot of recent developments

Tax legislation and policy announcements

Appeals to Taxation and Charities Review Authority

Changes to the Charities Act 2005, made via the Charities Amendment Act 2023 (No 34 of 2024), received Royal assent on 5 July 2023. The Amendment Act expanded the existing Taxation Review Authority to hear appeals under the Charities Act 2005 and become the Taxation and Charities Review Authority (the Authority). The new appeals provisions in the Charities Act commenced on 5 July 2024.

The Charities (Taxation and Charities Review Authorities — Appeals Process) Regulations 2024 (SL 2024/131) came into force on 5 July 2024. They set out procedural requirements in relation to appeals to the Authority under the Charities Act 2005.

DTA with Austria amended

On 1 August 2024, the Double Taxation Relief (Austria) Amendment Order 2024 (SL 2024/153) was notified in the NZ Gazette. The Order came into force on 29 August 2024 and amends the Double Taxation Relief (Austria) Order 2007 by adding a protocol agreed by the Governments of New Zealand and Austria on 12 September 2023.

The protocol amends the Agreement between New Zealand and the Republic of Austria with respect to taxes on income and on capital. The protocol is set out in new Schedule 2 of the principal Order.

DTA with Slovak Republic notified

On 1 August 2024, the Double Tax Agreements (Slovak Republic) Order 2024 (SL 2024/154) was notified in the NZ Gazette. The Order came into force on 29 August 2024 and gives effect to the agreement between New Zealand and the Slovak Republic for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance and protocol to the agreement.

Decrease in Petroleum or Engine Fuel Monitoring Levy

The Petroleum or Engine Fuel Monitoring Levy decreased on 1 July 2024 to 0.69 cents per litre from the existing rate of 0.72 cents per litre. The new levy rate applies from 1 July 2024 to 30 June 2025.

Tax and Welfare Analysis (TAWA) Model Methodology report

On 6 August 2024, Treasury published the Tax and Welfare Analysis (TAWA) Model Methodology report. TAWA is the Treasury's microsimulation model of the New Zealand personal tax and transfer system. It applies potential policy changes to individuals in its input data, and then scales up and aggregates the results so that they are representative of the New Zealand population. It is used extensively within Treasury and in external work related to tax and welfare policy analysis.

Companies Act 1993 to be reviewed

On 15 August 2024, the Minister for Commerce and Consumer Affairs proposed new rules in the Companies Act 1993 and related corporate governance legislation, including:

- Modernisation, simplification and digitisation
- Increase NZ Business Number use, function and uptake
- Insolvency law improvements
- Identifying directors and general partners

The changes will be done over two phases, phase one is the corporate governance reforms and phase two is a Law Commission review of director's duties and related issues of liability, penalties and offences, and enforcement.

Treasury: Joint Report Tax Policy Scorecard OIA release

On 15 August 2024, Treasury released the February Joint Report Tax Policy Scorecard Update as part of an Official Information Act release. The Tax Policy Scorecard (Scorecard) is a memorandum account that allows the fiscal impacts of tax policy changes to be offset against one another, rather than being managed through Budget allowances or the between-Budget contingency. The Scorecard's balance as of 29 February 2024 is $27.232 million. This decreased from the October 2023 balance of $52.232 million. This reduction has been caused by this year's changes to the 39% tax rate and the introduction of new rules for disposals of trading stock at below market value.

Inland Revenue statements and guidance

Inland Revenue: Enhanced tool to help with property tax rules

On 23 July 2024, Inland Revenue encouraged people to check the updated property tax decision tool. The tool helps to determine whether a property sale is taxable under any of the land taxing rules, including the bright-line test. It can be found on Inland Revenue's website at Buying and selling property and takes approximately 7 minutes to complete.

Inland Revenue said its next focus in the property area is speculators, those who frequently buy and sell property, to ensure they comply with the tax rules.

Inland Revenue: Income tax extension of time

On 23 July 2024, Inland Revenue provided an update on the enhancement to allow individuals and non-individuals to apply for an extension of time (EoT) through myIR. It is for taxpayers applying for an individual EoT, and not those eligible for an EoT as a client of a tax agent.

Inland Revenue: Newsletter subscription service

On 24 July 2024, Inland Revenue announced that starting in August it would email subscribers to Inland Revenue's newsletters and important updates to confirm their desire to continue receiving them.

Standard Practice Statement: Requests to change a balance date

On 30 July 2024, Inland Revenue issued SPS 24/01: Requests to change a balance date. This Standard Practice Statement explains how to apply for a change of balance date and how the Commissioner of Inland Revenue will use their discretion under section 38 of the Tax Administration Act 1994 to approve a change of balance date. It replaces SPS 18/02.

Paragraph [12] sets out situations where the Commissioner of Inland Revenue will agree to a change in balance date. Paragraph [16] sets out situations where the Commissioner of Inland Revenue will not agree to change a balance date.

Inland Revenue: Processing 2025 individual income tax early returns will resume by the end of 2024

On 30 July 2024, Inland Revenue provided an update on early IR3, IR3NR, and early automatic assessments which Inland Revenue have paused processing for the 2025 tax year (due to the new income tax thresholds). Inland Revenue will calculate the 2025 income tax returns using the annual composite tax rates for the 2025 income tax year.

Early returns can still be filed. But these will be held and processed by the end of the calendar year. Inland Revenue will notify when they start processing these early returns.

Interpretation statement: Employer obligations for employee share scheme benefits paid in cash

On 30 July 2024, Inland Revenue issued IS 24/05: Employer obligations for employee share scheme benefits paid in cash and an accompanying fact sheet. The Interpretation Statement explains an employer's PAYE, student loan and KiwiSaver obligations when an employee receives a benefit under an employee share scheme (ESS) that is paid in cash.

The Interpretation Statement sets out to answer two questions that arise when an employee receives a cash-settled ESS benefit:

1. Is the employer required to withhold tax (and student loan, if any) from the benefit (on the basis that a cash benefit is an ordinary extra pay) or does the employer have the choice to withhold as they do if the benefit is provided in shares?
2. Does an employer have to withhold ACC earners' levy or have KiwiSaver obligations?

Interpretation statement: PAYE – How an employer funds the tax cost on an employee share scheme benefit

On 30 July 2024, Inland Revenue issued IS 24/06: PAYE – How an employer funds the tax cost on an employee share scheme benefit. The Interpretation Statement explains an employer's withholding and reporting obligations related to PAYE, student loans and KiwiSaver if an employer wants to fund the cost of tax (and student loan, if applicable) on an employee share scheme (ESS) benefit provided in shares.

Commissioner's Statement: Determining the "market value" of shares that an employee receives under an employee share scheme

On 31 July 2024, Inland Revenue issued CS 24/01: Determining the "market value" of shares that an employee receives under an employee share scheme (EES). The statement provides guidance on working out the market value of a share benefit that employees receive under an ESS. It updates and replaces the Commissioner's Statement CS 17/01.

Foreign investment funds: deemed rate of return for 2023-24 income year

On 7 August 2024, Inland Revenue set the deemed rate of return for taxing interests in FIFs at 8.63% for the 2023-24 year. This is up from the previous year's rate of 8.15%.

Standard practice statement: Extension of time applications from customers without tax agents

On 8 August 2024, Inland Revenue published SPS 24/02: Extension of time applications from customers without tax agents. The Standard Practice Statement sets out how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts. This replaces SPS 09/03.

Draft interpretation statement: Look-through companies and disposal of residential land under the bright-line tests

On 12 August 2024, Inland Revenue published the draft Interpretation Statement PUB00455: Look-through companies and disposal of residential land under the bright-line test and accompanying fact sheet which includes a summary table. The Interpretation Statement explains how the bright-line rules (including main home exclusion and rollover relief) apply in various situations involving residential land and transfers involving look through companies. This interpretation statement applies only to transfers on or after 1 July 2024.

Submissions close on 23 September 2024.

Question we've been asked: Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the compulsory zero-rating rules?

On 15 August 2024, Inland Revenue issued QB 24/05: Do supplies of standing timber and other unsevered crops wholly or partly consist of land for the compulsory zero-rating rules? The Question we've been asked provides further guidance on the meaning of "land" for the purposes of the compulsory zero-rating rules. It supplements an earlier Question we've been asked, QB 20/04, and interpretation statement 17/08.

Interpretation statement: Deductions for parties to employee share schemes

On 22 August 2024, Inland Revenue published IS 24/07: Deductions for parties to employee share schemes. The interpretation statement considers what deductions employers can claim for income tax in relation to employee share schemes (ESSs). It explains the need to satisfy the general permission and when the capital limitation might apply.

Consultation: Commissioner of Inland Revenue's search and information gathering powers

On 26 August 2024, Inland Revenue published two new draft operational statements for the Commissioner of Inland Revenue's powers under section 17 of the Tax Administration Act 1994. The closing date for each consultation item is 18 October 2024.

ED0258: The Commissioner of Inland Revenue's search powers

This draft sets out the Commissioner of Inland Revenue's view of the law and procedures the Commissioner of Inland Revenue will generally follow when exercising the Commissioner of Inland Revenue's search powers under sections 17, 17C and 17D of the Tax Administration Act 1994 and the Search and Surveillance Act 2012 (the SSA). This will replace OS 13/01 and is supplemented by SPS 10/02 Imaging of electronic storage media.

ED0260: Section 17B Notices

This draft outlines the procedures the Commissioner of Inland Revenue will generally follow when issuing notices under s 17B of the Tax Administration Act 1994. This operating statement replaces OS 13/02. Section 17B empowers the Commissioner of Inland Revenue to require any person to provide any information and produce any documents considered necessary or relevant for any purpose relating to the administration or enforcement of an Inland Revenue Act or a function lawfully confirmed on the Commissioner of Inland Revenue. Section 17B allows the Commissioner of Inland Revenue to require information directly from taxpayers or third parties.

Technical decision summary: GST – payment for participation in religious practice (adjudication)

On 30 July 2024, Inland Revenue issued TDS 24/15: GST – payment for participation in religious practice. The TCO decided that payments received in religious practices were consideration for the supply of services (being participation in the religious practice) and therefore liable for GST under section 8 of the GST Act 1985.

Technical decision summary: Look-through company election (private ruling)

On 8 August 2024, Inland Revenue issued TDS 24/16: Look-through company election. It relates to a company electing to be a look-through company and the liquidation of a wholly owned subsidiary. Amongst other issues, the TCO determined there were three look-through counted owners and that income distributions provided to a beneficiary company and a charity prior to the look-through election, and any further distributions made to that charity, would not prevent the applicant from satisfying the definition of "look-through company."

Technical decision summary: Deductibility of bonus payments (private ruling)

On 14 August 2024, TCO issued TDS 24/17: Deductibility of bonus payments. The TCO concluded that bonuses issued to workers funded by issuing shares to shareholders were deductible and no limitation applied as the bonuses were made in respect of services directly related to the companies' income-earning process, were not made in connection with the cessation of a business, and were not related to establishing, acquiring or enlarging the permanent structure of the business.

Tax Information Bulletin Vol 36, No 7 (August 2024)

On 1 August 2024, Inland Revenue issued TIB Vol 36, No 7 (August 2024). It includes:

- Taxation (Budget Measures) Act 2024
- FDR 2024/02: A type of attributing interest in a foreign investment fund for which a person may not use the fair dividend rate method (Colchester Multi-Strategy Global Bond Fund PLC – The Colchester Global Green Bond Enhanced Currency Fund - NZD Hedged Accumulation Class Z Shares)
- DEP112: Tax Depreciation Rate for metal (scrap) recovery plant
- IS 24/04: Trustee of employee share scheme trust treated as nominee
- QB 24/03: Fringe benefit tax - employee share loans and associates
- QB 24/04: When is a subdivision project a taxable activity for GST purposes?
- TDS 24/13: GST - supply of accommodation
- TDS 24/14: Interest free loan and dividends

Deloitte Global Perspectives

India Budget 2024: Amendments impact non-residents and dispute resolution scheme

In July, the Indian Budget was released. Notable changes affecting non-residents include:

- Corporate tax rate on foreign companies reduced from 40% to 35% to attract foreign direct investment. This will likely benefit non-residents undertaking business in India through a permanent establishment/branch office/project office.
- The rules and regulations for foreign direct investment will be simplified to facilitate / prioritise foreign direct investments.
  - The export duration for aircraft and vessels imported into India for maintenance, repair and overhauling has been extended from 6 months to 1 year, with an additional option of 1 year.
  - Further, the duty-free re-import period for goods exported from India under warranty has been extended from 3 to 5 years, with an option for a further 2-year extension.
- A non-resident with a liaison office in India must prepare and deliver a statement in respect of its activities in a financial year to the Assessing Officer within 60 days from the end of such financial year. Now, the period for filing such a statement shall be prescribed in rules.
- Changes to capital gain tax rates for certain areas.

Another measure introduced in the Indian Budget is a Dispute Resolution Scheme (Vivid se Vishwas Scheme, 2024). The scheme provides taxpayers with a one-time option to close pending litigations by offering incentives such as waiver of interest and penalty.

OECD updates

G20 Ministerial Declaration on International Tax Co-operation

On 25-26 July 2024 the third G20 Finance Ministers and Central Bank Governors meeting was held, culminating in an agreed Communique and the G20 Ministerial Declaration on International Tax Co-operation.

It was the first time that G20 members have agreed a Tax Declaration, reflecting the achievements of international tax cooperation to date, acknowledging that the OECD/G20 Inclusive Framework on BEPS "has demonstrated the potential of international tax co-operation over the past decade" and recognising the Two-Pillar Solution as a "resounding success of international taxation co-operation". The OECD Secretary-General commended the G20 members on this declaration.

OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors

On 25 July 2024, the OECD released the Secretary-general's tax report to G20 Finance Ministers and Central Bank Governors. The report describes some of the key developments in international tax reform since February 2024, including on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and on the implementation of the base erosion and profit shifting (BEPS) minimum standards. It also covers progress made in tax transparency and on tax and development, tax administration and consumption taxes, as well as dedicated segments on tax and inequality and tax policy developments. This report was prepared by the OECD ahead of the third meeting of G20 Finance Ministers and Central Bank Governors held under the Brazilian G20 Presidency from 25-26 July 2024, in Rio de Janeiro.

Taxation and Inequality: OECD Report to G20 Finance Ministers and Central Bank Governors

On 25 July 2024, the OECD released its report on the role of tax systems in addressing inequality. It explores how tax systems can mitigate or exacerbate inequality with a focus on the distribution of income and wealth and identifies scope for potential reform. It zooms in on the specific tax policy and compliance challenges associated with taxing high-net-worth individuals (HNWIs), some of which have a cross-border dimension.

Strengthening International Tax Transparency on Real Estate – From Concept to Reality

On 25 July 2024, the OECD released its report setting out the building blocks to increase transparency on real estate. This follows a 2023 OECD report which made the case for enhanced tax transparency on real estate, and which set out a number of conceptual solutions to improve the existing architecture on a voluntary basis.

Bringing Tax Transparency to Crypto-Assets – An Update

On 25 July 2024, the OECD released its update on the work to implement the recently agreed OECD/G20 Crypto-Asset Reporting Framework (CARF), which extends the automatic exchange of information for tax purposes to the crypto-asset sector. This includes an update on the work of the Global Forum's recently established dedicated CARF Group to develop the Global Forum's commitment process in time for its delivery this year, to ensure that all relevant jurisdictions implement the CARF according to agreed timelines to deliver an effective CARF based on a level playing field. In this regard it is noted that 58 Global Forum members have already announced their intention to commence exchanges under the CARF in 2027.

Beneficial Ownership and Tax Transparency – Implementation and Remaining Challenges

On 25 July 2024, the OECD released its report examining the critical role of beneficial ownership transparency in combating tax evasion and illicit financial flows. With reference to the G20 mandates in this area, the report delves into the progress made in implementing the beneficial ownership requirements set out in the standards on transparency and exchange of information for tax purposes. Offering a global perspective, the report assesses the current state of implementation across jurisdictions, analyses the peer review results on effective implementation for Exchange of Information on Request, together with best practices for strengthening beneficial ownership transparency in the global tax landscape. The report also highlights capacity building activities to assist jurisdictions in building robust beneficial ownership frameworks and concludes with possible future directions.

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

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