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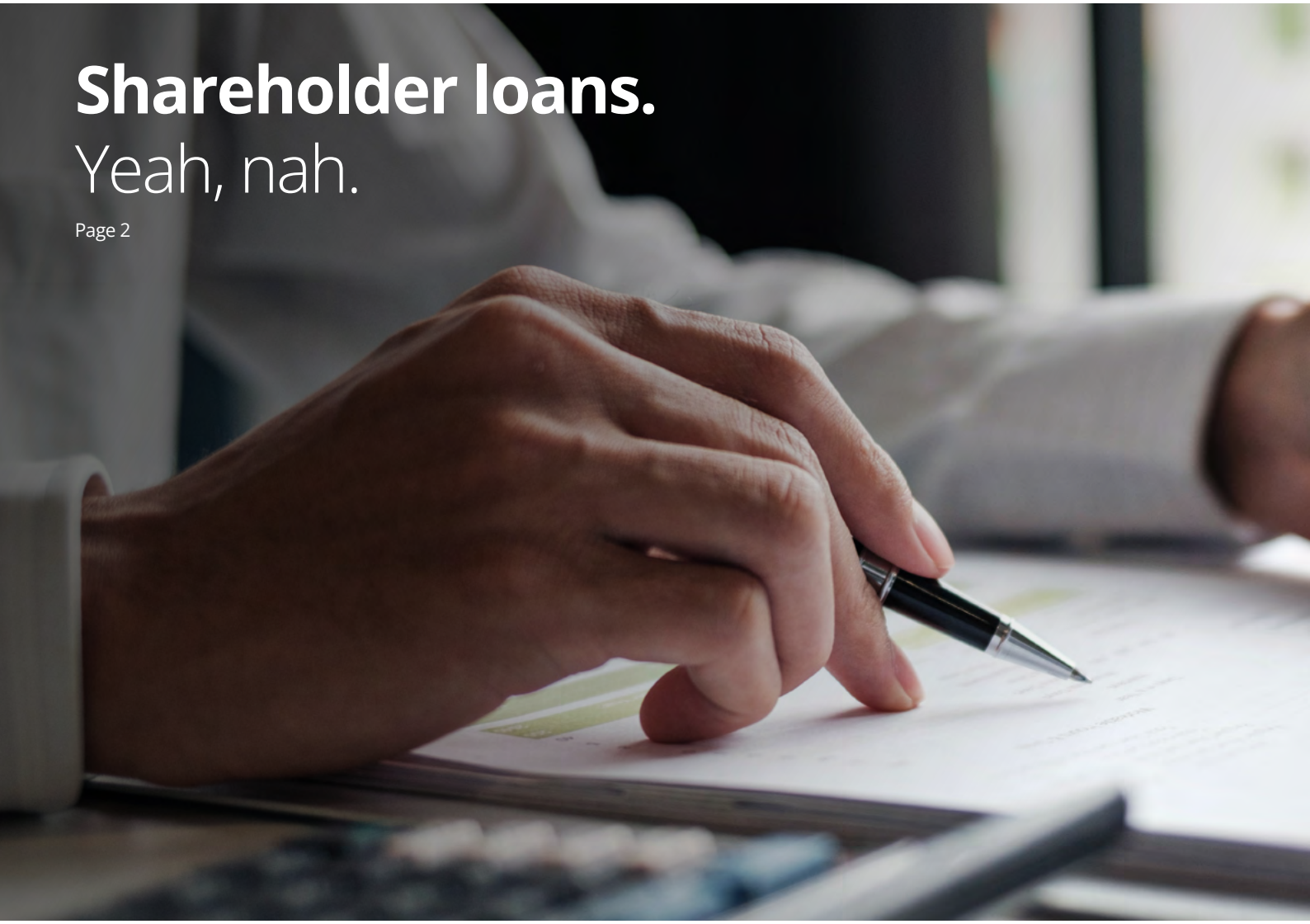
Tax Alert

December 2025



Shareholder loans.
Yeah, nah.

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Shareholder loans. Yeah, nah.

By Robyn Walker

New Zealanders have long been known for having laid-back, casual attitude, with "she'll be right" being a popular idiom.

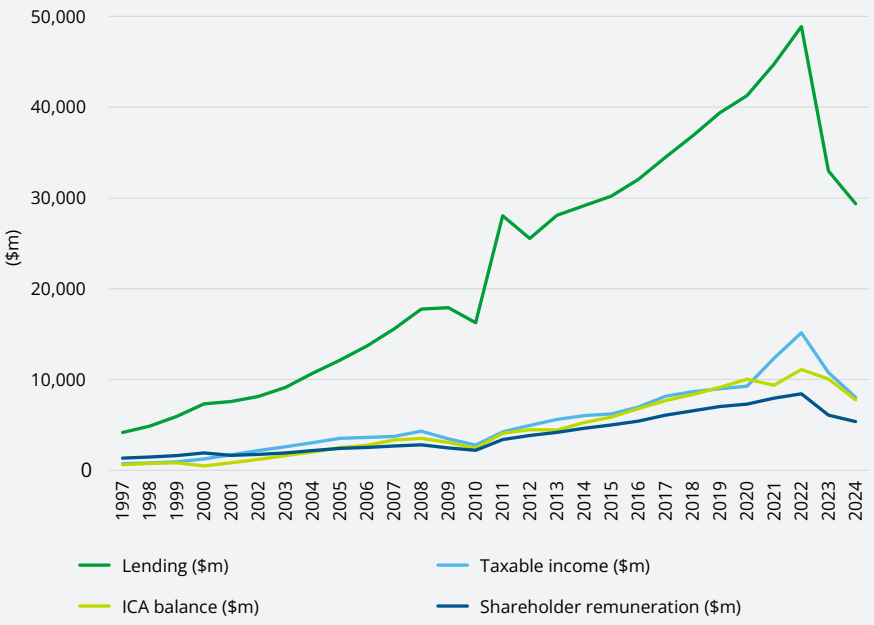
There are concerns that this casual approach has flowed into New Zealand's businesses with a rather lackadaisical approach to managing interactions between businesses and shareholders in some cases leading to large shareholder loan balances which are unrecoverable when a business gets into trouble.

With increased funding to investigate taxpayers, it seems Inland Revenue have formed the view that more discipline is required in this area and a "no worries" approach is no longer fit for purpose. In early December Inland Revenue released a consultation document "Improving taxation of loans made by companies to shareholders – Officials' issues paper" (the Paper).

This Paper paints a sober picture of the current state of affairs. Of all the companies registered in New Zealand, 119,000 companies were owed nearly $29billion by about 165,000 natural person or trustee shareholders. The average loan amount sits at over $245,000 per company .

The concern is not so much that there is shareholder lending, but the quantum of material lending. Of the companies reviewed, 5,500 had loan balances in excess of $1million, and 540 had balances above $5million. Many loan balances are going up, indicating that shareholders potentially have an inability to repay the loan and they are not just being used for working capital purposes within an income year.

Figure 2: Lending to shareholders, taxable income, imputation credit account balances and shareholder remuneration of lending company



Source: Improving taxation of loans made by companies to shareholders – Officials' issues paper

Is the party over?

The Paper makes it clear that there is no issue with shareholder debt (or overdrawn current accounts) per se; however, *"Inland Revenue is concerned that the way shareholder loans are taxed, together with the differences in tax rates, means that the current tax system provides an unintended tax advantage when companies lend funds to shareholders, compared with paying taxable dividends,"* The Paper goes on to note *"We consider that the current tax treatment of shareholder loans results in a less efficient taxation system, lower revenue raised and creates horizontal and vertical inequities.*

The current rules are unfair to shareholders who receive dividends or salaries, partners, sole traders and employees, who will typically be taxed at a higher marginal tax rate (33% or 39%) at the time they receive the income." The Paper expresses concern that the current tax rules provide little incentive to repay loans and makes comparisons to Australia, United Kingdom, Canada and Norway, who all have rules of varying severity to address such issues.

In response to these concerns the Paper has three main proposals:

1. **Treating shareholder loans as dividends if not repaid within set period of time:** Inland Revenue propose to treat new loans by a company to a shareholder as a dividend if the loan is not repaid within a set period of time, subject to a de minimis threshold and other exceptions
2. **Treating outstanding shareholder loans as shareholder income when company removed from Companies Register:** Inland Revenue propose that when a company is removed from the Companies Register with an outstanding shareholder loan, the amount of the loan will be treated as income at that time (if not already treated as a dividend by first proposal).
3. **Improving record-keeping and reporting requirements:** Inland Revenue propose new record-keeping and reporting requirements for Available Subscribed Capital and Available Capital Distribution Amount.

The remainder of this article focuses on proposal 1.

Are loans still 'sweet as'?

When a significant potential law change is announced, it's necessary for Inland Revenue to think through how to make an announcement without causing bigger issues due to the time lag between the proposal and enacted law. In this case, if progressed, changes to shareholder loans are intended to take effect from the date the consultation document was released, 4 December 2025. The proposals will not apply to loan balances in place prior to this date, unless there is a material change to the loan.

For new shareholder loans, it is proposed that if the loan balance remains outstanding for a certain period, it will be converted into a taxable dividend. Subject to the outcomes of consultation, the likely features will be:

Application to: shareholder loans by New Zealand resident companies to any natural person or trustee shareholders.

Timeframe for loan repayment: the rules will apply if a loan is outstanding following two successive balance dates. This means, subject to when the loan was taken out, that the loan period could be between 12 to 24 months (for example, if a standard balance date taxpayer took out a loan on 31 March 2026, the loan would need to be repaid by 31 March 2027. If a loan were taken out on 1 April 2026 it would need to be repaid by 31 March 2028).

De minimis: the rules wouldn't apply if total company loan balances are less than $50,000 at the end of any income year. It is estimated than this de minimis will remove about half of all companies from the rule.

Possible exceptions: the Paper raises four areas where exceptions could be considered, with two of them not expected to make the cut: (1) capital gains [officials do not think this should be an exception]; (2) loans on commercial terms with proper documentation [officials do not think this should be an exception]; (3) employee share scheme loans [officials consider an exception would be appropriate]; and (4) loans in the ordinary course of business [officials consider an exception would be appropriate].

Integrity measures: if this proposal goes ahead it's likely there will be a series of integrity measures to ensure it is not possible to defeat the intention of the rules, for example by repaying and immediately redrawing a loan, temporary repayments, back-to-back loan structures, related party loans and lending to associates.

Implications of a dividend: it will be possible to attach imputation credits to a dividend but any withholding tax implications may fall squarely on the shareholder and not the company. The loan will only be treated as a dividend for tax purposes so will technically continue for other purposes and ultimately require repayment in some way. The need to still repay the loan essentially exists to knock the practice on the head and encourage taxpayers to avoid falling within the rules, as this may technically result in double taxation if the loan is repaid from post-tax income.

Nek minnit

With the potential for rule changes from 4 December, now is the time for businesses with shareholder loans to evaluate the current position and put in plans to ensure loan balances remain manageable. Consultation on the proposals remains open until 5 February 2026, so now is the right time to think around practical issues and to make submissions to ensure any rules work as intended and don't cause unnecessary disruption to vanilla business practices. For more information or to talk through implications and alternatives approaches to shareholder transactions please get in touch with your usual Deloitte advisor.

Contact

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

Bringing up the rear

Final two shortfall penalty guidance documents published

By Amy Sexton and Robyn Walker

Earlier this year we detailed how the Inland Revenue had published a number of draft guidance documents on shortfall penalties. What was missing from those drafts were guidance covering the evasion and abusive tax position shortfall penalties. Inland Revenue has now published these last two for consultation.

Abusive tax position

An abusive tax position shortfall penalty can be imposed when a taxpayer has taken an unacceptable tax position where there is a tax shortfall and the taxpayer took the tax position in respect or as a consequence of an arrangement entered into with a dominant purpose of avoiding tax (commonly called tax avoidance). The shortfall penalty is 100% of the tax shortfall.

The draft guidance is consistent with the previous guidance (IS0061, published in 2006), but has been updated to reflect legislative changes and a number of significant tax avoidance cases, including *Ben Nevis, Krukziener, Alesco* and *Frucor*. While the technical analysis may not be controversial, what may give a few tax practitioners and accountants pause for thought is the inclusion of an example (Example 2, excerpt below), which Inland Revenue describes as an example of an arrangement that is caught by an anti-avoidance provision and which should be subject to an abusive tax position penalty. This example is also topical with the recent announcement of the proposed changes around shareholder current account loans.

Facts

Ms B carries on a business through her company, C Ltd. In each of the 2012–2017 tax years she provides management services to C Ltd and, in return, C Ltd pays her a salary of between $150,000 and $200,000.

In the 2018 tax year, C Ltd's revenue reduces due to adverse market conditions. C Ltd also requires funds to meet capital expenditure. Ms B decides to forego her salary so C Ltd can pay for the capital expenditure and meet its ongoing operating costs.

By the start of the 2020 tax year, market conditions have improved, and C Ltd has met its capital expenditure needs and is trading near the levels it was trading at before the 2018 tax year. Despite this, C Ltd does not resume paying Ms B a salary. This creates a shortfall in the funds Ms B needs to meet her private expenditure. Ms B funds the shortfall using periodic borrowings obtained from C Ltd, and C Ltd funds the borrowings out of retained earnings. The borrowings are repayable on demand and interest is charged at the fringe benefit tax rate. All interest is capitalised at year end. The advances are recorded in a loan account Ms B maintains with C Ltd. At the end of the 2025 tax year, the account balance is $950,000.

The Commissioner considers s BG 1 of the ITA 2007 applies to the loan advances in the 2020–2025 tax years and proposes to treat the advances as income under s GA 1 of the ITA 2007. Ms B disputes this. In support of her position, she contends:

- the amounts she received cannot be taxed as income because they are loan advances;
- the terms on which the advances were made are not objectionable because they are typical of the terms used in related-party transactions;
- her initial decision to stop being paid a salary had a commercial purpose of leaving funds in C Ltd to be used for business purposes; and
- a person is entitled to live off capital, and under the loan she received advances of capital that she intends to repay.

The Inland Revenue consider the facts as they stand in this example show an arrangement with a dominant purpose of avoiding tax in the 2020 to 2025 years. In considering whether the abusive tax position shortfall penalty applies, the Inland Revenue states that the Example 2 scenario is consistent with the decision in *Krukziener*, where the arrangement was caught by s BG 1 (the general anti-avoidance provision in the Income Tax Act) and the shortfall penalty applied. Given it is not uncommon to charge and capitalise interest on shareholder loans it's a timely reminder that simply charging interest on a loan is not an adequate substitute for a business owner receiving income in their own right through either a shareholder salary or a dividend and this type of approach could be challenged by Inland Revenue. The facts in this example are much tamer than what occurred in the *Krukziener* case which involved a property developer receiving 'loans' from a number of different single purpose (property development) trading trusts involving vast sums of money (millions) over a 10-year period.

If the outcome of this example concerns you, submissions can be made on the draft guidance until 15 December 2025.

Evasion

Tax evasion is the action to evade the assessment or payment of tax and requires intention and actual knowledge, wilful blindness or subjective recklessness. The penalty is the 150% and unlike other shortfall penalties, the onus of proof is on the Commissioner of Inland Revenue to prove the taxpayer is liable for the penalty. The draft guidance is consistent with the original 2006 guidance as the legal test for evasion has not changed. What is new, however, is guidance on the exception where a person is liable to pay an employer's withholding payment penalty and the new penalty and offences concerning electronic sales suppression tools.

The submission deadline for the evasion guidance is also 15 December 2025.

Contact

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

Employment Leave Act
A new era for leave entitlements in New Zealand

By Lauren Foster and Shirley Walls

In September 2025 a Press Release came from Hon Brooke Van Velden, Minister of Workplace Relations and Safety, that Cabinet had agreed to a policy proposal to repeal the controversial Holidays Act 2003 and to replace it with new legislation, the 'Employment Leave Act'.

Draft legislation is yet to be released, but the Employment Leave Act will represent a significant reform of the Holidays Act 2003 and will impact all businesses operating in New Zealand that employ staff. Education and preparation will be critical for businesses navigating the transition.

This reform introduces significant changes to how leave is accrued, calculated, and paid, shifting from a complex 'weeks and days' model, to an hours based system that is intended to provide more flexibility.

Employers who invest early in understanding the proposed legislation, updating payroll systems, and revising employment agreements will be better positioned to ensure compliance, avoid costly errors, and maintain employee trust.

With a 24-month implementation window, proactive planning and clear communication with staff will be key to making the transition smooth, sustainable, and beneficial for both employers and employees.

Why the Change Was Needed

Documents from the Ministry of Business, Innovation and Employment (MBIE) provide a glimpse of some of the challenges with the Holidays Act 2003:

> *"Employers struggle to understand and apply the Holidays Act 2003 correctly, leading to workers not getting their correct entitlements. Administrative burden and compliance costs are high for employers, and despite good intentions, non-compliance is widespread and ongoing across both the public and private sectors. In the current legislation, many provisions are unclear, complex, difficult to apply for diverse working arrangements, and hard to systematise in payroll systems.*
>
> *Fixing the system will reduce errors, save time, and lower costs for businesses. These changes will simplify how leave is earned, taken, and paid – so that employers know what they need to do, and workers know what they should be getting"*

Implementation Timeline

With legislative principles for the new laws announced, we're now in the position of waiting to see how these will be translated into legislation. Draft legislation is expected to be introduced to Parliament early 2026 as the Employment Leave Bill.

Once introduced, it will go through the Select Committee stage, where the public and stakeholders will have the opportunity to provide feedback and submissions.

It's important to note that none of the changes are final yet. Employers must continue to comply with the current Holidays Act 2003 until the new legislation is enacted and comes into force.

The proposed law includes a 24-month transition period once passed. During this transition period, employers will need to update employment agreements and payroll systems, train HR and payroll staff on the new entitlements, and engage with MBIE guidance and resources as they become available.

Key Features of the Employment Leave Act

1. Annual Leave based on hours worked

Workers earn annual leave, from day one, in direct proportion to contracted hours of work. Annual leave accrues at a rate of 0.0769 hours (4/52) per 'contracted' hour (providing the equivalent of four weeks' leave for workers whose contracted hours do not change).

2. Sick Leave based on hours worked

Workers earn sick leave, from day one, in direct proportion to contracted hours of work. Sick leave accrues at a rate of 0.0385 hours (2/52) of sick leave per 'contracted' hour (providing the equivalent of 10-days per year for a worker who works five days a week and the same hours every day). There will be a cap of 160-hours. Once hit, the cap will stop new accrual until the worker has used some of their stored entitlement.

3. Provision of leave entitlements during unworked periods

Annual leave and sick leave accrue when a worker is on paid leave under any legislation and when on parental, jury and volunteers leave. It does not accrue when a worker is receiving accident compensation and not working or on any unpaid leave.

4. Using annual leave

Workers can use accrued leave hours to take any part of a day off work. Annual leave is taken in hours against contracted hours. Leave can be taken on days a worker would have worked their contractual hours under their employment agreement, or a roster created when leave is requested. If a worker doesn't have days of work in their employment agreement, they must agree to a 'notional roster' for leave purposes that would be used if a roster had not been created when leave is requested.

A worker can request to 'cash up' 25% of their annual leave, as at their last 12-month employment anniversary, in each 12-month period.

5. Using sick leave

For every hour a worker takes off work, they will use an hour of accrued leave. Workers can use accrued sick leave hours to take any part of a day off work.

Sick leave can be taken on days, and against any hours, a worker would have worked under their employment agreement or that they had accepted at the time of the leave request.

Where sick leave is notified in advance, a notional roster will be used where an employment agreement does not specify days/hours (as per annual leave).

6. Notional Rosters

Where the employment agreement includes a contractual obligation to work but doesn't specify all of the information needed to determine someone's leave entitlements (such as days of the week and times contracted, hours worked or the number of hours of work for a salaried employee) the employment agreement must then include a 'notional leave roster' that includes those details. It will be necessary to review the Notional Leave Roster regularly to ensure it reflects an employee's actual work pattern.

7. Salaried employee – working extra hours

If an employment agreement states that the salary includes payment for some additional hours, the employee will not accrue leave or receive any leave compensation for those hours.

However, if a salaried employee is paid extra wages for those additional hours, a leave compensation payment must be made at 12.5% of the employee's ordinary hourly salary rate.

8. Waged employee – working extra hours

Any extra hours worked by a waged worker, on top of contracted hours, will not accrue annual or sick leave, but a leave compensation payment will be paid at the time the hours are worked. The rate will be 12.5% of a worker's ordinary hourly wage rate.

9. Casual employees

All workers with no contracted hours will receive a leave compensation payment instead of accruing annual and sick leave for every hour they work.

The leave compensation payment is in lieu of accruing both annual leave and sick leave and is to be paid in every pay period. The rate will be set at 12.5% of a worker's ordinary hourly wage rate, and is based on the value of both annual and sick leave entitlements (7.69% for annual leave and 3.85% for sick leave, with a small addition to recognise other factors (e.g. the insecurity of additional and casual hours of work).

The leave compensation payment will be a separate component of pay and must be shown separately in employee's records and pay statements.

10. Payment of leave

The same hourly leave pay rate will be used for all types of leave. It will be based on a worker's lowest wage rate that would apply for the day of leave (for example, if an employee takes a contractual night shift as leave and would have received time and a half for the whole shift, the hourly leave pay rate will be the time and a half rate).

For those on piece rates (where an employer is paid for the number of pieces produced, e.g. for the number of buckets of apples picked) the hourly leave pay rate will also include an hourly average of piecework wages calculated over pay periods starting in the previous 52 weeks.

In addition to the hourly leave pay rate, fixed allowances (such as an accommodation allowance) will be paid in full during leave, as they are under the current legislation.

Other components of pay, like bonuses, commissions and variable allowances (such as for ad hoc special duties) will not be included in the hourly leave pay rate.

11. Parental Leave

Workers will continue to earn (accrue) leave while they are on parental leave. Once they return to work, when annual leave is taken, it will be paid like leave taken at any other time would be. This will be an increase in minimum entitlement compared with the status quo.

12. Bereavement and family violence leave

All employees will be able to access bereavement and family violence leave from day one. These will remain days-based entitlements, but workers will be able to take part days of leave.

13. Public holidays not worked (entitlement when OWD determined)

A day is an Otherwise Working Day (OWD) if an employee would have worked on it under their employment agreement (including based on an agreed pattern of days of work).

Where an employment agreement is not clear on whether a day is an OWD, this will be determined by whether the employee worked that day of the week in seven of the preceding 13 weeks. A day will not, however, be considered an OWD, if it is reasonable to expect the employee would not have worked on it due to parental leave, volunteers' leave, accident compensation or unpaid leave.

14. Public holidays worked

Workers will accrue alternative holiday hours at a rate of one hour for every hour worked on a public holiday that is an otherwise working day.

Workers who work only some of their contracted hours on a public holiday will receive time and half for the hours they actually work and leave (Public Holiday not worked) pay for the unworked hours.

15. Pay statements

Employers will be required to provide clear pay statements each pay period itemising pay and leave in a way that's transparent and easy to understand.

Pay statements will need to include a subset of information from workers' records – sufficient for workers to determine whether their pay and leave have been calculated correctly. There will be flexibility around how an employer provides the pay statement – it could be provided directly in a physical or digital form or made accessible to workers via an online portal.

How Deloitte can help

Navigating legislative change can be challenging, but Deloitte is here to support you. Our team of payroll and Holidays Act specialists can help you understand the new proposals and prepare your business for a smooth transition.

We offer:

- **Holidays Act Playbook & Leave Conversion Tools** to help you understand the proposed legislation and what is changing from their current set up.
- **Change Management Support** to communicate to employees about what is changing and how this will impact their pay.
- **Employment Agreement & Policy Reviews** – helping review current policies and agreements to suggest potential changes to come into alignment with the new legislation.
- **AI Tools for Compliance & Reporting** – tools to help identify any areas of potential non-compliance.
- **Holidays Act / Leave Act Lab** – interactive lab to help Payroll teams to prepare for the new legislation.

Contact

Lauren Foster
Partner
Tel: +64 4 470 3854
Email: lfoster@deloitte.co.nz

Shirley Walls
Senior Specialist Lead
Tel: +64 3 741 5912
Email: swalls@deloitte.co.nz

Future proof your tax governance framework

The Participating Advisor advantage

By Annamaria Maclean, Vicky Yen and Charlotte Mackenzie

Deloitte has collaborated with Inland Revenue to develop the Participating Advisor program, and since its official launch in April 2025, taxpayers have had great success from the benefits and protections of Participating Advisor reviews for GST, FBT and Payroll. Deloitte is also proud to now also be an approved Participating Advisor for Tax Governance reviews.

Tax governance is no longer a "nice to have", it is a significant focus area for Inland Revenue and a key consideration in their questionnaires, risk assessment decisions, and audit procedures. If Inland Revenue becomes aware of governance weaknesses, it can lead to a thorough audit and little flexibility regarding penalties.

For taxpayers navigating today's landscape of increased Inland Revenue scrutiny and expectations for tax governance, a Participating Advisor review provides an assessment of the existing tax control framework to identify gaps and opportunities, while demonstrating a proactive, governance focused mindset. Parameters of the Participating Advisor review have been agreed with Inland Revenue, providing clarity on expectations along with an additional level of protection that Inland Revenue should not separately undertake further testing on governance for a four-year period (provided there are no significant organisational or system changes).

The review can also be undertaken in response to/as a defence to further Inland Revenue audit or risk review activity on governance matters. Deloitte, as an approved Participating Advisor, is here to help you move confidently toward best practice and future-proof your Tax Governance strategy.

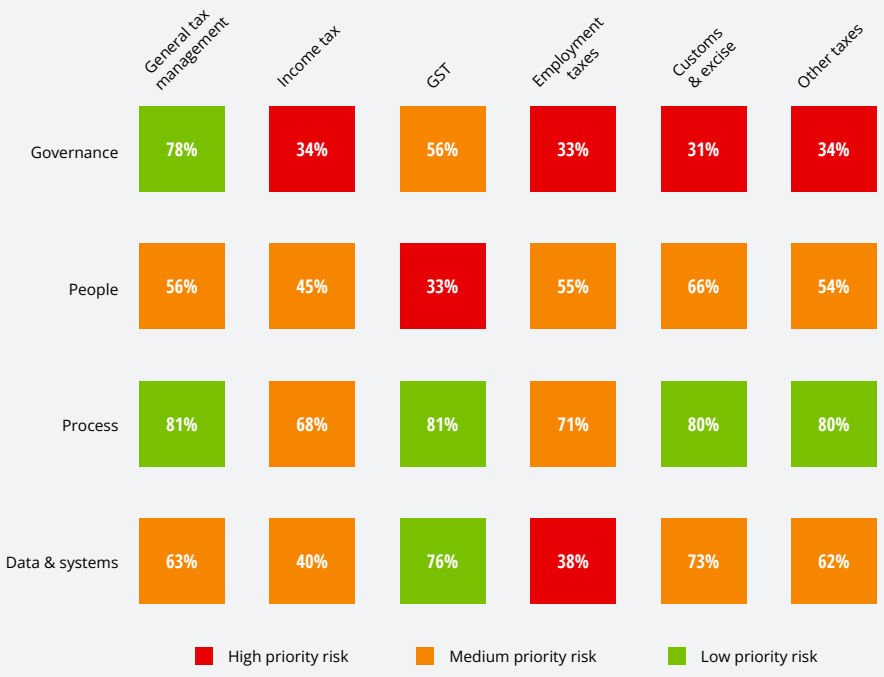
What does the Tax Governance Participating Advisor review involve?

The Participating Advisor Tax Governance review focuses on testing the existence, design and operating effectiveness of documentation, processes and controls compared to Inland Revenue's expectations and best practice.

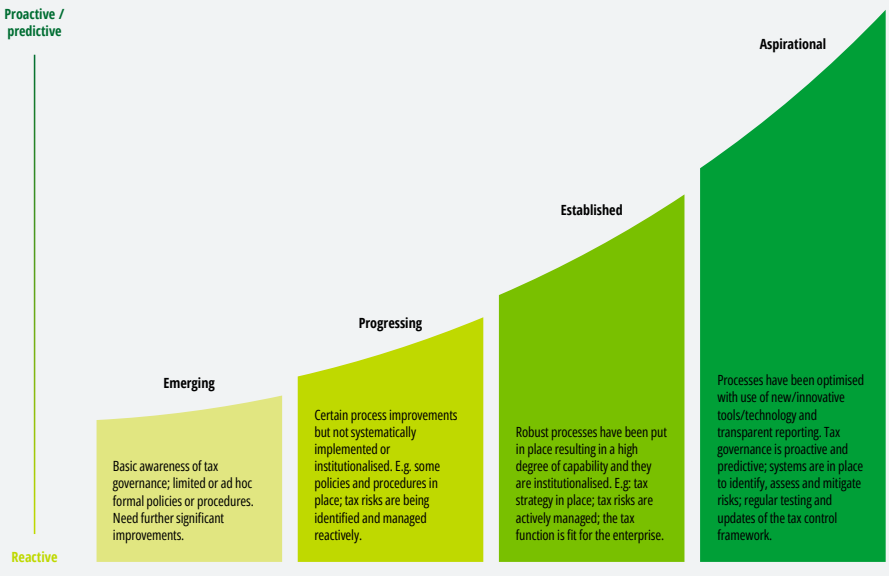
Our review involves a desktop review of your documentation and evidence of controls. This is followed by a workshop to identify additional informal processes or controls which might be in place. We use our Tax Governance assessment model to work through a series of criteria and provide a gap analysis report which includes:

- Our Tax Cube risk heatmap on key aspects of governance per relevant tax type (including general, income tax, indirect tax, employment taxes and international considerations);
- An indication of where Deloitte believes the taxpayer is on the Inland Revenue tax governance maturity model; and
- A summary of the key findings and recommendations (broken down by relevant tax type) to assist in strengthening the tax control framework and progress towards the aspirational and proactive/predictive end of the tax governance maturity model.

Tax cube risk heatmap



Inland Revenue tax governance maturity model



Why is Tax Governance so important?

A robust tax governance and tax control framework is fundamental to supporting compliance. Inland Revenue expects most enterprises to be near the 'established' level of their maturity model, with significant or multinational enterprises expected to already be at the 'established' level or higher. Our May 2025 Tax Alert article provides an explainer on what the Inland Revenue is looking for.

Taxpayers that receive the Basic Compliance Package (BCP) will see tax governance as a significant focus of the 2026 BCP questionnaire (for the 2025 income year). The BCP applies to New Zealand owned multinationals with a turnover of at least NZD 80 million or foreign owned multinationals with a turnover of at least NZD 30 million, it is intended to be issued to such taxpayers on a three-yearly basis. The focus of the 2026 BCP questions will be on understanding the current state of tax governance within the New Zealand market and any existing/potential barriers to increasing tax governance.

The proposed questions include:

- Whether there have been any significant changes to the Tax Governance control framework within the last three years.
- A self-assessment using the Tax Governance Maturity Model (included above) of which phase best describes the current maturity of the taxpayer.
- An indication of the key challenges taxpayers are facing in improving tax governance maturity.

Where to from here?

BCP questionnaires are released around March each year, giving taxpayers time to get their house in order. Deloitte can assist with conducting the Tax Governance Participating Advisor review to identify the gaps and opportunities within your current tax control framework. This will allow you to focus on improving the key risk areas and progressing through the Inland Revenue Maturity Model.

Please contact your Deloitte advisor to discuss how we can help you on your Tax Governance journey.

Contact

Annamaria Maclean
Partner
Tel: +64 9 303 0782
Email: anmaclean@deloitte.co.nz

Vicky Yen
Associate Director
Tel: +64 9 975 8610
Email: vicyen@deloitte.co.nz

Charlotte Mackenzie
Senior Consultant
Tel: +64 9 306 4490
Email: cmackenzie@deloitte.co.nz

Software development and SaaS expenditure under the policy spotlight

By Joe Sothcott, Brendan Ng and Robyn Walker

Back in 1993, the internet was something you dialled into (if you'd even heard of it), the cloud referred to actual clouds, and software came on floppy disks. Needless to say, a lot has changed since then.

Yet surprisingly, New Zealand's tax laws and guidance for software still carry traces of that bygone era. Recognising the need for change, Inland Revenue has launched consultation on the income tax treatment of software development expenditure and the costs of configuring and customising Software-as-a-Service (SaaS).

What's on the table?

At this stage... not much in terms of proposals. The consultation isn't advancing specific policy options yet. Instead, it seeks to identify the challenges businesses face when determining the tax treatment of software-related expenditure and clarify which costs should be immediately deductible and which should be capitalised and depreciated. Detailed policy proposals are expected in a later round of consultation.

That said, the paper does hint at Inland Revenue's thinking on software development and SaaS customisation costs. Here's what you need to know.

Software Development Expenditure

The paper first looks at expenditure on software developed for sale or licensing, asking whether current approaches provide an appropriate basis for deductibility or depreciation. It outlines three main approaches currently in use:

1. Trading Stock Approach

In 1993, Inland Revenue's position was that software development costs should be immediately deductible as the cost of producing trading stock. This made sense when software was sold on disks or CDs. Today, with software typically licensed or delivered as a service, Inland Revenue considers this approach outdated except where there is a full copyright assignment as part of an outright sale.

2. Depreciation Approach

These days, software is typically distributed under non-exclusive licences or as a service, rather than sold outright, meaning it no longer qualifies as trading stock. Recognising this, Inland Revenue issued an issues paper in 2016 stating that software development expenditure should generally be capitalised as depreciable intangible property, with depreciation deductions applying when the software is available for use.

Under this approach:

- The applicable depreciation rates are 50% (diminishing value) or 40% (straight line).
- Upgrades can be capitalised and depreciated.
- Abandoned projects may qualify for a deduction under section DB 40B of the Income Tax Act 2007.
- Timing depends on asset recognition and whether the R&D rules apply.

Notably, this 2016 view was never finalised as Inland Revenue and tax administrations around the world continued to grapple with tax implications of software. However, most taxpayers would be using the depreciation approach (or the R&D approach described below), which often leads to questions of what expenditure, how much expenditure, and when expenditure should be capitalised. These questions are particularly relevant when considering the iterative nature of software development, especially in relation to maintenance and upgrades, and whether there is actually an upgrade or an improvement to the software.

3. R&D Approach

Under section DB 34 of the Income Tax Act 2007, expenditure meeting the IFRS accounting definition of research or development (see NZ IAS 38 'Intangible Assets') can be fully deducted in the year incurred or carried forward until an intangible asset must be recognised. Depreciation then applies to any remaining capital expenditure not covered by this section.

The paper acknowledges that applying section DB 34 can be challenging in practice. From our experience section DB 34 can provide businesses with a lot of clarity and reduce their compliance costs, however it is important to consider all the requirements for applying NZ IAS 38 and make sure that appropriate processes are put into place to be certain the appropriate position is taken.

The consultation paper also highlights that section DB 34 can result in asymmetric results. That is, expenditure can be deducted under section DB 34 but gains from the sale of assets created from the R&D may be non-taxable capital gains. Inland Revenue suggest a more symmetrical approach is justified, indicating this is likely something Inland Revenue will look at in more detail in the next round of consultation.

Inland Revenue's View

Inland Revenue concludes that the current approaches to determining deductibility are broadly acceptable. However, they are seeking feedback on whether the unique nature of software development creates incorrect outcomes and whether alternative methods are warranted.

Software-as-a-service (Saas)

The second half of the consultation paper addresses configuration and customisation costs incurred by taxpayers licensed to use a SaaS application owned by a third party. In these arrangements, the SaaS provider hosts the software on its own cloud infrastructure and grants customers the right to use it. Business customers often require changes to the standard application of this software, which fall into two categories:

- **Configuration:** Adjusting settings within existing code.
- **Customisation:** Modifying or adding code to create new functionality.

For accounting purposes, the key question is whether any configuration or customisation creates an intangible asset. If no intangible asset is recognised (because the customer doesn't control the software or no new resource separate from the software and controlled by the customer is created), costs are generally expensed.

For tax purposes, Inland Revenue's 2023 interpretation guideline (covered in a previous Tax Alert) clarified that SaaS configuration and customisation costs may, depending on circumstances, be deductible as development expenditure or treated as relating to depreciable intangible property. But issues have emerged.

Under current law, deductions are allowed only if they meet section DA 1 (the general permission) and aren't denied by the capital limitation in section DA 2(1). Inland Revenue considers the general permission to be met, but the capital limitation likely to apply, with the result being that the costs must be capitalised. Depending on the terms of the SaaS arrangement, a taxpayer may then be able to depreciate the right to use software under either the depreciable intangible property or fixed life intangible property rules.

Alternatively, even if the capital limitation does apply, section DB 34 could override this limitation if the costs qualify as "research" or "development" under NZ IAS 38, allowing the costs to be immediately expensed. The guidelines conclude that SaaS C&C costs are unlikely to be research but could be development; but would only fall under section DB 34 where the development work is undertaken in-house (i.e. not by a third party such as the SaaS provider).

From here, the consultation paper concludes that allowing SaaS C&C costs to be deductible under section DB 34 is not "tenable" from a policy perspective, though gives no reasoning other than the compliance burden. Instead, the paper suggests the best approach is for taxpayers to capitalise and depreciate all SaaS C&C costs—though officials are open to feedback on other approaches that may minimise compliance costs.

Deloitte's View

Deloitte disagrees with Inland Revenue's conclusion that allowing SaaS C&C costs to be deductible is untenable. Aligning the tax treatment with the IFRS treatment would be simpler, as SaaS costs expensed for accounting purposes are often hard to identify and capitalise for tax. Divergence between accounting and tax treatment creates unnecessary compliance costs for what is a minor timing difference (depreciation over roughly two and a half years given high depreciation rates for software). A separate rule / de minimis rule for those taxpayers who do not follow IFRS would also help.

Next Steps

Submissions on the consultation close on 30 January 2026. If you have questions about software or SaaS tax treatment, or if you would like to make a submission, please contact your usual Deloitte advisor.

Contact

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

Brendan Ng
Associate Director
Tel: +64 4 495 3915
Email: brng@deloitte.co.nz

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

Five-year RDTI review confirms strong business backing and economic impact

By Brendan Ng, David Creagh and Aaron Thorn

The Ministry of Business, Innovation and Employment first five-year evaluation report of the Research and Development tax incentive regime asked whether the 15% R&D Tax Incentive tax credit (RDTI) is encouraging more businesses to undertake R&D and whether the government is getting "bang for the buck" on the investment.

What are the reports key findings?

For those who haven't yet discovered it (we know you're out there!), the RDTI was introduced in April 2019 and provides a 15% tax credit on eligible R&D expenditure. The purpose of the RDTI is to broaden access to R&D support and stimulate innovation.

The Report considered whether the 15% tax credit is incentivising further R&D to be undertaken and its effect on growth on New Zealand's economy. In summary:

- Projected economy-wide benefit of the RDTI: **4.2 times government investment**, equating to a boost to New Zealand's GDP of **$6.8 billion** over the five-year period.
- Total additional R&D expenditure: **$1.833 billion** (present value) – with supported firms on average spending **$274,000 more on R&D annually.**
- "Bang for the buck" (BFTB) ratio (additional expenditure per dollar of support provided) is **1.4**, consistent with OECD benchmarks. This compares to a BFTB ratio of 0.83 under the Growth Grant regime.
- Net impact after government costs: **$221 million.**
- Innovation gains appear two years post-support, with a **6.1 percentage point increase in innovation rates**, with supported firms showing higher growth in output, capital, and employment.
- No significant productivity effect has yet emerged, reflecting the short evaluation window.

The RDTI regime seems to have achieved its goal, with key figures for the 2020-2024 period being:

- 1,752 firms supported, with **$1.074 billion** in tax credits provided.
- By 2023, supported firms accounted for **65% of total business R&D expenditure**, compared to 44% under Growth Grants.

This all seems to suggest that the RDTI has made a positive impact and is a welcome addition to the New Zealand innovation landscape. However, behind the numbers there may be other considerations.

So, is the R&D tax incentive working as intended?

Short answer: Yes. Long answer: There is room for improvement.

The report, prepared by Motu Economic and Public Policy Research and The University of Otago, is overwhelmingly positive in relation to the RDTI, noting that firms supported by the RDTI spent more on RDTI than they would have in the absence of RDTI support and that it is outperforming the Growth Grant scheme it replaced. The report states that given the rate of recent change in New Zealand's approach to supporting business R&D, and the potentially positive impact of stability on business decision making, there appears to be a strong case for preserving a stable support mechanism (i.e. the RDTI regime) in the medium term.

However, there is unpredictability in the processing time for Supplementary Returns – which extends the time between businesses outlay on the R&D and when it received the incentive – and a lack of discretionary powers available to the Commissioner of Inland Revenue that is disproportionately penalising companies for minor missteps.

Is New Zealand's RDTI scheme globally competitive?

The Report briefly covers how the RDTI regime compares with similar overseas regimes, but notes that there are difficulties in comparison given different externalities and design features. Australia is the best and easiest comparison and the report found that Australia's scheme may be more generous for SMEs and offer more flexibility for overseas and software R&D.

However, the tightening of the requirements for Overseas Findings has had a significant impact on the ability to claim overseas costs in the Australian scheme.

The Report also notes that Inland Revenue takes a vigorous approach to reviewing eligible R&D expenditure, and the rates of revision following review appear to reflect a greater level of expenditure scrutiny when compared with some overseas schemes.

Deloitte's experience has been that the additional certainty provided by the RDTI's review process, which culminates with the issuance of a binding approval for the R&D activities, far outweighs the additional administrative burden of the review process. The report notes that these review processes are rare amongst R&D tax credit policies and are effective safeguards against error and fraud. This should hopefully protect New Zealand's RDTI scheme from some of the issues with R&D incentive schemes that have been encountered overseas.

What else did we find interesting in the report?

The Report covered feedback from stakeholders on how well the RDTI is working for them. Some of the feedback noted:

- **High compliance costs**, particularly for firms spending under $300,000 on R&D.
- **Administrative delays** in processing Supplementary Returns.
- **Restrictive software eligibility rules** misaligned with the standard iterative development process.
- **Policy instability** which undermines confidence and planning.

Much of this aligns with the feedback Deloitte has heard on the RDTI, however we do note that many of these grumbles have fallen away as businesses gain a better understanding of the RDTI with time. In particular, R&D in the software development space is a very strong area of claim, with Officials and guidance supporting the inclusion of software R&D in the RDTI regime. We recommend reaching out if you have any queries on whether your software development work would qualify as an eligible R&D activity.

The Report doesn't directly suggest immediate action is undertaken to make changes to the RDTI, but it does provide a number of suggested recommendations, including:

- **Maintain policy stability** to support long-term planning.
- **Streamline compliance for smaller firms**, possibly through simplified approval processes.
- **Revisit software eligibility rules** and clarify guidance.
- **Introduce greater discretionary powers** for the Commissioner of Inland Revenue to enable the correction of administrative errors.

It is notable that tiered credit rates (with a credit rate greater than 15% for the first $300k of R&D spend) and higher overseas expenditure caps were modelled and were found to deliver negative net impacts (based on various assumptions).

The report notes that the administrative challenges with running the scheme have swung from the initial overly restrictive application of the eligibility tests at the General Approval application stage to unpredictability in the processing times for Supplementary Returns. Underlying this are the challenges compliance officers encounter in determining the scope of the approved activities in the claim and therefore whether a particular expense relates to the approved activities. To help resolve this, the Inland Revenue and Callaghan Innovation (who have now moved into MBIE) teams are increasing their integration, with the Callaghan team beginning to receive Supplementary Returns to review for the first time.

Overall, it is clear from the Report that there are changes that could be made to the RDTI regime to enhance the benefits it provides both businesses and New Zealand alike.

What's next?

The current Government hasn't commented on the released Report, so it's hard to say whether any changes will come out of it. However, we do understand that the RDTI is being considered, amongst other things, in relation to the Government's Going for Growth initiative.

Additionally, the increased scrutiny of the link between activities approved in General Approval applications and expenditure claimed reinforces the need to ensure the project's costs are considered comprehensively at the General Approval stage.

If you have any questions on what changes might be coming to the RDTI, or if you have any questions on whether your business would qualify for the 15% tax credit, please get in touch with your usual Deloitte advisor.

Contact

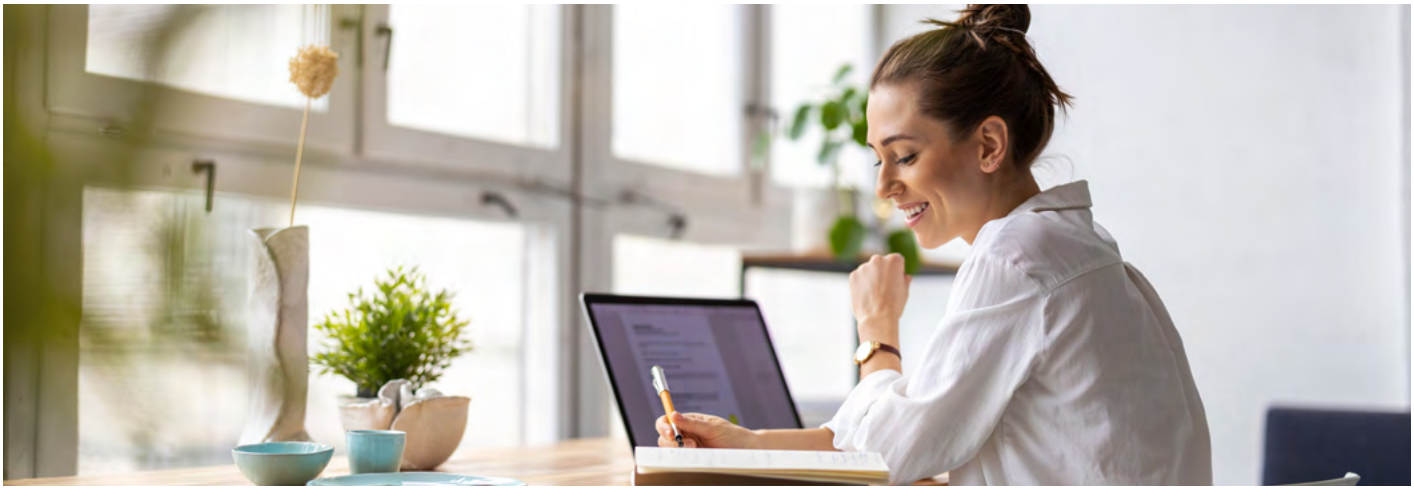
Brendan Ng
Associate Director
Tel: +64 4 495 3915
Email: brng@deloitte.co.nz

David Creagh
Associate Director
Tel: +64 9 952 4288
Email: dcreagh@deloitte.co.nz

Aaron Thorn
Partner
Tel: +64 3 363 3813
Email: athorn@deloitte.co.nz

Home office or Business hub?

By Jayesh Dahya, Julian Bryant and Ben Tinsley



The global adoption of remote and flexible work arrangements, accelerated by the COVID-19 pandemic, has enabled employees to work from virtually anywhere, including countries outside their employer's home jurisdiction. While this flexibility offers significant benefits, it also raises important tax considerations for businesses, particularly the risk that an employee's home office could be deemed a "permanent establishment" (PE) under international tax treaties.

A PE can expose an employer to unexpected corporate tax liabilities and compliance obligations in the foreign country where the employee is based. To mitigate these risks, many organisations have imposed restrictions on the duration or nature of overseas remote work that they will allow the employee to undertake. However, the question of when a home office constitutes a PE has remained a grey area.

The OECD has updated Article 5 of the Model Tax Convention commentary to provide new guidance that introduces a two-part test: a 50% working-time threshold that, if passed, means there will be no permanent establishment based on the time the employee spends remote working in another country, and, if the working time test is not satisfied, a commercial reason test that looks at various factors to assess whether the business has a commercial reason for the employee's presence in the other country.

This article summarises the key elements of the OECD's update, illustrates how the rules apply in practice, and outlines steps employers should take to align their remote work policies with the latest guidance.

OECD's 2025 Update: Home Office Permanent Establishment Guidance

- 50% Working-time threshold: If an employee works from their home (or another place, e.g., holiday home, the home of a relative or friend etc) in a foreign country for less than 50% of their total working time over any 12-month period, that location will generally not be considered a place of business of the employer. This safe harbour is designed to exclude sporadic or infrequent remote work from PE risk. If an employee is not able to meet this safe harbour then whether employer has a place of business at such a place will be determined by the facts and circumstances.
- "Commercial reason" test: If the employee works from the foreign home office for 50% or more of their total working time, the arrangement is assessed based on whether there is a business-driven reason for the employee's presence in that country. If the location provides a commercial advantage to the employer—such as serving local clients, accessing local resources, or enabling business expansion—it may be considered a PE. Conversely, if the arrangement is driven solely by the employee's personal preference or a general flexible work policy, it is less likely to create a PE.

The OECD Commentary makes it clear that cost savings, such as reducing office rent, or simply accommodating an employee's preferred place of residence do not, on their own, amount to a commercial reason for establishing business activities in a particular country. Likewise, having some customers or suppliers in the area, or the mere fact that the location is in a different time zone, does not automatically justify a business presence without additional context. For a foreign home office to be considered a PE, there must be a specific, business-driven rationale. Notably, if a company allows remote work solely to attract or retain a particular employee, this alone does not meet the threshold for a commercial reason.

In situations where only small amounts of profit would be attributed, the tests are aiming to limit situations of permanent establishments arising recognising that this creates increased compliance costs for businesses.

Application of the tests

The OECD guidance includes five practical examples to illustrate how these criteria apply.

Each example considers a scenario of an employee of "RCo" (resident in State R) working from a location in State S and considers whether that location in State S constitutes a PE for RCo

The examples and conclusions are summarised in the table below:

Example	Scenario	Is there a degree of permanence for the place to be "Fixed"	Working time/ Commercial Reason Present?	PE Outcome	OECD Commentary Reasoning
A	Employee of RCo works remotely from a rented location in State S for 3 consecutive months following a personal holiday.	No.	No need to consider.	No PE	The place in State S from which she works should not be considered fixed because RCo's business has been carried on at that place for three months during the twelve-month period. It therefore lacks permanence to meet the requirements of a fixed place of business. The same conclusion would arise on the same facts if the facts were the same but there was another personal reason such as caring for a sick relative.
B	Employee works from home in State S 1–2 days per week throughout the year (~30% of total working time).	Yes Regular weekly use over a full year has sufficient degree of permanence.	No – <50% of working time spent in State S.	No PE	The individual spends less than 50 per cent of her working time working from her home in State S. In the absence of other facts and circumstances showing otherwise, the home would not be a place of business of RCo and therefore it would not give rise to a PE of RCo in State S.
C	Employee works ~80% of time from home in State S and regularly meets and serves clients located in State S.	Yes Continuous use throughout the year has sufficient degree of permanence	Yes – >50% Employee's presence in State S facilitates the provision of services to local clients.	PE Exists	The individual spends at least 50 per cent of his working time working from his home in State S and there is a commercial reason for the individual's presence in State S. RCo has a commercial reason for the employee's presence in State S because it facilitates the provision of services by RCo (through the individual) to customers in State S, where the individual's home is located.
D	Employee works ~60% of time from home in State S, servicing clients remotely across multiple jurisdictions. Visits a client in State S quarterly.	Yes Continuous use throughout the year has sufficient degree of permanence	Yes – >50% No clear commercial reason – quarterly visits are intermittent and incidental	No PE	While the individual spends more than 50 per cent of his working time working from his home in State S, other facts and circumstances including the reason for the individual's presence in State S must also be considered. The mere presence of clients of RCo in State S does not mean there is a commercial reason for his presence there. In addition, his visits to a client are on an intermittent and incidental basis. As a result, there is no commercial reason for him to carry out activities related to the business of RCo at his home in State S. In the absence of other facts and circumstances showing otherwise, the home would not be a place of business of RCo and therefore would not be a fixed place of business permanent establishment of RCo in State S
E	Employee works nearly 100% from home in State S. Location enables 24/7 support for clients in other time zones.	Yes – continuous use throughout the year has sufficient degree of permanence	Yes >50%. Commercial reason exists in State S - provides time-zone advantage, enhancing service delivery.	PE Exists	R Co has a commercial reason for the employee's presence in State S because it facilitates the provision of services by RCo (through the individual) to customers in State R (and to those located in other time zones that differ to that of State S). In the absence of other facts and circumstances showing otherwise, the home would be a place of business of RCo and a fixed place of business PE of RCo in State S.

Source: The 2025 update to the OECD Model Tax Convention

Concluding comments

The OECD's 2025 update provides much-needed clarity for employers managing international remote work arrangements. A home office is not automatically considered a PE; if the arrangement is not driven by business needs, it will generally not be treated as a fixed place of business. However, employers should remember that other aspects of the PE definition, such as the activities of dependent agents, may still apply. Furthermore, not all countries have double tax agreements in place with New Zealand based on the OECD model.

Recommended Actions for Employers include:

- **Reviewing Existing Arrangements:** Assess current home office setups to ensure alignment with the new OECD guidance.
- **Updating Remote Work Policies:** Consider aligning internal policies with the 50% threshold and develop clear guidelines for handling long-term international remote work requests. Consider implementing systems to track where employees are working and for how long.
- **Documenting Commercial Purpose:** When approving an overseas remote work arrangement, document the rationale. If it's approved to allow for an employee's personal request or to retain their services (with no intent to expand business in that country), put that on record. Clear and contemporaneous documentation will be useful if you ever need to demonstrate the "commercial reason" for the arrangement.
- **Educating and Communicating to the teams:** Ensure HR, legal, and business teams understand the tax implications of cross-border work and know when to involve tax specialists in decision-making.

As with any remote working arrangements there will be other considerations for the employer to consider that include for example payroll and immigration.

If you have any questions or would like to discuss these changes please contact your Deloitte advisor.

Contact

Jayesh Dahya
Director
Tel: +64 4 470 3644
Email: jdahya@deloitte.co.nz

Julian Bryant
Associate Director
Tel: +64 9 758 658
Email: jubryant@deloitte.co.nz

Ben Tinsley
Intern
Tel: +64 4 470 3687
Email: btinsley@deloitte.co.nz

Emissions Trading Scheme for non-forestry industries

By Annamaria Maclean and Andrea Scatchard

Inland Revenue has released its final interpretation statement Income tax and GST – industries other than forestry registered in Emissions Trading Scheme (IS 25/24). This statement applies to industries participating in the Emissions Trading Scheme (ETS) (excluding forestry, which is subject to separate tax treatment) and encompasses emissions-intensive and trade-exposed sectors, as well as those engaged in removal activities and certain horticultural operations.

The interpretation statement addresses the intricacies of ETS-related rules for non-forestry industries and should be carefully reviewed by affected parties.

In summary, the interpretation statement outlines that businesses may claim deductions for emissions liabilities incurred, calculated according to the number of New Zealand emission units (NZUs) required to be surrendered based on production levels and on an accrual accounting basis.

NZUs can be obtained through purchase in the open market or, in some cases, received as "free NZUs" as an annual government subsidy. The statement clarifies that NZUs are considered revenue account property, with specific valuation requirements upon acquisition and at balance date. Additional complexity arises when businesses are allocated free NZUs; rather than reducing the emissions liability deduction due to receipt of free NZUs, the market value of these units at balance date generates income that offsets the emissions liability deduction.

Challenges may also occur if there is a shortfall or excess in the number of free NZUs provided or when a business's balance date does not correspond with the emissions year's calendar period.

The statement highlights the complexity in accurately monitoring and documenting all purchased and free NZUs held, including their valuation and method of disposal (whether sold or surrendered) from a tax perspective, noting this may differ from NZU register records. As part of robust tax governance, it is essential for impacted taxpayers to monitor compliance and assess their tax positions annually to ensure that they are following the guidance outlined in the interpretation statement.

Many submitters on the exposure draft of the interpretation statement highlighted the significant complexity inherent in the current ETS regime for non-forestry industries. Submitters have advocated for legislative reforms aimed at simplifying the regime's application and reducing administrative burdens for affected taxpayers.

Among the changes proposed by submitters are measures to remove the taxation of stockpiled free NZUs that have not been surrendered (or sold) to offset an emissions liability in an income year. Additionally, there are calls to allow taxpayers to calculate emissions liabilities and allocation of NZUs based on the emissions year that ends within their income year (much like inclusion of income from limited partnerships and CFCs), which would facilitate easier tracking and reconciliation of NZUs and associated tax obligations.

It is understood that these submissions have been forwarded to the Inland Revenue Tax Policy team for consideration. We will continue to monitor developments and keep readers informed regarding any future changes that may arise from this ongoing review process.

Please reach out to your usual Deloitte advisor if you have any queries on the ETS regime.

Contact

Annamaria Maclean
Partner
Tel: +64 9 303 0782
Email: anmaclean@deloitte.co.nz

Andrea Scatchard
Partner
Tel: +64 7 838 4808
Email: ascatchard@deloitte.co.nz

Taxing Christmas

By Robyn Walker, Rose Basile and Katie Helm

Have Santa's elves been busy bringing joy to your workplace?

While the work Christmas party and gift-giving bring joy, they can also bring confusion when it comes to understanding the tax implications for both employers and employees. Behind the sparkle of parties and presents lie three key tax regimes: FBT, PAYE, and entertainment expenditure, with each regime bringing its own festive twist, subtle enough to keep even the elves guessing.

Whether you're hosting a Christmas party, giving gifts to staff, or entertaining clients, chances are one of these regimes will apply, but which one isn't always clear.

The PAYE rules will apply where any monetary compensation is provided to employees in connection with their employment, think of things like bonuses, and gratuities provided to employees. Accommodation is also taxed through PAYE.

The entertainment expenditure rules reduce income tax deductions by 50% for certain types of expenditure including corporate boxes, holiday accommodation, expenditure on yachts, food and drink at celebrations, and all connected incidental expenditure.

The FBT regime then comes in to capture non-cash benefits that are provided to employees in connection with their employment. While there is some overlap between the entertainment rules and FBT, the entertainment rules will generally override FBT, unless:

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

For example, if you take your team out for a Christmas lunch the entertainment rules kick in. Swap that for a restaurant voucher they can use anytime, and you're in FBT territory.

This table provides a quick summary of the three regimes:

Tax Regime	What it covers	Tax impact
PAYE	• Monetary benefits linked to employment. • Includes costs reimbursed by employers or funded by allowances. • Examples: bonuses, extra pay, accommodation, and other employment-related monetary benefits.	• Expenditure is usually 100% deductible to the employer. • PAYE is withheld by the employer at the employee's specified rate.
FBT	• Non-cash benefits employees can enjoy at their discretion. • The employer usually bears the cost, although employees can make contributions toward the cost.	• Expenditure is usually 100% deductible. • Employer pays FBT at the applicable rate and makes a GST adjustment. • A de minimis threshold may apply for "unclassified benefits."
Entertainment	• Benefits that have both a private and business element. • Includes recreational events away from the office—corporate boxes, exclusive areas, craft activities, or holiday accommodation. • Applies to most food and drink (with some exceptions). • Benefits not received during, or as a necessary part of, employment duties.	• Generally, only 50% deductible. • Some exceptions apply, such as light refreshments served on business premises. • GST applies to the non-deductible portion.

Common Scenarios: Practical Examples for Your Business

Christmas Party Off-Site

Planning a festive event away from the office? Costs for food, drinks, and venue hire fall under entertainment expenditure rules. Incidental expenses—such as crockery, glassware, utensils, waitstaff, or music—are also included.

Tax impact: Only 50% of these costs are deductible.

Staff Cash Bonuses

Cash bonuses paid to employees are taxable under PAYE rules. These payments relate to employment but are not part of regular salary or wages.

Tax impact: Bonuses should be taxed at the "extra pay" rate.

Christmas Gifts for Employees

Most gifts to employees are subject to FBT. If instead you allow employees to buy their own gift and provide a reimbursement the cost after the fact, it falls under PAYE.

Tip: Some benefits may qualify for an FBT exemption under the de minimis rule if:

- Total unclassified benefits for all employees are under $22,500 in the past 12 months, and
- No employee receives more than $300 per quarter ($1,200 annually).
  Common examples: vouchers, gifts, flowers.

Gifts for Clients and Customers

Here's an interesting twist: Inland Revenue treats any food and drink as entertainment expenditure, even when given as a gift. Example: A gift basket with wine, cheese, towels, and soap.

Tax impact: Towels and soap are fully deductible, but wine and cheese are only 50% deductible.

We hope this clears up some common misunderstandings around employment tax regimes.

If you have questions, contact your usual Deloitte advisor.

From Us to You

Merry Christmas and Happy New Year!
The Tax Alert Team wishes you a joyful festive season and a well-deserved break!

Contact

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

Rose Basile
Associate Director
Tel: +64 4 470 3652
Email: rbasile@deloitte.co.nz

Katie Helm
Consultant
Tel: +64 4 470 3868
Email: khelm@deloitte.co.nz

Snapshot of recent developments

Tax legislation and Policy Announcements

Public Remedials Log (October 2025)

The Public Remedials Log has been updated for October.

Tax changes in redesign of vocational education and training system

On 21 October 2025, the Education and Training Amendment Act received Royal Assent. Part 2 of the Act amends the Income Tax Act 2007 to provide that the income of the Federation of Polytechnics Committee and an industry skills board are exempt from income tax. The amendment is effective on 22 October 2025.

South Korea and New Zealand conclude negotiations for revision to tax treaty

On 5 November 2025, Tax Notes reported that South Korea and New Zealand completed in principle negotiations for a revision to the 1981 double-tax agreement, amended by the 1997 protocol.

Parliament (Repeals and Amendments) Act 2025 passed into law

On 12 November 2025, the Parliament (Repeals and Amendments) Act 2025 received Royal assent. The Act contains a number of amendments to other Acts. Part 3, subpart 3, sch 2, contains minor and consequential amendments to tax legislation including amendments to sections CW 31, CX 33B and YA 1 of the Income Tax Act 2007, and amendments to s 6(3)(c)(i) of the Goods and Services Act 1985.

Agreement between New Zealand and Croatia for the Elimination of Double Taxation

On 20 November 2025, the double-tax agreement between New Zealand and Croatia, which has already been initialled, was signed by Croatia. New Zealand is yet to sign the agreement.

Inland Revenue Statements and Guidance

Purchase price allocation Commissioner of Inland Revenue notifications

On 16 September 2025, Inland Revenue released information as part of an Official Information Act request on the number of Purchase Price Allocations the Commissioner of Inland Revenue has been notified of by "person A" under the terms of section GC 21(3) and "person B" under the terms of section GC 21(5).

Severe weather conditions in Canterbury, Clutha and Southland

On 29 October 2025, Inland Revenue announced that taxpayers affected by severe weather in Canterbury, Clutha and Southland should get in touch via myIR including the word 'weather' or call Inland Revenue on their disaster line 0800 473 566.

Tax Information Bulletin: November 2025

On 3 November 2025, Inland Revenue issued TIB Vol 37, Nov 10 (November 2025):

New legislation

- Public Act 2025 No 50: Income Tax (FamilyBoost) Amendment Act 2025

Determination

- S65: Spreading method to be used for some electricity price contracts for difference

Standard practice statement

- Notice of withdrawal: Imaging of electronic storage media

Interpretation statement

- IS 25/21: GST – taxable activity

Case Summary

- CSUM 25/12: High Court refuses to grant stay of liquidation pending outcome of judicial review proceeding

Technical decision summary

- TDS 25/23: Disposal of cryptoassets

Public Guidance Work Programme

On 4 November 2025, Inland Revenue issued an updated Public Guidance Work Programme.

Auckland man sentenced for attempted multi-million-dollar COVID fraud.

On 4 November 2025, Inland Revenue published details of a man sentenced to over 4 years in prison due to his involvement in orchestrating a large-scale fraud targeting the Covid-19 Wage Subsidy Scheme, the Small Business Cashflow Scheme, COVID-19 Support Payments and Resurgence Support Payments.

Product Rulings: Ministry of Education bursary payments

On 6 November 2025, Inland Revenue issued the following product ruling:

- BR Prd 25/05: Ministry of Education
  The Arrangement is the payment of bursaries that Initial Teacher Education providers make to eligible student teachers under the School Onsite Training Programme.
- BR Prd 25/06: Ministry of Education
  The Arrangement is the payment of bursaries that the Ministry of Education makes to eligible student teachers under the Go Rural: Isolated Placements Fund.

Interpretation Statement: GST – Secondhand goods input tax deduction

On 11 November 2025, Inland Revenue issued IS 25/22: GST – Secondhand goods input tax deduction, discussing the requirements that must be met for a registered person to claim a secondhand goods input tax deduction. This includes, among other things, a discussion of the requirement that the goods be secondhand and the meaning of secondhand.

Interpretation Statement: GST – Meaning of payment

On 11 November 2025, Inland Revenue issued IS 25/23: GST – Meaning of payment. This is relevant for determining time of supply, tax periods, and eligibility for input tax deductions. A payment can be made using money, property, services, promissory notes, bills of exchange, deposits, or by set-off against existing debts. It can also occur when funds are borrowed under a separate loan agreement and used to settle the supply obligation. However, simply deferring the purchase price under the supply agreement does not constitute payment. Payments to stakeholders are not considered payments until the supplier receives the funds or they are held solely for the supplier's benefit. Accounting entries may provide evidence but are not determinative, and GST anti-avoidance rules may apply to artificial arrangements.

FDR Determination: Nuveen Global Sustainable Bond Fund – Class X NZD Distributing (H) share class

On 11 November 2025, Inland Revenue issued FDR 2025/05: Determination the fair dividend rate method may not be used to calculate FIF income by investors in the Nuveen Global Sustainable Bond Fund – Class X NZD Distributing (H) share class.

Home detention for COVID scheme fraud

On 11 November 2025, Inland Revenue provided the details of a Northland woman sentenced to 8 months home detention in consequence of making false applications for COVID-19 support.

Overdue IR3 returns

On 12 November 2025, Inland Revenue announced that in November 2025 it had emailed around 70,000 taxpayers with overdue IR3 returns for the 2024 and/or 2025 tax years, excluding those with an extension until 31 March 2026 through tax agents. The campaign urges taxpayers to file promptly and warn of consequences such as default assessments, late filing penalties, and enforcement actions. While focusing on 2024 and 2025 returns, Inland Revenue will also encourage filing of earlier overdue returns.

Interpretation Statement: Income Tax – business activity.

On 13 November 2025, Inland Revenue issued IS 25/25: Income tax – business activity. This provided guidance on what constitutes a "business" for income tax purposes, when it starts or ceases, and its implications for taxable income and deductions. The interpretation relies on case law, notably Grieve v Commissioner of Inland Revenue, focusing on the nature of activities and genuine profit intention, with factors like scale, regularity, and resources considered. It distinguishes businesses from hobbies, notes that passive activities may qualify, and outlines indicators such as systematic operations and planning. The statement also explains when a business ceases and clarifies differences between the income tax and GST concepts.

Draft Interpretation Statement: Payments by employers on the death of an employee to executors and family

On 14 November 2025, Inland Revenue issued PUB00470: Income tax – payments by employers on the death of an employee to executors and family. The interpretation statement considers whether such payments are taxable, PAYE obligations for employers, deductibility of payments, and executors' filing duties. Payments are generally taxable if they would have been income to the employee, with classification depending on whether they are employment income, pension income, or ordinary income. PAYE usually applies to most employer payments, and deductibility follows standard rules. Executors must file any outstanding returns for the deceased and, if required, estate returns.

The deadline for submissions is 30 January 2026.

Draft Determination: Tax Depreciation Rate for battery energy storage systems

On 18 November 2025, Inland Revenue issued draft determination ED0266: Tax Depreciation Rate for battery energy storage systems, proposing a new asset class and provisional depreciation rate for Battery Energy Storage Systems used in power generation and national grid distribution. The rate will apply only to modular units and is effective for the 2025 and later income years.

The deadline for submission is 18 December 2025.

SBC Loan Scheme

On 18 November 2025, Inland Revenue announced that the SBC loan scheme will expire by 30 June 2026 for taxpayers with 5-year loans. Inland Revenue will contact taxpayers whose loans end before that date, starting late November 2025 and February 2026, to address unpaid balances. Any remaining loan plus interest will become overdue debt, and default interest may apply. Inland Revenue will reach out to those behind on payments or in default and send reminder letters via myIR. These will not be redirected to tax agents.

Employer and GST debt older than 12 months

On 19 November 2025, Inland Revenue announced that they have widened the target campaign to collect overdue debt and returns, particularly GST and employer debt. The campaign will include clients with debt older than 12 months. Inland Revenue's Community Compliance team will be active in the community from late November through to mid-December.

Man returns from Australia to face home detention sentence

On 20 November 2025, Inland Revenue provided the details of an Auckland company director sentenced to 11 months home detention for aiding and abetting his companies from failing to account for PAYE. The man voluntarily returned to New Zealand from Australia to avoid extradition. The amount not paid by the due date by the companies the man controlled was just under $1.4 million.

GST fraud results in prison sentence

On 21 November 2025, Inland Revenue provided the details of a Central Otago man sentenced to 23 months imprisonment for GST fraud.

Technical Decision Summaries

TDS: How does the business continuity test apply to a consolidated group? (Private Ruling)

On 28 October 2025, Inland Revenue published TDS 25/26: How does the business continuity test apply to a consolidated group?. The case involved a parent company with three subsidiaries (Sub 1, Sub 2, and Sub 3) carrying forward tax losses, where Sub 1 and Sub 2 were profitable and Sub 3 had significant losses. The parent planned to sell Sub 3 after Sub 1 and Sub 2 exited the group, leaving Sub 3 as the sole member. The Tax Counsel Office considered whether Sub 3 could carry forward the group's losses under section IB 3 and if the business activities of the exited entities were relevant. It decided that the consolidated group is treated as the company with the tax loss, the business continuity test focuses only on Sub 3's activities, the activities of Sub 1 and Sub 2 are irrelevant, and section GB 3BA did not apply to the arrangement.

OECD updates

OECD releases new statistics on tax disputes

On 31 October 2025, the OECD released new statistics in Mutual Agreement Procedures (MAP) and Advanced Pricing Arrangements (APA) providing a comprehensive view of cross-border dispute resolution and prevention of double taxation. As part of the 2024 MPA and ACA awards on the 2025 OECD Tax Certainty Day, New Zealand received a reward for the shortest timing in closing non-Transfer Pricing cases (beating Australia who finished second) while Australia and New Zealand received the reward for the most efficient pair in joint case handling on non-Transfer Pricing cases. A preliminary version of the 2025 update of the Consolidated Information on Mutual Agreement Procedures was also released.

Effective Carbon Rates 2025

On 13 November 2025, the OECD published the Effective Carbon Rates 2025, which provides comparable data and insights into how 79 countries, accounting for 82% of global greenhouse gas (GHG) emissions, use carbon taxes, emissions trading systems (ETSs), and fuel excise taxes. Two key trends emerge from the latest data: carbon pricing policies are increasingly diverse and flexible to balance diverse policy objectives, and their adoption, particularly that of ETSs, continues to expand to new countries and more sectors.

Tax Administration 2025

On 17 November 2025, the OCED released the 2025 edition of the Tax Administration Series containing information on tax administration. This year's edition focused on the 10-year perspective on the evolution of tax administration and how the rise of artificial intelligence is shaping the future of tax administration. The report covered a wide range of deployments of AI across tax administrations in various jurisdictions.

Update to the OECD Model Tax Conventions

On 19 November 2025, the OECD released its 2025 update to the Model Tax Convention, introducing changes for cross-border work arrangements, natural resource taxation, and technical adjustments for tax certainty and transfer pricing. Key updates include guidance on when an employee's home can be a permanent establishment , an optional provision for natural resource extraction with a lower threshold, clarified rules on intra-group financial transactions and interest deductibility under Article 9, and expanded guidance on information exchange under Article 26. Additional technical changes were also made to the Convention and Commentary.

Plenary meeting of the OECD Forum on Tax Administration

From 18–20 November 2025, the OECD Forum on Tax Administration held its 18th Plenary in Cape Town with delegates from 49 jurisdictions, focusing on reducing tax gaps and compliance burdens. Key agreements included adopting digital technology to ease compliance, cooperating on tax debt reduction, supporting Global Minimum Tax implementation, and strengthening efforts to boost domestic resource mobilisation in developing countries.

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

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

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Amy Sexton

+64 (9) 953 6012

asexton@deloitte.co.nz

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

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

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

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

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

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

Tauranga
Level 2, Northern Quarter, 45 The Strand,
Tauranga 3110
+64 (0)9 303 0700

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

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