Deloitte.

Tax Alert

February 2025

Economic Growth: Tax Edition

Page 2

Economic Growth: Tax Edition

By Robyn Walker

The Prime Minister kicked off the year with a statement that 2025 will bring a "relentless focus on economic growth and productivity". Rt Hon Christopher Luxon, in his opening Statement to Parliament for the year has set out a vision where "the focus will be to say a lot less no and lot more yes". While the Statement did not mention any new tax initiatives, the Tax and Social Policy Work Programme released in late 2024 was made up of six pillars, including "economic growth and productivity".

Some of the items on the economic growth and productivity work programme include:

- Improvements to the employee share scheme regime
- Exploring compliance cost reductions, including improving tax compliance for small businesses
- Fringe Benefit Tax review
- Reviewing thin capitalisation settings for infrastructure
- Reviewing the Foreign Investment Fund (FIF) tax rules

In late 2024, Inland Revenue released an issues paper focusing on improvements to aspects of the FIF rules which have been deterring migrants from coming to or staying in New Zealand. Since its release there have been regular articles in the media highlighting real life examples of wealthy migrants considering leaving due to the punitive results that can arise from levying tax on unreleased gains rather than matching cashflows. Consultation is now closed, but with migrants (and the economic growth that can surround them) actively eyeing an exit from New Zealand it's hoped that Budget 2025 will bring a solution to this problem.

A connected issue relates to Employee Share Schemes (ESS), where taxes which don't match cashflow have once again come into the spotlight.

This issues paper revisits a proposal which first surfaced in 2017 and tests the waters on deferring the tax point for shares issued under an ESS by start-up companies. Perhaps in 2025 there will be a lot less no and a lot more yes to this proposal.

With February already upon us, it's full swing into the decision phase for what should be included in Budget 2025. This typically means that there is a flurry of activity to test last minute ideas, but then consultation is essentially locked down with decisions made and work being done under the veil of "budget secrecy". All will be revealed when the Budget is released on Thursday 22 May.

Despite the Budget process inevitably requiring secrecy, it has become a New Zealand tradition that many hints are dropped, perhaps to test reactions prior to a final decision. We reported in our December 2024 Tax Alert that Budget 2025 will include some type of tax announcement for the charitable sector. More recently both the Prime Minister and Minister of Finance, Hon Nicola Willis, have given a glimmer of hope to business owners that a company tax rate reduction may be on the agenda. This has prompted a flurry of reaction, generally either strongly in favour or strongly against. The company tax rate has not been touched since Budget 2010, so kicking the tyres on the costs and benefits of such a move is a welcome endeavour.

Also relevant is that Budget 2025 falls in the middle of the election cycle. This is the critical year for the Government to be seen to be getting the job done before electioneering restarts in 2026. To that end, if a headline company tax rate cut doesn't make the Budget, we might still see tax announcements which may "move the needle" in other ways. The work programme includes compliance cost reduction work (we'd put fringe benefit tax in that camp also), and it's understood that a laundry list of small but meaningful changes have been submitted to Inland Revenue to consider as part of these work streams. While a tax cut is always welcome, many business owners may also be happy with rules which streamline and simplify tax compliance, giving them the gift of time to reinvest into their businesses.

Tax Alert will continue to cover all tax announcements and Deloitte will be bringing full coverage of Budget 2025 on Thursday 22 May.

For more information contact your usual Deloitte advisor.

Contact

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

How's the fit? Reducing the tax barrier for migrants and returning expats

By Joe Sothcott, Amy Sexton and Sam Mathews

The Government is focused on encouraging economic growth and is very focused on investment in the IT and technology sectors in New Zealand. One way to do this is to attract migrants and expats who are already working or investing in these sectors overseas to move to (or back to) New Zealand. As part of this focus the Policy team at Inland Revenue has published an officials' issues paper *Effect of the FIF rules on immigration: proposals for amendments.* The proposals in the paper are a response to concerns of migrants and their advisors that the Foreign Investment Fund (FIF) rules may be a factor in discouraging non-residents who hold interests in foreign companies from coming to and staying in New Zealand.

But what are the FIF rules?
One of the aims of the international tax regime (which includes the Controlled Foreign Company (CFC) rules and the FIF rules) is to tax certain amounts of overseas income in New Zealand that is earned by New Zealand tax residents. The rules determine what is taxed in New Zealand, what amount is taxed and when it is taxed.

New Zealand tax residents (that are not transitional residents) are prima facie subject to the FIF rules if they have an interest (e.g. shares) in a foreign company, the interest is not enough to "control" the company (in which case the CFC rules would apply instead) and none of the "FIF exemptions" apply. There are a number of FIF exemptions, with the most common being where the cost of the shares is NZD50,000 or less, or where the foreign company is listed on the ASX (Australian Stock Exchange).

Taxpayers subject to the FIF rules have a number of different methods to calculate their FIF income, which is then included in their New Zealand tax return. The availability of a particular FIF method depends on the taxpayer and the nature of the FIF interest. The most common FIF methods are fair dividend rate (FDR), cost, and comparative value (CV).

Taxing deemed income vs actual dividends and gains
A commonly discussed issue with the FIF rules is that methods like FDR and cost calculate the tax on *deemed income.* Instead of taxing actual dividends received and any gains when the shares are sold, the FIF rules often require taxpayers to pay tax on this deemed income. As a tax liability can arise regardless of whether a dividend has been received or the shares have been sold, there can be cashflow problems for the taxpayer in paying the tax liability.

Deemed FIF income may also not reflect the reality of how the share's value may have changed in the year. Under the FDR and cost methods, taxable income is calculated as 5% of either the market value at the beginning of the year (FDR) or the cost of acquiring the shares (cost, with the cost base uplifted by 5% every year). This deemed 5% income is supposed to be a "typical" share's average annual return and approximate the taxable income that would arise if the taxpayer invested into a New Zealand company instead of the foreign company.

Depending on actual dividends received and the actual movement in the value of the share, the deemed 5% return could either be favourable or unfavourable for taxpayers (or sometimes, just right!).

The main reason for taxing FIF interests in this way is that many foreign companies have no/low dividend yields (think US technology stocks) and without a capital gains tax no tax would otherwise be paid in New Zealand on the investment. Taxing a deemed return is a relatively unique way of taxing offshore investments, so the rules can be confusing for many potential migrants.

How the FIF rules can deter migrants

The FIF rules can create problems for some types of investments, particularly illiquid assets (investments that cannot be sold easily for cash, which is the case for many unlisted shares). Unlike listed shares, these investments cannot be sold easily to pay the tax on the deemed income.

Another common issue is that because the FIF rules impose tax on deemed income rather than when the investment has been sold (in some cases well before the sale), tax paid on FIF income in New Zealand may not be able to be used as a foreign tax credit to offset foreign taxes due on the actual sale of the investment (typically, overseas capital gain taxes), resulting in double taxation.

The third key issue is that a number of the FIF methods require a valuation of the shares when the taxpayer becomes a New Zealand tax resident and subject to the FIF rules. For publicly traded investments (like listed shares) this should be simple, but for other types of privately held investments this can be quite difficult, costly, or even impossible.

The potential options

To help reduce the tax barriers for migrants, Inland Revenue suggests two potential alternative FIF calculation methods for migrants that meet certain criteria:

Revenue account method – Taxing FIF interests on revenue account would mean that each year tax would only apply to dividends received and any ***actual*** gain in value of the investments when they are sold. It is suggested by Inland Revenue that this method would only apply to a migrant's non-listed foreign shares at the time of migration to New Zealand, and the current FIF rules would apply to all other FIF interests held by the migrant.

Inland Revenue recognises that there is a risk that a migrant could still face double taxation on their FIF interests even after becoming a New Zealand tax resident and so there may be a case for this method to apply to all FIF interests (including those interest acquired after becoming a New Zealand tax resident).

Deferral method – A migrant's FIF interests would be taxed upon sale (i.e. on realisation), based on a deemed 5% per annum increase in value from the date of their migration, with an additional interest charged to compensate Inland Revenue for the time value in money lost due to the deferral. This is similar to how withdrawals from foreign superannuation schemes are taxed.

Inland Revenue also recommends an "exit tax" for whichever option is chosen. This would be a tax on unrealised gains (increases in share value where the shares have not been sold) when a migrant ceases to be a New Zealand tax resident.

Deloitte perspective

We have lots of first-hand experience of the FIF rules putting off new migrants and returning New Zealanders, so we welcome the proposals in the issues paper as a step in the right direction. However, we think the proposed criteria to access the rules is unnecessarily restrictive and the rules as proposed may not be overly attractive to the target group. While we appreciate the need to consider any fiscal and integrity impacts, New Zealand needs to remove the barriers (of which the current FIF rules are just one) to attract these migrants and expats to New Zealand where they can have a positive impact on our economy and country.

In our experience there are also a number of other features of New Zealand's tax system that can deter new migrants and expats, such as the financial arrangement rules (which generally tax certain investments on an accrued unrealised NZD basis), the CFC rules and mismatches in the way New Zealand treats an investment vs the foreign country (e.g. entities that are flow-through for tax purposes in the US such as limited liability companies and S Corporations, but are not flow-through for New Zealand tax purposes). Without some tweaks to these rules, in addition to the careful and appropriate design of the tweaks to the FIF rules proposed in the issues paper, there is a risk that the objective of attracting these people to live, work and invest in New Zealand will not be achieved.

Finally, we would welcome additional changes to the FIF rules that are mentioned in the issues paper, including increasing the current NZD50,000 FIF de minimis threshold referred to above (which has not been increased since 2000) and expanding access to the attributable FIF income method (which is the FIF method that applies the active income exemption to certain FIF interests). These changes would also help reduce the barriers for migrants and expats with interests in foreign companies.

The issues paper had a limited consultation period which has now closed so it will be interesting to see the results of this consultation in due course.

If you have any questions or would like to discuss how the international tax rules may apply to your overseas investments, please contact your usual Deloitte advisor.

Contact

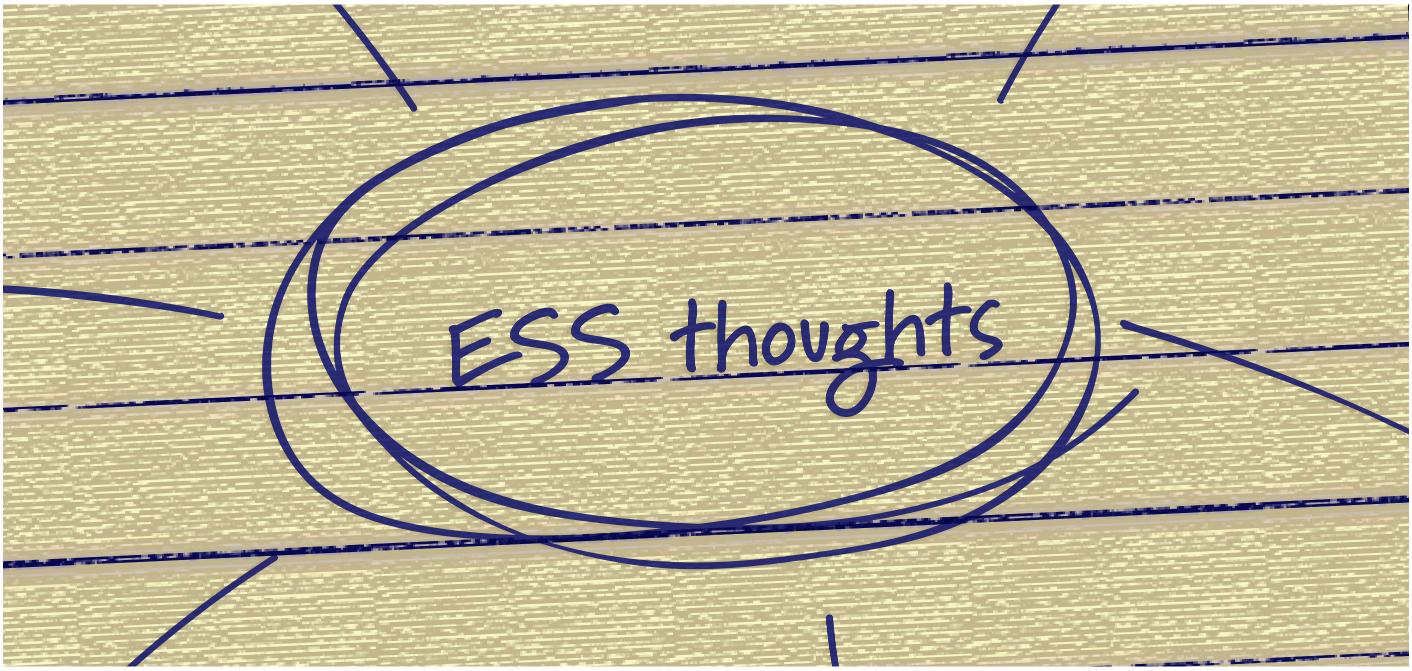
Joe Sothcott
Consultant
Tel: +64 9 975 8500
Email: jsothcott@deloitte.co.nz

Amy Sexton
Associate Director
Tel: +64 9 953 6012
Email: asexton@deloitte.co.nz

Sam Mathews
Partner
Tel: +64 9 303 0746
Email: smathews@deloitte.co.nz

ESS: Speak now or forever hold your peace

By Robyn Walker



Start-up companies take note: if you have thoughts on the operation of tax rules for employee shares schemes (ESS) now is the time to have your say.

Consultation has begun on a proposal to allow a deferral of the taxing point of awards under employee shares schemes operated by start-up companies. The proposal comes with a bit of a serve from Inland Revenue officials, saying the proposal was originally consulted on in May 2017 but there was "relatively little reaction to the paper". It is possibly unsurprising as start-up founders are rarely known to spend downtime reading tax policy papers, while the traditional tax submitters were bogged down in analysing and submitting on 191 pages of new tax legislation in the form of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill (which featured a raft of complex other changes to the ESS rules), and reviewing new proposals to reform the taxation of feasibility expenditure (which was announced as part of Budget 2017). So it may be understandable that the reaction was not overwhelming – timing is everything if you want people to have the bandwidth to respond.

However, a lesson that can be learned from this saga is to ensure that people make their voices heard on tax policy matters – whether that is a short note of support, or more detailed comment and critique. Often the emphasis is put on submitting against proposals, with not enough emphasis put on proactively supporting proposals. For the start-up community, there is now a (rare) second chance – so speak now (or by 15 March 2025) or forever hold your peace on this topic.

What is proposed?

In a nutshell, an ESS can be a popular tool for start-ups as they can build strong connections between the company and its employees and can also incentivise and remunerate the employees with a low cash-cost for the business (which may be cash-constrained during the start-up phase). However, for most ESS's the tax rules work to ensure there is a tax bill for employees on the difference between the value of shares received and the amount paid for them. When the shares vest to the employee, this is known as a share scheme taxing date. For start-ups, an issue exists that the shares in the company may be difficult to value and illiquid. Compared with listed companies where there is a clear market value and employees have the option to sell some shares to fund the resulting tax bill, start-up employees may not have this luxury. The outcome is that an ESS is a less effective tool for this part of the market.

The Issues Paper is proposing an alternative tax option, whereby the taxing point will be deferred. Sounds great, but the paper also makes it clear it's not intended to provide a "tax concession". Accordingly, there is a "cost" to the employee, being that they become taxable on any further appreciation in share value between the current taxing date and the deferred date.

This amount could otherwise have been a tax-free capital gain for the employee (in most cases). The employer is also not entitled to any tax deductions until the deferred taxing date has been reached.

For start-ups using the Research and Development Loss Tax Credit rules, the Issues Paper helpfully recommends amending these rules to include ESS costs as part of labour expenditure for the purposes of calculating eligibility under those rules.

Who does it apply to?

The Issues Paper is targeted at "start-ups" and consequently it is proposed to legislatively define this term. Australia has a definition and it's proposed to piggy-back off this approach. It's proposed the deferral rule would be limited to unlisted businesses of a certain size and age. The Issues Paper puts forward NZ$15 million as the turnover threshold and remains silent on age (Australia uses AU$50 million and 10 years).

Would it be compulsory?

The paper seeks comment on whether the regime should be compulsory or elective, and whether any election should be made by the employer or the employee. Given that the issue is ultimately driven by the ability of the employee to fund tax liabilities, it would seem logical that the employee should have a say in whether the rules apply to them (if they can afford to fund the tax upfront, that may be more beneficial to them).

How long is the deferral?

The problem being solved with these proposals is valuation and liquidity, so it stands to reason that these problems are solved when the shares are actually sold or able to be sold (for example the company undertakes an initial public offering (IPO)). However, the paper also highlights that this won't work in all circumstances and therefore the taxing point should also be triggered:

- When the shares are cancelled, including due to the company being struck off (not uncommon with start-ups, however the market value of the shares is likely to be very low or nil);
- When the employee ceases employment with the employer or ceases to be New Zealand tax resident;
- At a sunset date, proposed to be seven years (note, Australia uses 15 years).

These later two scenarios go back to square one as far as ignoring the valuation and cashflow problems the proposal is supposed to solve. Part of the drive for tax arising when employment ends is the proposal that the employer is not entitled to a deduction until the employee is taxed. If they are no longer employed it makes it more difficult for the employer to obtain this critical information. And, while there is some logic to try to tax individuals while they are tax resident, this proposal may also be problematic for employees who continue employment but move overseas as part of business expansion.

Speak now or forever hold your peace

As mentioned above, it may be necessary to get a critical mass of support for change in order for these changes to proceed. Start-ups and other interested parties should take the time to make their views known to officials. The process to make a submission is straight forward and outlined in the Issues Paper. If you'd like to know more about the process of making a submission please speak to your usual Deloitte advisor.

Contact

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

Asset identification guidance finalised - so what does make a computer, a computer?

By Hiran Patel and Navroz Singh

Back in July 2024, Inland Revenue released for consultation a draft interpretation statement on how to identify the relevant item of property when applying the depreciation rules. Our August 2024 Tax Alert article reviewed the consultation document. The Interpretation statement has now been finalised by Inland Revenue and the final document provides useful guidance (with a number of helpful examples) for taxpayers when identifying the depreciation treatment of those tricker assets, like those pesky computer mice (or is it mouses?).

As a reminder, a relevant item of property must be identified to determine if it is a depreciable item and, if so, the applicable depreciation method and rate, from which the amount of depreciation loss is calculated. In some cases, this consideration determines if the item of property meets the low value asset threshold to qualify for an immediate deduction in the year of acquisition.

As such, when a new asset is acquired, the first consideration should be if the asset is its own separate asset or if it forms part of a larger asset. The focus is on identifying a physical thing that satisfies a particular notion. That is, whether the asset is something that is an entirety by itself, and not a subsidiary part of anything else.

So, what is new?

In the final version of the interpretation statement, Inland Revenue have provided further guidance on relevant considerations for when an item of property "is part of an integrated system". In particular, Inland Revenue have emphasised that this is only one of a number of factors to be considered and is not solely determinative in the analysis of what is an item of property for depreciation purposes.

This clarification highlights the interaction of certain components of an asset, and how these components interact can sometimes dictate whether there is one or multiple assets. In the context of the computer example discussed in our previous article, Inland Revenue have clarified that there might be circumstances arising that would indicate that the integrated system is less important in identifying the relevant item of property.

The guidance discusses a situation where a touchscreen laptop is purchased as part of a package with a keyboard and mouse as it was cost-effective (Example 3). In this case, if the keyboard and mouse were going to be used separately (and potentially with other computers), there is no integrated system due to the distinctiveness and completeness of each individual item. On this basis, there is less weight given to the integrated system test.

Interestingly, in this example, if an additional screen is purchased, the guidance indicates that this would be treated as a cost to the package (as it is an improvement to the asset), rather than as a separate item of property (and likely prevent an immediate write-off under the low value asset rules). This demonstrates the fine balance in determining what is the relevant item of property.

Another example in the guidance (Example 1) discusses whether a utility vehicle and trailer are separate items of property. In this example the trailer allows the vehicle to perform a specialist purpose, suggesting that the two are separate items of property, despite the trailer not being able to perform its function to transport items without the vehicle.

Low value assets

Our August 2004 article highlighted the complexity around the application of s EE 38 of the Income Tax Act 2007 which gives the ability to obtain an immediate write-off for low value assets (the low value asset threshold being $1,000, which has not changed since 2021). The key issue being that if something forms part of another asset, the low value asset write-off will not apply even if the item costs less than $1,000. Taxpayers will need to continue to document their approach to implementing s EE 38 when acquiring new items of property (for example, what checks are taken to determine whether an item is part of a larger asset).

While Inland Revenue have made some clarifications and expanded examples in the final document, it remains clear that whether an item of property should be capitalised or immediately expensed is not a decision that can be made solely on the monetary value of the asset. Given this complexity contact your usual Deloitte advisor with any depreciation questions you may have.

Contact

Hiran Patel
Director
Tel: +64 4 831 2432
Email: hiranpatel@deloitte.co.nz

Navroz Singh
Senior Consultant
Tel: +64 4 831 2434
Email: navrsingh@deloitte.co.nz

When do I need to pay tax on my share investments? Inland Revenue's final guidance (almost) answers all the questions.

By Joe Sothcott and Amy Sexton

As we wound down for the summer holidays last year, Inland Revenue delivered an early Christmas present when it published the finalised share investment interpretation statement and two handy fact sheets.

The final guidance document has had a few changes to the draft guidance we discussed in our September 2024 Tax Alert article. The advent of online platforms which makes share investment easy has increased the proportion of the population who are investing in shares. The new guidance should be a useful reference point for investors, particularly for those just beginning to invest in shares who don't realise that buying and selling shares can have tax implications.

First, a recap of the long-standing share investment rules:

An individual investing in the shares of both New Zealand and foreign companies (when not subject to the Foreign Investment Fund or Controlled Foreign Company rules) has taxable income in two circumstances:

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

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 company dividends, tax is typically withheld and paid on behalf of the investor. Taxpayers should still check what has been pre-populated in their tax return in case they need to 'top-up' the tax withheld. There may be a tax liability in the tax return if tax has not been withheld or the amount withheld (when combined with imputation credits) is less than the taxpayers tax liability in relation to the dividend.

For foreign company dividends, tax is usually withheld by the other country, and occasionally, New Zealand tax is withheld (depending on the investment platform). A tax credit can be claimed for any New Zealand tax withheld, and a foreign tax credit may be available for foreign tax withheld. The rules for foreign dividends and foreign tax credits can be difficult and we recommend seeking advice if you are unsure.

Selling shares

A gain from the sale of shares is taxable in three circumstances:

1. If the investor is in the business of share dealing.
2. If the acquired shares are part of a profit-making undertaking or scheme.
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.

In our September 2024 article, we cover these three scenarios in greater detail. However, what most investors need to be aware of is circumstance three. If ***at the time*** the shares were purchased the ***dominant purpose*** for purchasing the sales was to later dispose of them (by sale or otherwise), any gain on the share sale will be taxable.

Factors that Inland Revenue consider relevant in establishing if there is a dominant purpose to dispose 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.

There are no strict brightline tests to determine dominant purpose, but situations where shares are held for only a short time could be taxable. Another common disposal situation that would be taxable would be when shares have been purchased to sell later to fund a specific goal (like a house deposit).

Examples of when disposal will not be taxable would be if the shares were acquired with the dominant purpose of:

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

Taxpayers should remember:

- Whilst a taxpayer may have several purposes (or no particular purpose at all) when buying shares, the onus is on the taxpayer to prove that the disposal of the shares was not the dominant purpose of acquiring the shares.
- Investors should keep recordings of the purpose of their purchases and keep shares purchased for different reasons in separate accounts.
- If share income is taxable, deductions can be claimed for the cost of acquiring the shares and other related costs like platform or broker fees. If the cost of acquiring the shares is more than the sale price, the loss can be claimed if the shares were purchased with the dominant purpose of disposal or as part of a share dealing business.

What has changed from the draft guidance?

Most notable is not what has been added but rather what has been removed. The final guidance document has removed two sections on share lending and foreign currency accounts. These are two complex areas of tax that warrant guidance documents of their own. As such, we can see why Inland Revenue have chosen to remove them to avoid confusing readers.

A flow diagram has been added to assist with determining which tax rules may apply to individual share investors.

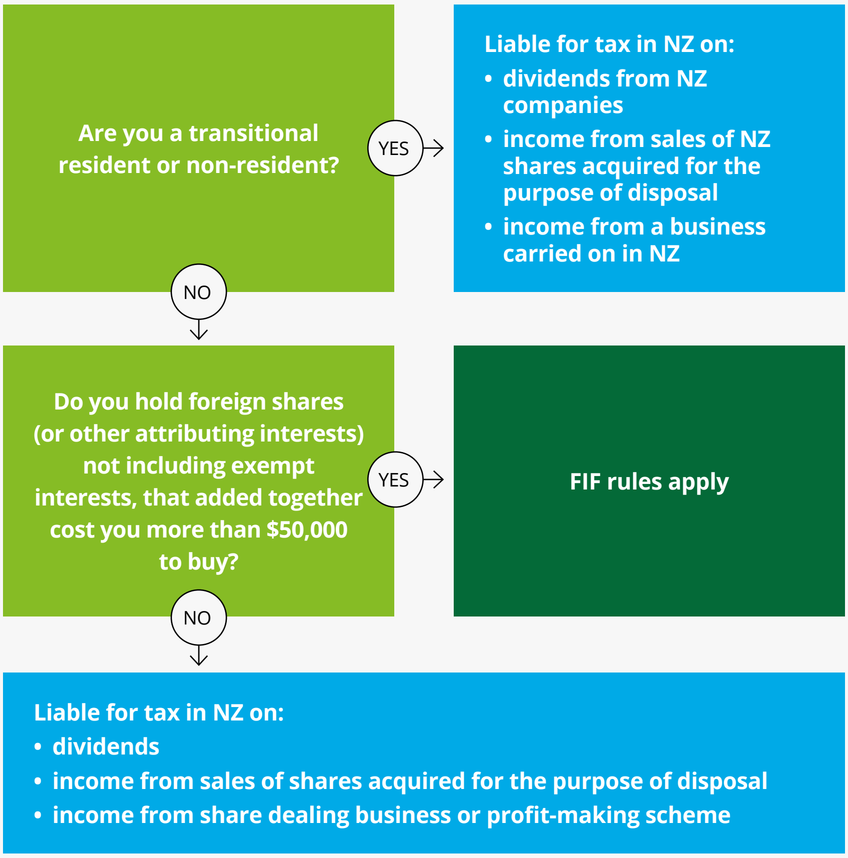
One of the more useful additions is the new section on the interaction between share sales and investment plans. Investment plans are strategies an investor uses when choosing where to invest their money. These plans are based on each investor's personal goals and can consider things such as investment objectives, risk appetite, and types of investment. These plans sometimes include asset allocations for each class, expressed as a percentage of the overall portfolio or risk limits (e.g. an investor might choose to allocate 10% of their total portfolio to bonds).

To ensure the investment plan is stuck to in situations where one type of asset increases or decreases in value, assets can be reallocated. A share sale in these situations may not be taxable when there is a long-term investment plan.

It is important to note that this rule does not apply to the portfolio but to the purchase and sale of individual shares. So any shares within an investment plan purchased with the dominant purpose of sale remain taxable. However, sales to rebalance a portfolio to align with an investment plan's asset allocation or risk tolerance will generally not be taxable. As with all things tax, this is fact specific.

The final guidance applies to New Zealand tax resident individuals who invest in shares. It does not apply to investors who acquire interests in managed funds, KiwiSaver or portfolio investment entities.

If you have any questions or would like assistance with the tax obligations associated with your share portfolio, please contact your usual Deloitte advisor.



Contact

Joe Sothcott
Consultant
Tel: +64 9 975 8500
Email: jsothcott@deloitte.co.nz

Amy Sexton
Associate Director
Tel: +64 9 953 6012
Email: asexton@deloitte.co.nz

UOMI payments just got cheaper. Here's why...

By Joe Sothcott and Veronica Harley

The use-of-money interest (UOMI) rates have recently dropped.

The new rates apply to over and under payments of tax with effect from 16 January 2025. In this article we explain why UOMI is charged by Inland Revenue, how the rates are set and consider if they might reduce further this year. We also take a look at tax pooling, an option that can help reduce UOMI risk.

What is UOMI?

UOMI is interest charged by Inland Revenue on underpaid tax or late payments. It is also payable by Inland Revenue when tax is overpaid by taxpayers. Despite being levied on a range of taxes; it is most often encountered when paying provisional tax and as a part of tax disputes and return reassessments.

Whilst UOMI may be levied in addition to penalties, it is not itself a penalty and therefore, UOMI paid is tax deductible, while UOMI received is income.

The underpayment rate is set above market rates to encourage taxpayers to pay their taxes on time and compensate the government for not receiving the payment when it was due. Meanwhile, the overpayment rate is deliberately set below market rates as it is intended to be compensation and not a return on investment. Inland Revenue does not want to be seen as an alternative to a bank.

What are the rates and how are they set

Having seen three changes in 2023 to the UOMI rates, there was a hiatus in 2024 with no change. But with effect from 16 January 2025, the new rates are:

- Underpayment: 10.88%
- Overpayment: 4.30%

These are very marginal changes. The underpayment rate is down a miserly 3 basis points from 10.91%, and the overpayment rate is down 37 basis points from 4.67%.

Some may be wondering the point of this change. Since the last UOMI rates were set, inflation has eased, and there have been three cuts to the OCR of 125 basis points (5.5% to 4.25%). But it's important to remember these rates are set by statue.

Here's how it works:

The methodology for calculating rates is prescribed in a regulation. The underpayment rate is set as the Reserve Bank's floating first mortgage rate for new customers in the housing market, plus 2.5%. The overpayment rate is either 0% or the Reserve Bank's 90-day bill rate minus 1%, whichever is higher.

The rates must change when either:

1. The Reserve Bank's 90-day bank bill rate or the floating first mortgage new customer housing rate moves by 1% or more from the figures used to calculate the last rate change; or
2. One of these indexes moves by 0.2% or more, and the UOMI rates have not been adjusted in the last 12 months.

The effective date of an adjustment to UOMI rates will typically be the day after the following standard method provisional tax payment date. The latest rates effective date of 16 January 2025 is the day following the second instalment of provisional tax due on 15 January for a standard balance date.

Given how the methodology works, another change in rates is on the horizon. The latest UOMI rates are based on data from August. Since then, the 90-day bank rate has dropped by more than 100 basis points. The floating first mortgage new customer housing rate has also dropped 99 basis points from 8.38% to 7.39%, meaning it is only one basis point away itself. Regardless, because the 90-day bank rate has changed by more than 1%, another change to the UOMI rates looks to have been triggered, which we expect to be from 8 May 2025.

Managing UOMI

Most taxpayers' experience with UOMI will be when paying provisional tax. Having a general idea of how the provisional tax rules operate can help minimise unwanted UOMI exposure.

Most taxpayers use the "standard method" when calculating how much provisional tax they must pay. The standard method is generally based on the residual income tax from the previous year (or the year prior, depending whether the latest tax return has been filed), and generally payable in three instalments.

If the residual income tax is under $60,000 and the taxpayer uses the standard method, they qualify as a "safe harbour taxpayer". A safe harbour taxpayer can pay all their residual income tax in a single instalment on their terminal tax date and is only liable to pay UOMI after this date has passed to the extent any tax is not paid by that date.

If residual income tax is more than $60,000 and the taxpayer uses the standard method, UOMI will apply from the day after the final provisional tax instalment is due if there is a difference between the actual residual income tax liability and the total amount paid by the final instalment date.

Because the final instalment of provisional tax occurs after the end of a taxpayer's year (i.e. the 13th month), in theory, taxpayers should have more information about the results for this year and top up the final instalment amount if needed. But this is sometimes easier said than done, especially for those with fluctuating cash flow or complicated tax return adjustments.

Tax pooling

This is where tax pooling can help. We asked one of New Zealand's leading tax pooling providers, [Tax Traders] to explain what tax pooling is and how it might help your business with cashflow.

As a key part of our income tax legislation for over two decades, tax pooling is integral to helping many New Zealand taxpayers manage their tax payments with less concern about high UOMI bills.

Where a taxpayer needs to change the timing of their provisional tax payment obligations to match their cash flow, tax pooling allows the taxpayer to defer upcoming tax payments to a time in the future that suits them. Rather than being exposed to UOMI and late payment penalties for adopting their preferred payment profile, taxpayers instead pay the lower interest rates offered by tax pooling providers.

Tax pooling can also reduce exposure to UOMI if a taxpayer's finalised residual income tax is greater than initially forecast. The ability to top up any shortfalls/missed payments throughout the year helps reduce the uncertainty about 'uplift' payment obligations, particularly coming into the major provisional tax date on 7 May.

Under the tax pooling framework, taxpayers pay their taxes into a tax pool operated by a registered commercial provider, such as Tax Traders, instead of making payments to Inland Revenue. These payments are managed by an independent trustee, Public Trust, while they are held in the tax pool.

A taxpayer who overpays their provisional tax has the option to sell this excess tax, which can be purchased by another taxpayer who has underpaid their provisional tax. A tax pool facilitates the transaction between the seller and the buyer at much favourable interest rates compared to UOMI rates.

Taxpayers who deposit their provisional tax into a tax pool also have the added flexibility of being able withdraw these payments should they need cash (as opposed to having these payments held at Inland Revenue until the tax return is filed). They also can use their tax deposits as collateral to secure affordable short-term working capital, subject to anti-money laundering checks.

Please contact your usual Deloitte advisor if you have any questions about UOMI or provisional tax, and Tax Traders if you would like to find out more about tax pooling.

Contact

Joe Sothcott
Consultant
Tel: +64 9 975 8500
Email: jsothcott@deloitte.co.nz

Veronica Harley
Director
Tel: +64 9 303 0968
Email: vharley@deloitte.co.nz

Don't get run over by a runaway M&A train, get your tax issues under control from the start

By Emma Marr, Tara Johnson and Ian Fay

As the mergers and acquisitions (M&A) market starts to pick up a bit of momentum, this is a great time to think about the key tax issues for buying or selling a business, restructuring, or raising capital. Often, in the heat of a fast-moving transaction, important tax issues (and their consequences) can be overlooked, resulting in significant loss of value. Avoid these issues by bringing in a specialist M&A tax advisor as soon as the planning discussions start.

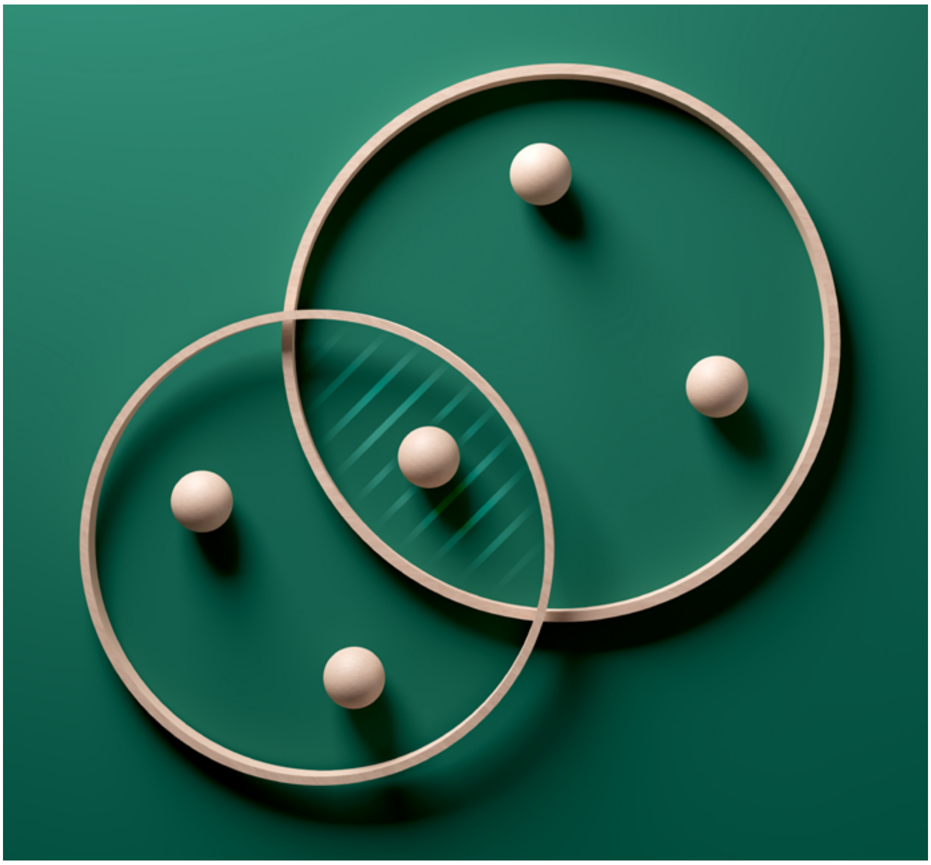
Getting the tax treatment of transaction costs right

It's common for transaction costs to be pushed down to the company being sold, rather than being paid by the shareholders who are buying or selling the business. These costs, which typically include fees for advisors, lawyers, and accountants, can be substantial, and if their tax treatment is not correct, the cash tax impact can also be significant. Transaction costs borne by a company on behalf of the shareholders that are buying or selling the business may be treated as a dividend to that shareholder (the company is providing a benefit to the shareholder, who is receiving that benefit at no cost). The company will not only have a non-deductible cost, but should also treat the payment as a dividend, with associated withholding tax liabilities. If left unaddressed, accrued penalties and use of money interest could be significant by the time the tax treatment is corrected.

GST on transaction costs is also an issue that is easily overlooked, and is not as straight forward as simply assuming that the entity paying the expenditure gets an input credit. Managing the deemed dividend risk through a recharge of costs may not result in a correct GST position of these expenses. To get the GST treatment right, it's necessary to understand a number of factors, including who is legally bearing the costs, the structure of the transaction (for example, whether it is the issue of new shares or the sale of existing shares or a sale of assets), the GST registration status of the relevant parties and which party is receiving the benefit of the work done.

Thinking about your exit strategy

While New Zealand doesn't have a specific capital gains tax, there are various different tax rules that may still apply to the sale of a business. For example, buying shares or assets with the clear purpose of resale would result in a taxable transaction on sale, while buying with the purpose holding for the long-term may not. When examining what the purpose of a transaction might be, discussions had, and documents created at the time of acquisition will need to be considered. This could include investment committee papers, board papers, and other supporting documents (like internal memos and emails). It's important to be clear about the impact of decisions made on acquisition, as they might determine the tax treatment of any profit made later.



Are you valuing tax losses in your transaction?

Following the introduction of the business continuity test (BCT) in April 2020, company tax losses are no longer automatically forfeited following a change in shareholding of more than 51%. Before the BCT, tax losses would immediately be forfeited in such a transaction, meaning any losses the company was carrying forward would not have been attributed any value. Now that losses may be able to be carried forward and used, consideration can be given to the potential value of losses.

We have not yet observed many transactions that do value losses. While Inland Revenue recently released further draft guidance on how they will interpret the BCT (see our [October 2024 Tax Alert] article) it remains to be seen whether greater certainty around its interpretation will lead to more transactions in which losses are valued.

If you are contemplating a transaction in which losses could continue to be available after sale, you should consider:

- What value can be attributed to the losses, and should any discount apply?
- Are you confident that the losses are available to be carried forward, and is any protection available under the warranties and indemnities given by the seller?
- Do your plans for the business after acquisition create the possibility that the BCT would not be satisfied, and the losses forfeited?
- Could any part of the purchase price attributable to the losses be paid over time, or repaid if the losses cannot be used?

Are you sure you know how much ASC you have?

Available subscribed capital (ASC) is capital, initially paid by shareholders, that a company can, in some instances, return to shareholders tax free. ASC can become a focus in transactions, including when companies are changing the share capital structure, are being restructured or wound up, or shareholders are exiting. Quantifying ASC when acquiring a company is also important.

While at a basic level the calculation of ASC can be simple, there is some complexity to the rules, and calculating ASC if it has not been tracked throughout the life of a company can be a difficult task. We recommend that companies keep records on all changes to ASC at the time those changes happen, and that if a transaction is planned, early attention is given to calculating ASC. Failure to demonstrate that a payment to a shareholder was ASC can mean that a payment the parties thought was tax free, is actually a taxable dividend, resulting in costs on both the company and the shareholder.

Repayment of Research & Development loss tax credit

The R&D Loss Tax Credit (RDLTC) regime is a scheme designed to support innovative companies engaging in R&D activities before they become profitable (see our [August 2023 Tax Alert] article for more on RDTLCs). This scheme allows companies which are R&D intensive to receive the tax effect of their losses as cash instead of carrying forward the losses.

The aim is to boost cash flow for companies heavily investing in R&D that may not yet be making a profit.

The RDLTC works, in effect, as a loan that is repaid when the company starts to make a profit. If there is a sale event before the 'loan' is fully repaid, the full outstanding balance will need to be repaid on that loss recovery event. A number of events can trigger this early repayment obligation:

- Disposal of intellectual property
- Appointment of a liquidator
- Company migration, or no longer a company
- Shareholding change of greater than 90%

If a significant transaction is contemplated, the obligation to repay the RDLTC should be factored into the transaction process and value.

What will the transaction mean for any employee share scheme?

If a business is being sold or is introducing new shareholders, and has an employee share scheme (ESS) or an employee share option plan (ESOP) in place, the sale is likely to impact on the ESS/ESOP. An existing ESS/ESOP may be wound up, with payments made to participants, the ESS/ESOP may continue, or a new ESS/ESOP may be set up. While New Zealand's tax rules around ESS and ESOPs are intended to create neutrality between a payment in cash or a payment in shares, the rules can create complex tax issues. Where payments are made to existing employee shareholders who have a key role in the transaction, the deductibility of any payment made to wind up an ESS or cancel options, as well as any potential payroll withholdings, filings and reporting obligations, will need to be considered. The specific terms of the plans will need to be reviewed, and any payments should also be factored into the overall transaction value.

Purchase price allocation

Asset sales need to have a specified "purchase price allocation" (PPA), under rules introduced in 2021. The aim of the rules is to stop buyers and sellers allocating asset values in a different way that gives more favourable tax outcomes to each party. If the buyer and seller don't agree on the allocation, there are mechanisms to allow first the seller, then the buyer to set the values. If neither do so, the Commissioner of Inland Revenue can set the values, and can, in any case, reconsider values that have been allocated by the parties to the sale. Generally, the best outcome is for the parties to agree the asset values between them, and to maintain documentation supporting those values. While the sale documentation might not necessarily include the full PPA, it should include a mechanism for settling the PPA within a reasonable period after sale.

The PPA rules don't apply to every asset sale, with exceptions for more simple or low value sales.

Are you complying with the Approved Issuer Levy rules?

The Approved Issuer Levy (AIL) regime is available when interest is paid by a New Zealand resident to a foreign lender. An AIL registration allows a borrower to pay a levy of 2% on the interest payments to the foreign lender, rather than paying the Non-Resident Withholding Tax (NRWT) rate (often 10% or 15%). To pay AIL, the borrower and the loan or security must be registered with Inland Revenue before AIL can be applied. Currently there is no flexibility around this rule. If the AIL registrations are not done, there is no way to register retrospectively and un-do the error and NRWT has to be paid instead. While the rules will be changing, with draft legislation before Parliament to allow retrospective registration, its not currently proposed that this change will itself be retrospective.

In the fast-moving transaction, it can be easy to assume AIL can be taken care of later. However, you should consider the detail of any financing arrangements, and be aware that in some cases interest can be paid sooner than expected.

The definition of 'interest' can include some financing fees, and the terms of the financing may mean that the fees (i.e., interest) are paid on settlement. This means AIL registrations need to be in place before settlement to ensure any payments of interest can have AIL applied.

We recommend checking early and often to make sure that the AIL rules are being complied with, as mistakes can cause significant costs. Our September 2023 Tax Alert article provides more detail on the AIL regime.

While these are some of the tax issues we commonly observe in our M&A work, there are many areas where tax plays an important role in planning and executing a transaction. Please contact your usual Deloitte advisor for support in your M&A activity.

Contact

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

Tara Johnson
Senior Consultant
Tel: +64 4 495 3909
Email: tarjohnson@deloitte.co.nz

Ian Fay
Partner
Tel: +64 4 470 3579
Email: ifay@deloitte.co.nz

Tick tock, time is running out to opt certain assets out of the GST net!

By Viola Trnski and Robyn Walker

While it may seem like a good idea to register for and claim GST when purchasing an asset with some business use (for example, a holiday home that may sometimes be rented out, a home office within a private family residence, or a property within a larger organisation where it is unclear how it will be used), when it comes time to sell, some owners may kick themselves when facing the subsequent GST obligations.

GST decisions (and consequences) are usually irreversible... but in this case, there is a limited opportunity to utilise the transitional rule in s 91 of the GST Act, turning back the clock and opting the asset out of the GST net.

This transitional rule overrides the default position for such assets, where if GST is claimed on even a portion of the purchase (or the purchase was zero-rated) there is a GST liability triggered on sale of the asset on the entire value of the asset. While some remaining GST input credit may be available at the time of sale, it is still common for sellers to be left out of pocket to some degree, particularly for appreciating assets like property.

To take advantage of the transitional rule there are four key requirements that **must** be met:

1. The asset must have been acquired before 1 April 2023, and
2. The asset must not have been acquired for the principal purpose of making taxable supplies, and
3. The asset was not used for the principle purpose of making taxable supplies, and
4. GST input tax credits have previously been claimed, or the asset was acquired as a zero-rated supply.

Examples of common assets that you should review the GST status of include:

- A home office within a larger private family residence;
- A holiday home that may have had some use as rented out short stay accommodation but is primarily a family bach; and
- Buildings used by businesses making a combination of taxable and exempt supplies (for example a business holding some residential property which may have been acquired as part of a larger land purchase).

This list is not exhaustive – if you have any assets where a portion of GST has been claimed historically but is primarily used for GST exempt/non-business use then it is worth thinking about the transitional rule now and whether you should make an election.

In order to use the transitional rule, the election **must** be made **before** 1 April 2025 by notifying the Commissioner of Inland Revenue in an acceptable way of the election, the election date and details of the election. We recommend this is done by way of a letter loaded into myIR by 31 March 2025.

If an election is not made, then from 1 April 2025 the sale of any asset with business use that had GST claimed on purchase will be subject to GST on sale. The transitional rule does not include any GST claimed on operating costs (for example, rates, utilities and insurance).

If you think you may be eligible to use this transitional rule, we recommend you act now to confirm that you can use it and undertake the necessary calculations to determine the amounts owed to Inland Revenue.

The amount would become GST payable. We would expect that Inland Revenue will be open to providing an instalment arrangement for taxpayers who need it.

31 March 2025 will be upon us in no time, so start considering this rule sooner rather than later as there will be no extensions given to this deadline.

Please contact your usual Deloitte advisor for more information.

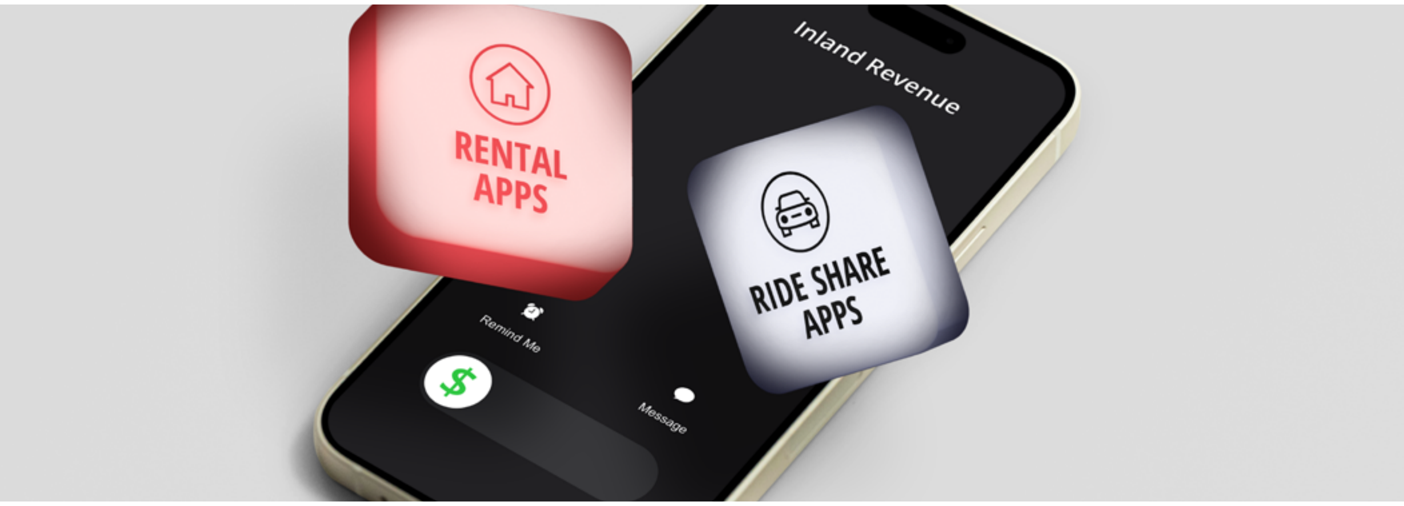
Contact

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

Full speed ahead: Platform economy changes continue with new OECD reporting requirements

By Viola Trnski, Amy Sexton and Robyn Walker



While the introduction of GST on the platform economy on 1 April 2024 garnered a lot of media attention (often dubbed the "app tax"), the reporting rules intending to monitor activity undertaken via platforms has largely flown under the radar. On 7 February 2025 the first tranche of data collected by the reporting requirements was due from online marketplaces (also called digital platforms). In case you missed it, let's recap the reporting requirements.

Why the new rules?

Income earned from salary, wages and investments are monitored through regular reporting requirements on employers and those who make payments of investment income. The new platform reporting rules will make income earned by sellers on online marketplaces more visible to Inland Revenue. The information collected will provide oversight to Inland Revenue and allow them ensure tax obligations are being complied with.

The implementation of these reporting requirements is also intended to reduce compliance costs of these New Zealand resident online marketplaces that may otherwise face reporting obligations in multiple overseas jurisdictions, all with different reporting rules. New Zealand has adopted the OECD's Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy (MRDP). This will allow the Inland Revenue to exchange reporting information with overseas jurisdictions under the existing Automatic Exchange of Information (AEOI) agreement.

Who do the rules apply to?

The rules apply to online marketplaces that are tax resident in New Zealand. Also captured under the rules are any non-tax resident online marketplaces that are incorporated under New Zealand law or have their place of management in New Zealand.

These online marketplaces must collect information on sellers that receive consideration from relevant services provided through their platform, those relevant services being:

- The rental of immovable property (both commercial and residential) including carparks, short-stay, and visitor accommodation, and
- Personal services, including ridesharing, food delivery, and graphic and web design services.

A personal service is defined as time- or task-based work performed by one or more individuals at the request of a buyer.

When do these rules apply from?

There are two key dates:

- **1 January 2024** is the date information for the first reporting period needs to be collected from. Reporting periods run in calendar year cycles, meaning that the first reporting period should capture transactions that took place between 1 January 2024 and 31 December 2024.
- **7 February 2025** was the due date for the first reporting period. These reports will contain the information collected in 2024. Future calendar year reports will be due on or before 7 February of the follow year.

As the first reporting due date has just passed online marketplaces should already have effective processes and systems in place to collect the required information. Anyone who has not complied should speak to a tax advisor or contact Inland Revenue to correct the error.

What information needs to be collected?

The reporting requirements place a number of obligations on online marketplaces. As well as collecting the information in the table about sellers, online marketplaces are required to verify the information to ensure it is accurate as well as provide the information collected to sellers themselves.

Online marketplaces must register for a Digital Platform Information account with Inland Revenue and provide the required information in quarterly periods in XML or Excel (for up to 1,000 sellers) format.

Online marketplaces that facilitate the sale of goods and vehicle rentals

While not currently captured by the existing reporting requirements, the OECD has also developed an optional extended standard that imposes reporting obligations on online marketplaces that sell goods and facilitate vehicle rentals.

This extension has not yet been implemented in New Zealand but could be in the future.

Are you an online marketplace operator?

If you are, the reporting rules are becoming increasingly complex, and the penalties for non-compliance can be significant – Inland Revenue may enforce fines of up to $100,000 for non-compliance.

As this is a new reporting requirement and non-compliance can result in large penalties, online marketplaces should seek advice from their tax advisors. If you would like to discuss the tax and reporting requirements for online marketplaces, contact your usual Deloitte advisor.

FOR INDIVIDUALS	FOR ORGANISATIONS
• First and last name • Address • IRD number (or TIN*) and relevant jurisdiction • Date of birth	• Legal name • Primary address • IRD number (or TIN*) and relevant jurisdiction • Business registration number

FOR BOTH INDIVIDUALS AND ORGANISATIONS
• Seller's total income or consideration paid or credited. • Number of relevant activities carried out to which that consideration relates. • Fees, commissions or taxes withheld or charged. • Financial account identifier (where available). • Name of the holder of the financial account where the consideration is paid or credited.

*Tax Identification Number

Contact

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

Amy Sexton
Associate Director
Tel: +64 9 953 6012
Email: asexton@deloitte.co.nz

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

Transfer Pricing – year end is approaching, is this something I need to think about?

By Melaine Meyer and Lucy Scanlon

March and June are our most commonly used balance dates, and with March year end approaching and the end of June quick to follow, it is useful for businesses think about their transfer pricing positions to ensure financial accounts/income tax returns reflect an arm's length position. Here are some key things to think about:

Does transfer pricing apply to my business?

You will need to consider your transfer pricing position if there are cross border transactions with associated parties. Any cross border associated party transactions will need to be undertaken on an arm's length basis, which means the transactions must be priced as if the transactions were between two independent third parties.

How do I determine/support the cross border transactions have been undertaken at arm's length?

There are standard transfer pricing methods which Inland Revenue (and all OECD countries) anticipate are applied to support the arm's length nature of the transactions. Inland Revenue then expect taxpayers to prepare transfer pricing documentation to demonstrate the application of those methods and the resulting arm's length outcome. Preparing transfer pricing documentation in line with Inland Revenue expectations on a contemporaneous basis (before the tax return for the year is filed) provides penalty protection to the taxpayer, i.e., if Inland Revenue determine a different approach/outcome which results in a different tax outcome, the existence of transfer pricing documentation demonstrates reasonable care in taking the position filed.

What if my transactions are small. Do I still need to prepare transfer pricing documentation?

Transfer pricing documentation should be prepared to support all cross border associated party transactions. However, Inland Revenue expect the documentation prepared by taxpayers to be in alignment with the risk, complexity, and materiality of the transactions. While each transfer pricing document prepared should cover off key components required of a transfer pricing document, the level of the documentation prepared should be tailored to the specific circumstances of the taxpayer.

If I need to consider my transfer pricing position, what should I do now?

Please reach out to your Deloitte advisor so we can help you determine the right transfer pricing approach and appropriate level of transfer pricing documentation for your circumstances. By considering your transfer prices pre-year end and having a discussion up front, you can ensure your financial statements align with a robust and supportable transfer pricing position. This then makes the process of transfer pricing compliance a lot easier - the right approach for you could range from intercompany agreements and transfer pricing calculations through to full technical transfer pricing compliance documentation or options in between. Our specialist transfer pricing team is very experienced across the spectrum of appropriate approaches/ documentation and with a chat can guide you to the most practical solution for your current business operations.

Contact

Melaine Meyer
Partner
Tel: +64 4 470 3575
Email: melaniemeyer@deloitte.co.nz

Lucy Scanlon
Director
Tel: +64 4 470 3502
Email: lscanlon@deloitte.co.nz

Snapshot of recent developments

Tax legislation and Policy Announcements

NZ and Singapore Sign Pact Implementing Arbitration Process Under Tax Treaty

On 18 and 21 November 2024, the Competent Authorities of Singapore and NZ signed a Competent Authority Arrangement (CAA) to establish the mode of application of the arbitration proceedings provided for in Part VI (Arbitration) of the Multi-Lateral Instrument (MLI). The arbitration provisions allow taxpayers to request for issues arising from a Mutual Agreement Procedure (MAP) case which remained unresolved after a two-year time period to be submitted to an arbitration panel for resolution.

The full text of the CAA is published as Annex B to the Singapore-New Zealand DTA which is available here.

Income Tax (Clean Transport FBT Exclusion) Amendment Bill defeated

On 20 November 2024, Hon Julie Anne Genter's Income Tax (Clean Transport FBT Exclusion) Amendment Member's Bill was read and terminated at the first reading. The bill proposed to remove FBT from elective vehicles and clarify that for FBT, a double cab ute must be treated as a car.

Excise and Excise-equivalent duty rates for tobacco products adjusted

On 21 November 2024, the Excise and Excise-equivalent Duties Table (Tobacco Products Indexation and Reduction) Amendment Order 2024 was notified in the New Zealand Gazette and came into force on 1 January 2025. The Order amends the Excise and Excise-equivalent Duties Table to permanently reduce by 50% the excise and excise-equivalent duty rates on products used to heat tobacco without combustion (products for use with tobacco heating systems). The Order also adjusts the excise and excise-equivalent duty rates on tobacco products to reflect the movement in the Consumers Price Index, less credit services subgroup, over the 12-month period ending on 30 September 2024. These adjustments have also been applied to the permanently reduced excise and excise-equivalent duty rates on heated tobacco products.

Submissions on the scope of Inland Revenue's long-term insights briefing

On 26 November 2024, Inland Revenue published the submissions and a summary of the submissions they received during the consultation on the scope of its next long-term insights briefing. Inland Revenue confirmed the scope of the topic.

FamilyBoost tax credit – extension of time to file certain returns of tax income

On 26 November 2024, the Tax Administration (FamilyBoost Tax credit – Extension of Dates to File Returns of Income) Order 2024 was notified in the New Zealand Gazette. It came into force on 27 November 2024, and applies to a person applying for a refund of a FamilyBoost tax credit for the quarter ending on 30 September 2024 under section 41C of the Tax Administration Act 1994, and to their partner if applicable.

If a person to whom this order applies filed their last return of income after the date required, and that date was before this order came into force, the date is extended to 31 March 2025 for the purpose of the application for a refund. In practical terms, this order applies to:

- Returns of income for the 2023-2024 tax year that were filed late
- Returns of income for the 2022-2023 tax year that were filed late (if the person's 2023-2024 return has not been filed and is not late for filing).

Tax changes for Charities confirmed for Budget 2025

On 3 December 2024, Minister of Finance Hon. Nicola Willis confirmed that "tweaks to the charities tax regime" can be expected to be announced at Budget 2025.

NZ and Slovenia sign Double Tax Agreement

On 3 December 2024, Minister of Revenue Hon. Simon Watts and Slovenian Ambassador Marko Ham signed the Double Tax Agreement between NZ and Slovenia. This is the first tax treaty between the two countries. It will enter into force after the exchange of ratification instruments.

Information release - Order in Council for the Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria

On 9 December 2024, Inland Revenue released documents relating to the Order in Council for the Double Tax Agreement with the Slovak Republic and Amending Protocol with Austria.

2024 ACC levy consultation results

On 12 December 2024, the results of the latest ACC levy consultation were released and Cabinet approved the 2025 – 2028 levy rates.

Information release - Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024

On 16 December 2024, Inland Revenue released documents relating to Tax Administration (FamilyBoost Tax Credit – Extension of Dates to File Return of Income) Order 2024.

Public Remedials Log launched

On 16 December 2024, Inland Revenue launched the Public Remedials Log. The log provides updates on tax remedial legislative issues that Inland Revenue has considered. It also tracks the progress of each item through the legislative amendment process. Certain issues have been redacted because they contain sensitive information. There are currently 181 items on the log.

The December and January editions have been released. The log will be updated on the Government Tax and Social Policy Work Programme webpage.

Customs (Levies and Other Matters) Amendment Bill introduced

On 18 December 2024, the Customs (Levies and Other Matters) Amendment Bill was introduced to Parliament. The Bill is an omnibus Bill that contains amendments to legislation administered by Customs, Inland Revenue, and the Ministry for the Environment.

Treasury paper: How the tax and transfer system affects financial incentives to work

On 23 January 2025, Treasury published a new Analytical Note — The Cost of Working More: Understanding Effective Marginal Tax Rates in New Zealand's Tax and Transfer System. It examines how NZ's tax and transfer system affects financial incentives to work, using Effective Marginal Tax Rates (EMTRs) as the main measure.

Information release - Minimum Family Tax Credit Threshold – Holding the Rate this Year

On 24 January 2025, Inland Revenue released documents relating to the Minimum Family Tax Credit Threshold – Holding the Rate this Year.

Inland Revenue Statements and Guidance

Product ruling: Kiwibank Limited

On 18 October 2024, Inland Revenue issued BR Prd 24/04: Kiwibank Limited.

The Arrangement is the issue by Kiwibank Limited of perpetual preference shares (PPS) of up to $275 million in 2024. The PPS will be issued directly to investors through a public offer, such that they are recognised as Additional Tier 1 capital per the relevant requirements of the Reserve Bank's BPR110 Capital Definitions.

The Taxation Laws apply to the Arrangement as follows:

a. Section GB 35(2) and (3) will not apply to the Arrangement.

b. Section BG 1 will not apply to the Arrangement.

This Ruling will apply for the period beginning on 18 October 2024 and ending on 30 April 2030.

Product Ruling: Air New Zealand – Airpoint Dollars not income for members

On 6 November 2024, Inland Revenue issued BR Prd 24/05: Air New Zealand Limited.

The Arrangement is the receipt of Airpoints Dollars by members of the Airpoints programme in respect of work-related travel paid for, or the expenditure for which is reimbursed, by the employers of members and the redemption of the Airpoints Dollars by the members for air travel and other rewards. This Ruling does not rule on any other aspect of the Airpoints programme that employees and employers may engage with.

Subject in all respects to any conditions stated above, the Taxation Laws apply to the Arrangement as follows:

a. Members do not have income under any of ss CE 1, CB 1, CB 3, CB 4, CB 5, or CA 1(2) when they receive Airpoints Dollars or rewards, on the redemption of Airpoints Dollars, arising from work-related travel paid for, or reimbursed, by their employers.

b. The receipt by members of Airport Dollars and rewards under the Airpoints Programme from work related travel paid for, or reimbursed, by their employers is not a fringe benefit as defined in s CX 2(1) and employers of members are not liable to pay fringe benefit tax under s RD 26.

The Ruling does not rule on:

- Sharepoints Accounts
- Business owners
- Airpoints for Business Programme

The ruling applies from 1 October 2024 to 30 September 2028.

Inland Revenue: Prescribed withholding rate

On 20 November 2024, Inland Revenue announced they had identified non-compliance within the horticulture industry, particularly with contractors not meeting all their tax obligations. There may be an increase in the Commissioner of Inland Revenue's use of prescribed withholding rates for contractors operating in the horticulture sector.

Inland Revenue: Withdrawal Notice

On 29 November 2024, Inland Revenue published a withdrawal notice removing the remaining parts of the Commissioner's 1993 Policy Statement on computer software in an Appendix to TIB Vol 4, No 10 (May 1993). The notice notes there has been considerable change in the last 30 years since the Tax Information Bulletin was published, and it has already been partially replaced by IS 16/01: Income tax – Computer software acquired for use in a tax taxpayer's business.

The Notice recommends that taxpayers who believe their tax affairs have been adversely affected by the withdrawal should contact the Commissioner of Inland Revenue.

Tax Information Bulletin: Volume 36, No 11 (December 2024)

On 2 December 2024, Inland Revenue published TIB Vol 36, No 11 (December 2024), which covers:

Interpretation statement

- IS 24/09: Income tax – Overdrawn shareholder loan account balances

Technical decision summaries

- TDS 24/19: Income tax and GST deductions
- TDS 24/20: Permanent establishment

Inland Revenue: Registering for and filing donation tax credit claims

On 5 December 2024, Inland Revenue announced they are aware many tax agents and intermediaries are having trouble registering their clients for donation tax credits (DTCs) and provided information about how to do it.

Draft QWBA: Can section CB 3 apply to amounts derived from the disposal of land?

On 6 December 2024, Inland Revenue published PUB00519: Can s CB 3 apply to amounts derived from the disposal of land?

Question

Can s CB 3 apply to amounts derived from the disposal of land?

Answer

Section CB 3 can apply to amounts derived from the disposal of land as part of a profit-making undertaking or scheme. Section CB 3 does not, however, apply to any amount derived from an undertaking or scheme involving the development of land or division of land into lots.

Submissions close 14 February 2025.

Draft OS: Cash collateral is "money lent"

On 9 December 2024, Inland Revenue published ED0263, a draft Operational Statement outlining a change in view by the Commissioner of Inland Revenue whether cash collateral provided as part of security lending and derivative transactions is "money lent" and the resident and non-resident withholding tax obligations on interest payable on the cash collateral.

The Commissioner now considers payments of amounts of money in the form of cash to act as security to cover the exposures of a party from obligations under security lending or derivative transactions using market standard documented agreements (cash collateral) to be a loan. This means that the payer of interest on the cash collateral, unless they have Resident Withholding Tax (RWT)-exempt status, must withhold RWT or non-Resident Withholding Tax (NRWT).

The statement does not cover interest that might be said to be a component of the pricing of other elements of the broader arrangement such as derivatives or shares.

The statement applies from the date of issue prospectively. It is proposed that the Commissioner will allow taxpayers to make the required changes to their systems and any alternative arrangements in order comply with the new view when taking tax positions from 1 April 2025 (proposed date only). The Commissioner will not be devoting resources to identifying incorrect compliance with the RWT or NRWT regimes for previous periods.

Inland Revenue: Public Guidance work programme (December update)

On 10 December 2024, Inland Revenue updated the public guidance work programme 2024-25.

Inland Revenue: Compliance work update

On 10 December 2024, Tony Morris, Segment Lead Significant Enterprises at Inland Revenue spoke at a recent conference and gave an overview of the first three months of its increased compliance work.

Inland Revenue: Tax agents survey

On 10 December 2024, Inland Revenue announced an independent research provider is reaching out to tax agents as part of the voice of the customer surveys. The surveys help Inland Revenue understand tax agent's experiences when interacting with Inland Revenue and identifying areas for improvements. The survey results are reported quarterly, and in 2025 Inland Revenue are going to start sharing some of the key findings.

Inland Revenue: Standout yearlings at Karaka or Christchurch 2025

On 11 December 2024, Inland Revenue announced new investors in standout yearlings (thoroughbred and standardbred), acquired with the intention to breed in the future for profit, will be able to claim income tax deductions as if they had an existing bloodstock breeding business. Investors will also be taxed if the standout yearling is subsequently sold.

Inland Revenue also outlined the types of information required when notifying about an intention to breed for horses and when there is a change of intention.

Inland Revenue: Auckland man imprisoned for tax evasion

On 15 December 2024, Inland Revenue provided details about a man sentenced to 2 years and 1 month in prison for tax evasion. The man had plead guilty to 16 charges of tax evasion and 84 charges of taking PAYE from his workers' wages but not passing it on to Inland Revenue.

Inland Revenue: Companies removed from the Companies register

On 16 December 2024, Inland Revenue announced it is currently reviewing its records to identify companies that are still active in its system but have already been removed from the Companies Register. It will begin to close the accounts of these companies in its system from January 2025 onwards.

Inland Revenue: Canterbury earthquake relief measures

On 17 December 2024, Inland Revenue announced that tax relief measures relating to the Canterbury earthquakes in 2010 and 2011 have expired. 2024 is the final income year the relevant provisions apply. This means that some taxpayers may have to account for any deferred amounts they did not include in past years in their 2024 income tax return. This may include insurance or compensation payments held to be attributed to a disposal or to repair costs, or suspended depreciation recovery income.

Inland Revenue: Changes to the account manager service

On 18 December, Inland Revenue announced that from 1 January 2025, it is making some changes to the account manager service to prioritise efficiency and effectiveness.

Determination: Amortisation Rates for Listed Horticultural Plants

On 19 December 2024, Inland Revenue issued DET 24/04: Amortisation Rates for Listed Horticultural Plants. This supplementary determination acknowledges that mānuka, cultivated and managed as part of a farming activity primarily to promote the production of honey or another mānuka product (not being timber), is recognised by the Commissioner of Inland Revenue as a listed horticultural plant for tax purposes.

Inland Revenue: 'Income tax - more information' requests reminder

On 14 January 2025, Inland Revenue reminded agents that if clients have received an 'Income tax – more information' request these need to be completed. The agent unfiled returns report will help determine which clients still have 'Income tax – more information' requests that need to be completed.

Inland Revenue also reminds that before 31 March 2025, agents should confirm that their clients' income is correct and add any additional income and expenses as well as ensuring bank account details are current so that any credits can be refunded directly to taxpayer's accounts.

Interpretation Statement: Income tax - deducting costs of travel by motor vehicle between home and work and FBT – travel by motor vehicle between home and work

On 15 January 2025, Inland Revenue published IS 25/01: Income tax – deducting costs of travel by motor vehicle between home and work and IS 25/02: FBT – travel by motor vehicle between home and work as well as accompanying fact sheets, IS 25/01 FS: Income tax and IS 25/02 FS: FBT

Draft interpretation statement: Income tax and GST – industries other than forestry registered in the Emissions Trading Scheme

On 16 January 2025, Inland Revenue published PUB00493: Income tax and GST – industries other than forestry registered in the Emissions Trading Scheme. It applies to industries registered in the Emissions Trading Scheme (ETS), other than forestry (which is taxed differently). The draft interpretation statement outlines the conceptual framework for the income tax treatment of emission liabilities and emissions units (NZUs) in these sectors explains how to calculate deductions for emission liabilities, and it discusses the treatment of NZUs as income. There is a brief discussion of the GST treatment of NZUs.

The deadline for submissions is 27 February 2025.

Technical Decision Summary: Accommodation provided to an employee - PAYE/GST (Adjudication)

On 20 November 2024, Inland Revenue issued TDS 24/21: Accommodation provided to an employee. It related to the supply of accommodation to an employee. The Tax Counsel Office ruled that the taxpayer had provided accommodation to the employee, it was in relation to the employee's employment, the value of the accommodation for income tax purposes was the market rental value, reduced to take account of the part used for work purposes and the value of the accommodation for GST purposes was the market rental value, reduced to take account of the part used for work purposes.

Technical Decision Summary: Transitional residency and cryptoassets (Private Ruling)

On 3 December 2024, Inland Revenue published TDS 24/22: Transitional residency and cryptoassets. It related to a transitional resident who held cryptoassets. The Tax Counsel Office ruled the taxpayer would qualify to be transitional resident and the amounts derived from the sale of cryptoassets did not have a source in New Zealand.

Technical Decision Summary: Depreciation loss on asset no longer used (Private Ruling)

On 5 December 2024, Inland Revenue published TDS 24/23: Depreciation loss on asset no longer used. It related to a company who no longer had use for an asset. The Tax Counsel Office ruled the Taxpayer had a depreciation loss for the income year equal to the adjusted tax value of the asset at the start of its income year.

Technical Decision Summary: Share Scheme Taxing date (Private Ruling)

On 18 December 2024, Inland Revenue issued TDS 24/24: Share Scheme taxing date (SSTD). It related to the issue of shares under an employee share scheme. The Tax Counsel Office ruled the SSTD arose on the date the shares vested to the member, provided the shares had not been forfeited prior to this date.

Technical Decision Summary: Sales of leasehold interests in residential and commercial units (Private Ruling)

On 23 January 2025, Inland Revenue issued TDS 25/01: Sales of leasehold interests in residential and commercial units. It related to limited partner in limited partnership that was a multi-rate portfolio investment entity (PIE) that had an arrangement where units were sold to the members of the public by first granting itself a sublease of each unit and the assigning the sublease to the purchaser. The Tax Counsel Office ruled the investments were permitted investment types for a PIE and the income was also permitted.

Deloitte Global Perspectives

Deloitte related party customs value country guide (8th edition)

Deloitte Global Trade Advisory have unveiled "The Link Between Transfer Pricing and Customs Valuation—Eighth Edition Country Guide," one of the most broad-based, authoritative, periodically updated guides of its kind for over the last 12 years. The guide compiles essential information regarding the customs-related valuation requirements and implications of related party pricing and retroactive transfer pricing adjustments in 59 jurisdictions around the world.

OECD Updates

Revenue Statistics 2024

On 21 November 2024, the OECD published its report Revenue Statistics 2024. The average tax-to-GDP ratio for OECD countries was 33.9% in 2023, 0.1% below its level in 2021 and 2022, but above its pre-pandemic level of 33.4% in 2019. New Zealand's ratio for 2023 was 34%, increasing from 33.1% in 2022 but down from 34.5% in 2021.

Revenue Statistics 2024 also includes a special chapter on health taxes.

Consumption Tax Trends 2024

On 21 November 2024, the OECD published its Consumption Tax Trends 2024 report. At 9.9% of GDP, revenue from consumption taxes in OECD countries remained stable in 2022 compared to 2020 (9.9%) and 2021 (10.0%). The overall share of consumption taxes in total tax revenues has fallen slightly to 29.6% in 2022, compared to 30% in 2021 and 30.1% in 2020. This decline is mainly attributable to the decreasing revenue importance of taxes on specific goods and services (mainly tobacco, alcoholic beverages and fuel, as well as certain environment-related taxes) as a percentage of total tax revenues in OECD countries on average. VAT/GST generated 20.8% of total revenue in OECD countries on average in 2022.

VAT/GST continues to be the largest category of consumption taxes, generating almost four times as much tax revenue as excise duties that form the bulk of taxes on specific goods and services, accounting for 5.6% of total tax revenue in 2022 on average.

New Zealand's revenue from consumption taxes as a percentage of GDP in 2022 was 11.3%, down slightly from 11.6% in 2021.

Release of new tools for the implementation of Amount B relating to the simplification of transfer pricing rules

On 19 December 2024, the OECD released a pricing tool and fact sheets to facilitate the understanding and operation of the simplified and streamlined approach to transfer pricing.

OECD Publishes Updated Arbitration Profiles for New Zealand, Singapore

On 20 December 2024, the OECD published updated arbitration profiles under the Base Erosion and Profit Shifting Multilateral Instrument for New Zealand and Singapore. The updated New Zealand profile can be found here, replacing the one published on 10 November 2023.

Kenya deposits its instrument of ratification of the Multilateral Base Erosion and Profit Shifting Convention

On 8 January 2025, Kenya deposited its instrument of ratification of the Multilateral Base Erosion and Profit Shifting Convention.

Multinational enterprise business functions and corporate taxation

On 13 January 2025, the OECD published a working paper examining responses of large multinational enterprises to tax by studying the global allocation of their business functions such as manufacturing and sales or financial and holding functions and provides insights on the structure of multinational enterprise global value chains as well as the actual economic impacts of corporate taxation.

Global minimum tax: Release of compilation of qualified legislation and information filing and exchange tools

On 15 January 2025, the Inclusive Framework released a compilation of qualified domestic rules together with other tools to streamline the co-ordinated administration of the global minimum tax. These include:

- Central record of legislation with transitional qualified status
- Administrative Guidance on Article 9.1 of the GloBE Model Rules
- Updated GloBE Information Return
- GIR Multilateral Competent Authority Agreement
- GIR XML Schema and User Guide

Technical Webinar on Amount B

The OECD is holding a technical webinar on 11 February 2025 on the latest developments relating to Amount B, including a demonstration of the Pricing Automation Tool.

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

Sign up to the
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

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

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

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

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

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

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

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

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