Tax Alert

June 2025

Investment Boost: Frequently asked tax questions

By Robyn Walker

Since Budget 2025 revealed Investment Boost as the centrepiece of the Government's plan to stimulate the economy, we've been inundated with questions from people and businesses wanting to understand more about what this is and how it works.

At its heart, Investment Boost is a set of tax rules which allow upfront expensing of 20% of a new assets cost. In most cases, this is bringing forward the ability to claim depreciation deductions.

Here are some of the frequently asked tax questions related to the application of Investment Boost. There will be flow on consequences for taxpayers to consider, such as the impact on the level of provisional tax payable.

What does this apply to?

Almost all New Zealand new depreciable assets that first become available for use on or after 22 May 2025 will qualify for Investment Boost. Secondhand assets are not eligible unless they are new to New Zealand. The rules also apply to improvements to farmland, planting, aquacultural businesses and forestry land and assets associated with petroleum development and mining development (which operate under different tax rules to depreciation).

Commercial buildings are eligible for Investment Boost. These are still depreciable assets, but the tax rate is set to 0%.

Improvements to any qualifying asset classes also qualify for Investment Boost.

These are collectively known as "new investment assets".

Excluded from Investment Boost are:

- Land
- Residential property
- Fixed life intangible property
- Petroleum and mining rights and permits

What is the benefit?

Investment Boost provides the ability to claim a deduction for 20% of the asset cost in the year of acquisition. In most cases, this is a timing difference as it is just changing the profile of when depreciation deductions are claimed so they are front loaded; however, this is more than a timing difference for any owners of new commercial buildings, and buildings which have been improved since 22 May 2025 (e.g. major capital improvements, including seismic strengthening).

To put this into context, if a company purchases an asset with a cost of $100,000, it will receive an Investment Boost tax deduction of $20,000 on day one. At a 28% company tax rate, this is equivalent to paying $5,600 (or 5.6%) less tax. In year one, the company also starts claiming depreciation on the 'net of Investment Boost' cost of the asset. Assuming a 10% depreciation rate and the asset was owned for the whole year, the business could claim $8,000 of depreciation, bringing total deductions in year one to $28,000 (as compared to the $10,000 that could be claimed without Investment Boost).

What does 'available for use' mean?

Because Investment Boost applies to new assets which become available for use from 22 May 2025, it is important for taxpayers who were in the process of acquiring or constructing assets to understand when something is considered 'available for use'. This is a concept which has been part of the depreciation rules for a long time and generally is well understood by taxpayers (although often not much turns on it). Given Investment Boost won't apply to assets available for use prior to 22 May 2025, taxpayers who were on the cusp of completing assets at the time of the announcement, or who had purchased an asset that wasn't capable of being used before 22 May 2025, should carefully consider this test prior and think about whether getting certainty from Inland Revenue (e.g. in the form of a binding ruling or indicative view) would be worthwhile. Consideration should also be given to guidance issued earlier this year on how to identify what an asset is, as this may influence the outcome for assets that were under construction.

When is something new?

Investment Boost applies to 'new' assets. A new asset is something which first becomes available for use in New Zealand on or after 22 May 2025. There is an exclusion to ensure that an asset which is sold but has been used as trading stock is still eligible. For example, a car yard will have vehicles available to be test driven prior to sale. As these are being held by the car yard as trading stock (rather than a depreciable asset of the car yard), when that vehicle is sold to its first owner, the new owner will be eligible to claim the Investment Boost (if they are using the vehicle for business purposes).

What are the value and business size limits?

Unlike similar regimes in other countries, there are no rules restricting this to smaller businesses or putting an upper cap on the asset value. Provided the investment is in new investment assets, the 20% deduction will be available. The broad application of Investment Boost means that the rules are simple to understand and apply, as there are no complicated boundaries and definitions to navigate.

Is it compulsory to claim the deduction?

No, this is an optional deduction. It does not need to be claimed by a taxpayer. For example, a taxpayer who has tax losses might choose not to claim the deductions if they thought they were at risk of losing shareholder continuity and not satisfying the business continuity test.

Does it have to apply to all assets?

The Investment Boost deduction applies to new investment assets on an asset-by-asset basis, there is no requirement to be consistent across all assets. For example, if claiming the additional deduction requires manual calculations, a taxpayer might choose to just apply it to big ticket items and depreciate all smaller assets under existing rules.

Is Investment Boost a depreciation deduction?

For all intents and purposes the deduction should be thought of as depreciation. The depreciation rules have been amended to ensure that Investment Boost deductions are included within depreciation recovery calculations.

How do the rules apply to agriculture?

Certain industries have their own special tax rules, including farming, horticulture, aquaculture and forestry. These special rules set out when and how tax deductions apply, and apply an amortisation approach rather than depreciation for certain types of expenditure. Investment Boost is intended to apply to improvements to farmland, forestry land, and aquacultural businesses and planting of listed horticultural plants where the cost is incurred on or after 22 May 2025. This will require an apportionment of costs in the first year of application.

Does it apply to buildings?

Yes, buildings are depreciable property so a new building will be eligible, provided it is not a "dwelling". A dwelling is generally a place that is used predominantly as a residence or abode, but specifically excludes hospitals, hotels and motels (and similar), nursing homes and rest homes (and similar).

If an improvement is made to a new investment asset, that also qualifies. So, if there are modifications being made or capital improvements like seismic strengthening to an existing building this will be eligible. Given the depreciation rate for buildings is set at 0%, this could represent more than just a timing difference as the cost of capital improvements is currently blackhole expenditure. Depreciation recovery rules apply as normal, so it is possible the deduction could be clawed back if the building is sold above book value in the future.

Can Investment Boost be included in Research and Development Tax Incentive (RDTI) calculations?

If an asset is being used in eligible R&D, then the Investment Boost deduction is also able to be incorporated as an additional expense when calculating the RDTI entitlement. The Investment Boost deduction should be treated as a depreciation deduction in these calculations.

How does Investment Boost interact with the low value asset rule and depreciation pooling rules?

Taxpayers are able to take an immediate deduction for assets costing $1,000 or less. We have confirmed with Officials that this threshold remains in place based on the full cost of the asset. That is, if you buy an asset costing $1,250, you don't claim $250 as an Investment Boost deduction, bringing the book value to $1,000, and then claim the remaining $1,000 as a low value asset.

For taxpayers who use depreciation pools, you are entitled to add assets into a pool which have a book value of $5,000 or less. In this case, Officials have advised they are comfortable that if an asset is acquired costing $6,000 and $1,200 is claimed as an Investment Boost deduction, the asset can be put straight into a depreciation pool as its book value will be less than $5,000.

What is Fixed Life Intangible Property (FLIP)?

Investment Boost does not apply to FLIP. This is because Officials were concerned that intangible assets are easier to manipulate and can be used to shift profits internationally. Examples of FLIP include patents, copyright licences and plant variety rights. In some cases, software will be FLIP.

FLIP is intangible property which has a legal life that is reasonably expected to be the same length as the property's remaining estimated useful life.

Software may be FLIP in some circumstances, and Inland Revenue has issued previous guidance about Software as a Service (SaaS) which states that if a SaaS arrangement has a fixed term it may be FLIP. The Inland Revenue guidance states:

> "The Commissioner considers the right to use software has an estimated useful life of 4 years. Accordingly, where the legal life of the SaaS arrangement is longer than 4 years, the SaaS arrangement will not be FLIP and the taxpayer must calculate their depreciation loss under the general provisions on depreciable intangible property that is discussed at [186]. However, where the legal life of the SaaS arrangement is shorter than 4 years, the estimated useful life of the right to use software will align with the legal life. It follows that in these situations the SaaS arrangement will be FLIP."

Inland Revenue expect this guidance to be adhered to when determining whether software expenditure is eligible.

What about mixed use assets?

Where an asset has both business and private uses, it will be necessary to apportion the Investment Boost deduction between the business and private uses. There is a rule which will require adjustments to be made if there is a 25%+ change in the way an asset is used.

What will I put in my tax return?

A common practical question is whether Investment Boost deductions will need to be separately disclosed in tax returns. Which disclosures will be required will be relevant to taxpayers who are seeking to determine what systems changes are required to ensure deductions can be identified and claimed efficiently.

It is not clear at this stage whether it will be a requirement. It is not necessary for a business to make a formal election into the regime, instead the legislation states that Investment Boost applies when "the person has chosen to apply [the rules] to the asset in a return of income for the income year"; that is, you elect in simply by claiming the deduction. Officials have advised in the Regulatory Impact Assessment accompanying the Investment Boost legislation that they will be wanting to monitor compliance with the rules; therefore, we recommend that businesses to seek to ensure systems will be able to identify the Investment Boost deductions being claimed. If for no other reason, the Government (and future Governments) will likely want to ensure there is evidence of the positive impact of the initiative to justify its longevity.

How do we account for this?

Deferred tax issues can arise when there is a difference between the tax and accounting treatment of assets. This is something that building owners will be familiar with as a consequence of changes to how buildings have been depreciated.

Taxpayers should start to consider what the deferred tax impacts will be, and possibly discuss this upfront with auditors if the issue is material.

Can off the shelf depreciation fixed asset registers do these calculations already?

It is necessary that a business retains a record of the original (full) cost of an asset so that depreciation can be calculated correctly when assets are disposed of; a business ideally shouldn't be loading just the net 80% cost amount into the tax fixed asset register.

It's likely that existing depreciation systems have some capability to undertake the calculations required for Investment Boost because similar expensing regimes have been in place in other jurisdictions, such as the United States. However, it will be necessary for taxpayers to work with software providers to determine whether the functionality exists and how to access it.

When do these rules end?

There is no legislated end date. Budget fund initiatives in four-year cycles, so under the current Government, the expectation is that this will remain in place for the foreseeable future. However, a future Government may have alternative priorities. As businesses crave stable rules, hopefully Investment Boost will be here permanently.

Please get in touch with your usual Deloitte advisor for further information about Investment Boost and how it works. There are professionals across all areas of Deloitte who are available to assist with understanding how to take advantage of Investment Boost.

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Infrastructure tax changes mooted

By Patrick McCalman and Hamish Tait

We have all heard it said enough times to know that New Zealand has an infrastructure deficit. Whether it's broken pipes, a congested transport network, or energy shortages, New Zealand has struggled to achieve the right level of investment – both to maintain existing infrastructure and to build new assets to keep up with population growth.

New Zealand also faces significant challenges such as climate change, urban sprawl, lack of scale, and rising construction costs.

Unfortunately, New Zealand is not in a unique position of having an infrastructure deficit which means that there is global competition for capital and capability. However, New Zealand is unique in many challenging ways including being a long way from the rest of the world.

This means that we need to make sure that we have the right policy settings to make sure a New Zealand infrastructure opportunity as investible as possible.

The Government is looking at what levers it can pull to enable this – appointing the rebadged National Infrastructure Funding and Financing Limited to be New Zealand's infrastructure shopfront, reviving the Public Private Partnership Programme, and instructing the Infrastructure Commission to develop a 30- year national infrastructure plan.

Consistent with this focus, Inland Revenue has just released an Officials' issues paper on New Zealand's thin capitalisation settings and whether they might be discouraging foreign investors from investing in privately owned infrastructure projects in New Zealand. The issues paper proposes two options for attracting more foreign investment into New Zealand, by relaxing the thin capitalisation settings using one of two proposed options (more on the options proposed below).

This issues paper was released as part of a pre-Budget tax announcement from Minister of Finance Hon Nicola Willis that states that the Government is removing tax roadblocks to investment. In that announcement, the Minister of Finance notes:

> *"Presently, New Zealand's thin capitalisation rules limit the amount of tax-deductible debt that foreign investors can put into New Zealand investments. The purpose of these rules is to prevent income being shifted offshore and to protect New Zealand's tax base. However, there is a risk that the rules may be deterring investment, particularly in capital-intensive infrastructure projects that are typically funded by large amounts of debt. We need to strike a balance."*

The Minister of Finance has allocated $65 million for a change to the rules, pending the outcome of the consultation.

There is a very limited time to comment on the proposals in the issues paper (submissions are due 19 June 2025). We expect that this is to enable the final proposals to be finalised and included in the next Tax Bill, which is anticipated in August of this year. While there is a lot of detail to be worked through in the consultation as to how the rules will work, it is highly likely that one of these options will proceed given that it has already been allocated Budget funding.

The issues paper notes that the government is committed to ensuring that New Zealand remains an attractive place for non-residents to invest. The issues paper works briefly through the current thin capitalisation settings, background to this proposal, and a problem definition to ensure that the policy direction in introducing these changes is clear. The issues paper then sets out details on the two potential solutions being consulted on:

- **Option One:** A rule targeted at infrastructure projects. Such a rule would draw on elements of the rules for special thin capitalisation rules for public private partnerships (PPPs), to allow an entity that would otherwise breach the general thin capitalisation thresholds to fully deduct its interest when key requirements are met.
- **Option Two:** A more general rule that applies to third-party limited recourse debt. Infrastructure projects would be able to use this rule, but it would not be limited to infrastructure.

But are the proposed changes enough?

The Proposed Options

Option One

New Zealand's thin capitalisation rules currently limit interest deductions for non-resident owned entities where debt exceeds 60% of net assets plus non-debt liabilities (unless the worldwide group is more highly geared). The intention of these rules is to both set the effective tax rate on non-resident investment and also prevent non-residents from artificially loading levels debt against the New Zealand tax base. The rules apply to both related party and third-party debt.

Under Option One, interest paid would be deductible provided the following key requirements are met:

1. The debt is applied by the entity to fund (or refinance) an eligible infrastructure project to upgrade or create assets in New Zealand that are expected to have a life of at least 10 years.
2. The assets are constructed after a set date (for example, 1 April 2026).
3. The debt is from an unrelated third party and only has recourse to the project.
4. The debt is not on-lent, except for minor and incidental lending to a third party (such as a bank deposit).
5. The interest expense, infrastructure project assets, and the income arising from the project assets must all arise or be incurred in New Zealand.

These changes are positive, as they recognise the commercial reality that infrastructure projects are often highly geared. Infrastructure is capital intensive, and its long-term, predictable revenue streams align with long term debt repayment profiles. Debt funding is also typically cheaper and more accessible in this context than equity financing. Denying interest deductions on infrastructure assets only increases their cost, as assets need to generate greater profits to meet equity investors' required rates of return. The changes will therefore help to remove this barrier to investment.

The changes also recognise that tax deductions should be claimable for what is a genuine economic cost (interest) if it arises on a commercial level of debt. This principle is reflected to some extent in existing law – in 2018 a specific concession for infrastructure project finance was introduced to allow interest deductions for third party debt provided on limited recourse terms. However, this concession is very specifically drafted to apply only to PPP structures. It is sometimes possible for other structures with only third party debt to also achieve a full interest deduction (e.g. in a corporate entity owned by a group of non-residents), however this is not always the case. This reduces certainty and equity for investors who cannot structure into the rules.

However, some concerns do arise with Option One.

Firstly, the option only applies to eligible infrastructure. This will result in inevitable line drawing exercise and so has the risk of creating projects, which are demanded by the market and able to be funded by third parties, but which fail to be able to avail themselves of the rule. The result will be projects where the tax cost increases because they fall on the wrong side of the pen.

Secondly, this option would only apply to greenfield investments. In any case where an infrastructure investor incurs a genuine economic cost (third party interest at commercial levels), it is difficult to see why our tax settings should only allow a tax deduction in a greenfield context. More broadly, we need to carefully consider whether New Zealand's tax settings should incentivise the creation of new infrastructure projects to the detriment of updating or developing existing infrastructure. This would distort investment decisions between different types of projects, and arguably ignores the value of brownfield development. According to the Infrastructure Commission, New Zealand is near the bottom 10% of OECD countries for the value we get from infrastructure spend. The Commission has also highlighted the importance of maximising the potential of existing infrastructure in improving efficiency. Excluding brownfield development from the new rules runs counter to this strategy.

Option Two

Option Two proposes interest would be fully deductible if:

1. The debt is issued to an unrelated third party.
2. The lenders only have recourse to the New Zealand assets of the borrowing entity or its New Zealand group (including membership interests in the entities within the New Zealand group)
3. The debt is fully used to fund commercial/business activities in connection with New Zealand, and
4. The borrower is a New Zealand resident entity.

Conceptually this rule overcomes the issues with Option One and allows the market to determine the projects which are best to be undertaken and funded. In that respect it reduces the risk of tax -based distortions to investment decisions. It is difficult to see why any new rule should be restricted to infrastructure as defined (as it is then necessary to get the definition right). If financial markets are willing to fund an investment, with limited recourse, third party debt, does it make sense for our tax rules to deny a tax deduction for the interest cost? Limiting exemptions to a specific structures or sectors can act as a barrier to investment and may create distortions by incentivising investment in New Zealand only via specific structures or into specific sectors. The design of this rule would, however, require greater rigour to ensure that interest costs taken against the New Zealand tax base are only be used to fund assets within the New Zealand tax base. That it itself is not insurmountable and properly designed would provide a rule where tax's influence on investment choice would be minimised.

Other matters which could be considered

Withholding tax

The issues paper does not consider any changes in relation to withholding tax, which can be a significant cost for infrastructure investors. Due to upfront expenses such as interest and tax depreciation, infrastructure projects tend to have taxable losses in their early years (i.e. not yet be paying corporate tax to generate imputation credits) but may still be cashflow positive. In this context, investors will often prefer to extract cash where it is not needed within the project vehicle.

Under New Zealand's current tax settings, any return to investors in early years may be subject to non-resident withholding tax (NRWT) at a rate of 15% to 30% if the dividends are unimputed (depending on the country).

Some double tax agreements (DTAs), such as with Australia and the US, can reduce this withholding tax to 0%, however many older DTAs (e.g. with the United Kingdom and other European states) do not which imposes an additional tax cost of their investment. Even for those who can access a 0% rate, to obtain a 0% rate often requires a Competent Authority determination, which provides a level of risk or uncertainty to overseas investors trying to get to grips with how certain and reliable this is.

To attract the foreign direct investment we need, the Government should consider unilaterally reducing NRWT rates to 0% on shareholdings greater than 10%. This would equalise the tax treatment for returns paid to investors, regardless of which country they are from/which DTA is in place, helping to broaden New Zealand's potential pool of infrastructure investors. It also avoids the undesirable distortion created by the current rules which encourages a limited partnership instead of company structure.

Tax loss carry forward

Due to the significant upfront costs involved in infrastructure, tax losses often arise in the early phases of projects. Previously, a shareholder continuity test limited the ability to carry forward tax losses where there was a greater than 51% change in ultimate shareholding, which presented an issue for infrastructure projects carrying forward losses.

Since 2021 the business continuity test has allowed companies that breach the shareholder continuity requirement to carry losses forward provided there are no major changes in their business activities. This has been a welcome change for taxpayers in a number of industries who may have early-stage tax losses that would otherwise be lost. However, greater clarity is needed on the technical application of these new rules to different types of infrastructure projects (including whether different project phases could be a 'major change').

It may be useful for Inland Revenue to consider publishing infrastructure-specific guidance on the rules – and potentially considering any remedial amendments if any issues are identified or the interpretation is unclear for investors.

Next steps

It is extremely positive to see consideration be given in this area. The question really comes down whether we want this rule to focus solely on (new) infrastructure or whether we prefer a rule which is more principle based and so allow investment to find its natural home.

Consultation on the proposed changes is now open, with a deadline for submissions set for 19 June.

If you would like to discuss the changes, or are considering making a submission, please contact your usual Deloitte advisor.

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Kilometre rates get an overhaul

By Amy Sexton and Andrea Scatchard

Every year one of our most popular Tax Alert articles is the annual mileage reimbursement update.

Normally these articles give an update on the new kilometre rates and a refresh of the rules. However this year Inland Revenue has decided to give the approach to the 2025 kilometre rates an overhaul, expanding out the number of rates from four to eight. This is likely to be a source of annoyance for businesses undertaking mileage reimbursements.

What has changed?

The Inland Revenue has conducted a review of the published vehicle kilometre rates, due to a significant difference in vehicle running costs between the different vehicle types (Petrol, Diesel, Petrol Hybrid and Electric). Traditionally the Commissioner of the Inland Revenue has set a single Tier One rate, however, due to the significant difference in running costs different rates have been set for four vehicle categories to ensure the rates more accurately reflect a reasonable estimate of the expenditure related to the business use of that particular vehicle.

So, in practice, this means than instead of the previous single Tier One and three Tier Two rates, there are now eight different rates, with the prior combined Petrol/Diesel category being separated.

2024 Mileage Rates

Vehicle Type	Tier 1 rate per km	Tier 2 rate per km
Petrol or Diesel	$1.04	$0.35
Petrol Hybrid	$1.04	$0.21
Electric	$1.04	$0.12

2025 Mileage Rates

Vehicle Type	Tier 1 rate per km	Tier 2 rate per km
Petrol	$1.17	$0.37
Diesel	$1.26	$0.35
Petrol Hybrid	$0.86	$0.21
Electric	$1.08	$0.19

What does Tier One and Tier Two mean?

The Tier One rates reflect the fixed and variable costs of running a vehicle and can be used for the business portion of the first 14,000km of total travel in the vehicle. After these limits, the lower Tier Two rates apply (which only reflect variable costs).

What do I need to remember?

The Commissioner is required to regularly set kilometre rates so that these can be used by self-employed business owners or close companies to determine available tax deductions for business use of a vehicle (if they choose to use the kilometre rate method). In practice, the same rates are often also used by businesses that reimburse employees for the use of personal vehicles for work purposes. Provided reimbursements are made at or below the specified rates, they can be paid "tax-free" without the employer doing further analysis.

Use of these rates is not compulsory. Business owners can instead claim deductions for actual costs incurred (the cost method), and likewise, employers can reimburse employees at higher rates, but records would need to be kept substantiating that the rate of reimbursement is a "reasonable estimate of expenditure". The move to require information about engine type from the first kilometre of travel reimbursed is likely to see more employers opting out of using these rates for reimbursements and incurring the compliance costs of determining something more practicable.

Self-employed and close companies

If you are a sole trader or qualifying close company and use the kilometre rate method to claim business vehicle costs, the new rates apply for the 2025 year, that is, 1 April 2024 - 31 March 2025 (if you have a standard balance date).

If you have already filed your 2025 income tax return relying on the 2024 kilometre rates, you may be able to self-correct the difference in your 2026 income return, depending on the amount of the difference between the two amounts claimed. If the difference between what was originally claimed, and what can now be claimed is material, you can file a Notice of Proposed Adjustment (this is only available within four months after the filing of an income tax return).

Employers

If you are an employer and are reimbursing employees for work-related travel, the new rates apply to reimbursements made from the date that the rates were issued – 30 May 2025. If your reimbursement policy states that you will reimburse employees at the Inland Revenue rate, you will need to update the rate you pay as soon as practically possible. When rates are increased, a lag in updating rates paid to employees, while potentially disadvantageous to employees, does not cause a PAYE problem. While most rates have stayed the same or increased compared to from last year, note that for this year, the new Tier One rate for Petrol Hybrid vehicles is lower than last year's single Tier One rate.

If your reimbursement policy states a set rate at which you will reimburse work-related mileage, and this is lower than the new rate, you do not need to do anything as the amount you pay will be tax-free, but you may get pressure from employees to increase the reimbursement rate.

New guidance provided

Along with the new rates, the guidance (OS 19 04 KM 2025) includes a new section to provide additional guidance on the use of the kilometre rates. Confusingly, this additional guidance does not reference the 3,500km Tier One safe harbour threshold in the examples presented.

The standard rule remains, that the Tier One rates can be used for the business portion of the first 14,000km of travel, technically requiring logbooks to be kept establishing that business portion of travel. Operational statements 19/04a and 19/04b both allowed, in the absence of a logbook, for the Tier One rate to be used for the first 3,500 km of business travel. This new guidance and its examples (reproduced below) make no mention at all of this 3,500km threshold, but does refer to 19/04a and 19/04b as providing more detailed information which leave us questioning the continued applicability of the safe harbour.

Example two in particular is relevant – 5,000km of employee travel is reimbursed in this example all at the Tier One rate, with no mention of the work related portion of total travel.

Use of motor vehicle for both business and private (non-taxable) purposes

Businesses that use a motor vehicle for both business and private purposes must calculate the proportion of business use, whether using actual motor vehicle costs (cost method) or the kilometre rates. The new guidance includes a worked example of using the kilometre rates in practice:

EXAMPLE ONE

Business vehicle (petrol) greater than 14,000 kms travelled - logbook maintained

The business taxpayer uses their petrol car for both business and private purposes. The previous logbook test period calculates that 60% of the travel is for business purposes. The car travelled a total of 20,000 kilometres for the 2024-2025 income year.

Deduction

Tier 1
14,000 x $1.17 x 60%
= 9,828.00

Tier 2
6,000 x $0.37 x 60%
= 1,332.00

Total deduction = $11,160.00

Source: Inland Revenue Kilometre rates for the business use of vehicles for the 2025 income year

Use of the rates for employee reimbursement for a use of a vehicle

There is a requirement that employee reimbursement for business use of a private motor vehicle be a "reasonable estimate of expenditure" and the kilometre rates have long been accepted by the Commissioner as being a "reasonable estimate of expenditure", but Inland Revenue now advise that employers need to be aware of factors that may mean this is no longer reasonable.

The kilometre rates are set for a particular income year based on factors that impact expenditure in that period. The rates just published reflect the actual costs of running vehicles in the March 2025 tax year. Reimbursement of expenditure using the 2025 mileage rates is likely to occur in the current (2026) income year. There is potential for actual running costs in the 2026 year to shift in a way that suggests the 2025 rates are no longer a reasonable estimate of the expenditure incurred by employees in the 2026 year. This seems to reflect an extremely micro approach by Inland Revenue which is hard to reconcile with a Government which has a focus on reducing red tape.

The guidance notes that the use of these rates may not be practical based on an employer not knowing the vehicle type that each of their employees are using. In these circumstances the Commissioner accepts a reasonable estimate that may be a blended average of the published kilometre rates, in order to reduce any compliance costs. However, employers need to be comfortable that this is still appropriate in the circumstances and timing of any reimbursement payment. The guidance includes two worked examples of employee reimbursement which may leave you more confused than enlightened:

EXAMPLE TWO

Reimbursement payment to employee for business use of their own electric vehicle – logbook maintained

A business makes a reimbursement payment to an employee that has a logbook recorded that they travelled 5,000km for business use in their own electric vehicle in the 2025-2026 income year. The employer considers that the Commissioner's kilometre rates for the 2024-2025 are still a reasonable estimate of expenditure that has been incurred by the employee and decides to use these rates to calculate the reimbursement payment.

Reimbursement payment

Tier 1
5,000 x $1.08
= $5,400

However, the employer is not required to calculate the reimbursement based on the Commissioner's published kilometre rates and may consider a better reasonable estimate is available from third-party published running costs, actual expenditure or other reasonable sources.

Source: [Inland Revenue Kilometre rates for the business use of vehicles for the 2025 income year]

EXAMPLE THREE

Reimbursement payment to employee for business use of their own vehicle (unknown type) – no logbook maintained

A business makes a reimbursement payment to an employee that has used their own vehicle for business use in the 2025-2026 income year. No logbook has been maintained, but evidence is provided of ad hoc short distances travelled for business purposes. The employer has many employees and does not track, nor have records of, the type of vehicle the employee uses.

In this instance the employer is only required to determine a reasonable estimate of the expenditure incurred by the employee for the business use of their vehicle. The employer considers that the Commissioner's kilometre rates for 2024-2025 are still a reasonable estimate of expenditure that has been incurred by the employee and decides to use an estimate based on these rates to calculate the reimbursement payment. The employer uses an average of the four Tier 1 rates (as the employee has only travelled for business a total of 1,000km in the year) and applies a rate of $1.09 per km for the reimbursement payment (1.17 + 1.26 + 1.08 + 0.86/4).

The Commissioner does not expect the employer to have additional compliance costs and track vehicle types where that is not practical. However, the employer is not required to calculate the reimbursement based on the Commissioner's published kilometre rates and may consider a better reasonable estimate is available from third-party published running costs, actual expenditure or other reasonable sources.

Source: [Inland Revenue Kilometre rates for the business use of vehicles for the 2025 income year]

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Out with the old, in with IS 25/16: Updated guidance on tax residency

By Stephen Walker and Renée Nicholson

Whether a taxpayer is an individual, company or trust, the tax residency status of key individuals can inadvertently change a non-resident taxpayer into resident taxpayer.

In May 2025, Inland Revenue released IS 25/16: Tax Residence, replacing the nine-year-old guidance IS 16/03. This updated interpretation statement modernises and updates Inland Revenue's views on New Zealand's tax residence rules for individuals, companies, and trusts.

It also reflects legal developments, evolving global dynamics, and Inland Revenue's ongoing commitment to clarity and accessibility.

What does this mean for individuals?

The legislative framework for determining individual tax residency remains unchanged. An individual is still a tax resident in New Zealand if they meet either of the following two tests:

- The permanent place of abode (PPA) test; or
- The 183-day rule (being present in New Zealand for more than 183-days in a rolling 12-month period).

IS 25/16 improves the understanding of these tests through logical flowcharts and detailed explanations. It reinforces that satisfying just one test is sufficient to establish New Zealand tax residency. Importantly, it also provides a structured explanation of the PPA test, emphasizing that it must be a place where the person habitually resides.

Habitually residing involves more than a mere physical presence and reaffirms that tax residency under the PPA test is grounded in connection, not merely location, and assessment of the strength and continuity of an individual's connections to New Zealand is required.

The updated guidance draws from recent case law, which has identified additional primarily habitual factors to consider for the PPA test, including:

- The availability and continuity of a home in New Zealand, including whether a property is maintained for personal use, even if temporarily rented out.
- The presence of a partner and children in New Zealand.
- The taxpayer's personal possessions and intention to return.

Noting that for the latter two items above, there still needs to be a dwelling in New Zealand for these factors to point towards there being a PPA.

What about Non-Resident Seasonal Workers?

There remains an exemption to the 183-day rule which is available for non-resident seasonal workers. The exemption provides that certain individuals who are employed under the Recognised Seasonal Employer Scheme are not treated as New Zealand tax residents even if they are physically present in the country for more than 183-days in a 12-month period and do not acquire a PPA in New Zealand.

What about individuals working overseas on Government Service?

Inland Revenue has released a separate interpretation statement (IS 25/17: Tax Residence – government service rule) addressing special residence rules for individuals overseas in connection with the service of the New Zealand Government which allows for these workers to be absent from New Zealand for more than 325-days in a 12-month period and not lose their New Zealand tax residency status.

What about Transitional Residents?

The transitional residence exemption allows eligible new migrants and returning New Zealanders to be exempt from tax on most foreign-sourced income for up to 48 months. IS 25/16 expands on this regime with clearer guidance and practical examples. Key enhancements include:

- A warning that applying for certain government benefits such as Working for Families tax credits, [Best Start payments](), or other income-based support can unintentionally terminate transitional residence status.
- A clarification that receiving the [FamilyBoost]() payment (a government childcare subsidy) does not count as an election to end transitional residence.
- Reminders that when an individual meets the 183-day rule test, under a back-dating rule they are treated as being a tax resident from the first day of having a presence in New Zealand. So familiarisation trips to New Zealand prior to a permanent relocation could cause tax residency to be back dated to the first day of the familiarisation trip.
- Further clarification on the start and end dates of transitional residency. Generally, it starts on the first day of residency under either the PPA test or 183-day rule (including any back-dating criteria). It ends either through an election to remove transitional residency, ceasing residency, or on the earliest of either the end of the 48th month after the month in which they acquired a PPA or satisfied the 183-day rule (ignoring the back-dating concept referenced above). So could, in theory and with the right fact pattern, last for as long as 5 years.
- Clarifying that transitional residency status is triggered, even if someone is a treaty resident elsewhere.

There has been an additional transitional residency flowchart published ([IR 1249]()) which helps taxpayers identify if they qualify to be a transitional resident.

What does this mean for Companies?

IS 25/16 retains the four core tests for determining corporate tax residence:

- Incorporation in New Zealand;
- Head office located in New Zealand.;
- Centre of management in New Zealand; and
- Control by directors exercised in New Zealand.

These rules remain unchanged meaning that a company only needs to satisfy one of the tests to be a tax resident in New Zealand. IS 25/16 significantly enhances the interpretation of these tests and provides clearer guidance, particularly on dual residence and the application of Double Tax Agreements (DTAs). This is particularly relevant for multinational entities or foreign-incorporated companies with connections to New Zealand.

Key refinements include:

- Clarifying that companies cannot rely solely on foreign incorporation when assessing New Zealand tax residence.
- Defining the head office test more precisely by distinguishing a head office from a registered office or an operational office. This includes clarifying that a head office can be a physical or operational base from which senior staff and management are located, or a location where major strategic and policy decisions are made, or where specialised functions are performed.
- Emphasising that the centre of management test relates to where high-level strategic decisions are made which can differ from the incorporation location and that temporary absences do not change this. In addition, management of a branch does not usually constitute the centre of management of a company as a whole.

The guidance has focused on changes in understanding regarding the director control test, some of the practical examples highlight common themes, such as:

- If key decisions are regularly made from New Zealand, even via digital platforms, director control may be exercised in New Zealand.
- Digital participation does not override substance and Inland Revenue will assess where decision-making authority is truly exercised.
- Inland Revenue stresses the importance of maintaining board minutes, director travel records, and management agreements to demonstrate where control is exercised.

The guidance has also outlined Inland Revenue's view that if a company is considered a dual resident but treated as solely resident in another country under a DTA, it is generally considered non-resident for NZ tax purposes (subject to some exceptions), which impacts tax grouping, foreign tax credits, and reporting obligations.

What does this mean for Trusts?

The updated guidance reorganises and clarifies the rules surrounding trust residence, particularly by reinforcing the importance of the settlor's residence in determining whether trustee income of the trust is taxable on a worldwide income basis in New Zealand.

If a trust is not considered to be a complying trust (i.e. non-complying trust, foreign trust, or both), then the rules around the taxing of beneficiary income and beneficiary distributions can be substantially different, potentially imposing a tax rate up to 45% on distributions.

A foreign trust's classification is based on the tax residency of the settlor(s) while a complying trust's classification is based on the tax residency of the trustee(s). This can lead to a trust being a dual status trust.

In general, the guidance outlines the following in relation to trustees:

- Each trustee is considered individually for tax residency purposes;
- A single New Zealand-resident trustee can render all trustees as resident; and
- Corporate trustees are assessed under company residence rules.

IS 25/16 includes new guidance on foreign trust disclosures (reflecting new rules introduced in 2017) and details requirements for New Zealand-resident trustees to register foreign trusts and file annual returns in order for the trust to be classified as a complying trust.

Subject to specific circumstances, in general we recommend completing annual reviews of the residency status for all trustees, maintaining proper documentation of trustee decision-making, and completing ongoing compliance with Inland Revenue's registration and disclosure rules.

Tax residence can be complicated and misunderstanding and errors can have serious consequences, if you have any questions, please contact your usual Deloitte advisor.

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New Product Ruling opens up public transport FBT exemption

By Robyn Walker

It's been just over two years since Fringe Benefit Tax (FBT) exemptions came into effect for the provision of public transport, bikes and scooters for the purpose of commuting to and from work. The exemptions had the potential to materially reduce the cost of commuting for employees using these modes of transport, but many employers, for a range of reasons, have faced practical obstacles to being able to utilise them.

The private sector has innovated, with two providers, WorkRide and Electric Bikes NZ obtaining Inland Revenue Product Rulings related to the provision of bikes to employees using a salary sacrifice; and most recently Extraordinary Pay obtaining a Product Ruling for the provision of a payment card for public transport. In all of these cases, Inland Revenue have agreed that the products satisfy the FBT exemptions and use a 'valid salary sacrifice' mechanism.

Tax Alert has previously covered the FBT exemption for bikes and salary sacrifices in detail, but not the public transport exemption on the basis that it was difficult to envisage an employer being practically able to utilise the public transport exemption.

In this article we explain some of the key tax technical issues that the Extraordinary Pay Product Ruling has overcome in order to make this a viable option for employers to consider.

What is the exemption?

Section CX 19C of the Income Tax Act 2007 provides an exemption from FBT for employer subsidised public transport. The subsidy applies to fares which are "mainly for the purposes of an employee travelling between their home and place of work". The exemption applies to public transport by bus, rail, ferry and cable car.

The exemption is one of the rare situations where the tax system has been used to influence behaviour with a tax incentive (most other FBT exemptions exist for compliance cost reasons or to make it clear a private benefit does not exist). For employees, the exemption provides an option to materially reduce the cost of public transport by being able to use a salary sacrifice to effectively pay for public transport costs using pre-tax income.

For employers, if a salary sacrifice is used the provision of the benefit is largely costless, and with more employers being required to monitor and report on emissions associated with staff commuting, the existence of this exemption provides a mechanism for employers to encourage greater use of public transport by employees (and have a way of tracking this).

Most employers are likely to adopt a salary sacrifice arrangement in order to provide equity as between employees who may have varying abilities to use public transport due to life circumstances. A salary sacrifice results in an employee agreeing to reduce their salary by the amount of expected public transport use; for example, if an employee anticipates spending $50 per week on public transport, they might reduce their pre-tax salary by $2,600 per annum. Depending on their marginal tax rate, the after-tax difference in salary may be much less.

PAYE vs FBT

The classification of benefits as between the PAYE and FBT regimes has long been a source of confusion. The general rule to remember when considering which tax regime applies is "who's expense is it?"

When an employer incurs an expense, this is subject to FBT. When an employee incurs a personal expense and this is paid by the employer, this is subject to PAYE. This could be in the form of a reimbursement, allowance or use of a corporate credit card.

The exemptions for public transport and bikes were only for FBT purposes, and it was made clear by Inland Revenue in its Tax Information Bulletin (pg 78) that allowances and reimbursements would not qualify. The issue with the provision of public transport is that it is very difficult for an employer to have the legal obligation for paying for public transport without entering into an arrangement directly with a public transport provider to pay directly for the public transport, which is particular impractical for employers based in multiple locations. Under the Extraordinary Pay Product Ruling, the employer is contracting with Extraordinary Pay to provide the facility for employees to top up their own public transport cards. This saves the employer from having to engage with multiple public transport providers.

Expenditure on account of an employee

Central to the PAYE vs FBT debate is the concept of "expenditure on account of an employee". Any payment that an employer makes for expenditure incurred or to be incurred by an employee will be treated as income from employment in the hands of the employee (and subject to PAYE) unless the payment falls under a specific exclusion. The primary exclusion is for reimbursement of work-related expenditure, in particular, payments related to amounts for "which the employee would be allowed a deduction if the employment limitation did not exist". This exemption works for things like reimbursing taxi travel to a work-related meeting, but for home to work travel, this is a private expense and therefore the expenditure would not be deductible because of the private limitation rather than the employment limitation.

Open loop vs closed loop

A popular solution adopted by employers to the general PAYE vs FBT conundrum has been to provide employees with vouchers and gift cards. The provision of these was generally thought of as being subject to FBT and consequently solved a lot of the headaches of having benefits fall within the FBT regime. That was until Inland Revenue reached a view that there are different types of gift cards and that 'open loop' cards are actually subject to PAYE. The Extraordinary Pay Card essentially functions like a voucher or gift card; however, because there are restrictions on where it can be used it is not an open loop card. When used for public transport benefits the Extraordinary card can only be used to top up Auckland Transport HOP Cards, Snapper cards, Metrocards and Bee Cards.

Future law changes

Tax Alert readers will be aware that FBT has been under a policy review. This review does not propose any changes to the public transport or bike exemptions, meaning employers can make plans to utilise the exemptions without unnecessary concern about legislative change. The FBT policy review does propose to amend the law to allow open loop cards to be taxed through FBT and to soften the complex boundary between PAYE and FBT. We'll have to wait and see whether these law changes proceed and in what form. In the meantime, the Extraordinary Pay Product Ruling provides an avenue for employers to start using the public transport FBT exemption for good.

Disclosure: *Deloitte assisted Extraordinary Pay to obtain its Product Ruling*

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To be or not to be a mutual association – Inland Revenue proposal to hit not-for-profits

By Phillip Claridge and Alex Mitchell

Unless you have been closely tracking the tax system's off-again, on-again, relationship with the not-for-profit (NFP) sector, following Budget 2025 you would be forgiven for thinking that income tax changes are off the table for NFPs. Unfortunately, this is not the case.

While the Minister of Finance Nicola Willis has ruled out taxing charities - for now - Inland Revenue is consulting on a revised approach for NFPs that do not have a specific tax exemption.

The proposed change may not be on the radar for most NFPs because it is buried in the technical analysis included in a draft Inland Revenue Operational Statement that is currently out for consultation.

If adopted, the change would result in member subscriptions (fees) that are currently exempt becoming taxable income for many NFPs. We expect this would result in new tax liabilities for many entities that are currently *practically* exempt from income tax.

Who will be impacted?

The changes may impact any NFP that does not have an income tax exemption. These could include clubs, advocacy groups, political parties, professional bodies/ associations, trade unions, residents' associations, body corporates for unit title developments and industry councils.

Charities and other income tax exempt organisations should not be impacted (many amateur sports clubs qualify for a specific income tax exemption so shouldn't be impacted).

How are not-for-profits taxed now?

Setting aside income tax exempt NFPs, many NFPs are subject to income tax under a modified version of the common law 'mutuality principle'. In a tax context, these NFPs are often referred to as 'mutual associations'.

In simple terms, the mutuality principle is the idea that a person cannot derive taxable income from dealing with themselves. That is, you cannot derive income by selling yourself something. By extension, a group of people acting together for a common purpose also cannot derive income from transacting with themselves.

A simple example of this is a book club. Imagine the members each contribute a small amount to cover the cost of snacks when they meet. It does not make sense to say those contributions are taxable 'income' of the club, nor are any residual amounts returned to members taxable to them. The book club members are simply spending their own money on themselves, and then getting the 'change' back.

This basic principle has been applied by the Courts to larger and more complex organisations that still retain a core element of mutuality. Under the principle of mutuality, where a group of people contribute to an activity or fund for their mutual benefit, any surplus from transactions within the circle of membership should not (in theory) be subject to income tax.

For many years New Zealand's tax legislation has overridden most practical effects of the mutuality principle described above. In summary, under these modified rules:

1. Mutual transactions are taxed under normal principles (i.e. the mutuality principle is overridden by legislation) *except* for member subscriptions that are an obligation of membership and condition of maintaining membership;
2. Mutual organisations can obtain a deduction for rebates paid to members in relation to member transactions.

In a nutshell, this means:

1. **'Member'** activities, being the receipt of subscription income and provision of related member benefits, are not subject to income tax (the mutuality principle is retained).
2. **'Commercial'** or 'trading' activities of a mutual association are subject to income tax in the first instance. This can include trading with members, for example payments by members to attend conferences.

The exception for member subscriptions is important as subscriptions are a primary source of funding for most mutual NFPs.

What is changing?

Inland Revenue's draft guidance proposes a subtle interpretive change. This is based on Australian case *Coleambally Irrigation Mutual Co-operative Ltd v FCT (2004) (Coleambally)*, which Inland Revenue believes New Zealand Courts would follow.

Under the new approach, NFPs with constitutions or governing documents that prevent funds from being distributed to members will no longer qualify as mutual associations for income tax purposes. This is despite the fact that the funds might have otherwise been used to further the collective objectives of the members throughout the life of the organisation. This might seem like a minor point, however many NFPs have constitutions or rules that prevent assets being distributed to members in the event of a windup. Instead the assets are usually required to be passed to another NFP with similar objects or a charity.

As a consequence New Zealand's modified mutuality rules would no longer apply to many NFPs, and subscription income would generally be taxed. This would move most NFPs from being *practically* exempt from income tax (because they have little or no income other than subscriptions), to being taxed on all income under normal tax rules. The draft guidance indicates Inland Revenue would only enforce the new approach prospectively.

For many NFPs, this proposal will come as a surprise, particularly because it upends over 50 years of established practice and turns on an Australian tax case decided 20 years ago. At the time the *Coleambally* decision was a surprise, and differed to the Australian Tax Office's own guidance on the matter.

Given the disruption it would have caused, the Australian Parliament passed legislation shortly afterwards retrospectively reversing the decision. If Inland Revenue does not change the interpretative position currently proposed, serious consideration should be given to adopting a similar approach here.

What should NFPs do?

NFPs need to understand how they may be impacted by the proposed change. If you have any questions on the what the change could mean for your NFP or are considering making a submission, please contact your usual Deloitte advisor. Inland Revenue is accepting submissions on the draft guidance at until 25 June 2025.

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Navigating the everchanging tides of tariffs

By Jeanne du Buisson, Haidee Watkin and Manav Sharma

After the first announcements of the 'liberation day' tariffs and the numerous twists and turns of recent months, many exporters are focused on their supply chains in an unstable global trade environment. Exporters are looking to understand their customs obligations and develop strategies that are both flexible and robust enough to withstand the challenges of the global trade storm.

So, what ropes can exporters tighten to ensure a path to calmer waters?

Reconciliation Schemes
Most jurisdictions allow importers to provide a reasonable estimate of the value of an import entry when they cannot establish the Customs value at the time of import, followed by a window allowing importers an opportunity to reconcile their estimate value with the final value of the goods.

Enrolling for the New Zealand Provisional Value Scheme or the U.S. Reconciliation Scheme can help businesses manage the uncertainty of import values and possibly help manage cash-flow more effectively when importing and exporting goods.

Deferred Payment Schemes
Deferred payments schemes allow businesses to defer the payment of Customs duties and GST until a later specified date. These schemes assist importers in managing cashflow requirements within jurisdiction.

Bonded Warehouses
A bonded warehouse allows businesses to store imported goods in a secure facility without the immediate obligation to pay customs duties or taxes. This arrangement enables them to defer payment until the goods are withdrawn for domestic consumption or exported. Like a reconciliation scheme, a bonded warehouse offers an alternative for exporters to manage customs compliance and help manage cash-flow more effectively when importing and exporting goods.

Duty drawback
Duty drawback schemes allow organisations that import goods into a region and subsequently export the goods to claim back (some or in some circumstance) all of the duties paid on the import of goods.

Secondly, understanding Free Trade Agreements (FTAs), Closer Economic Partnerships (CEPs), and preferential tariffs is crucial for businesses engaged in international trade, as these agreements significantly influence costs of operating in a region.

Lastly, many businesses tend to rely on historical data in determining their Harmonized System (HS) classification codes. As products grow and evolve it is important to reassess if old classifications are still valid and if compliance with country of origin requirements are met.

Deloitte along with New Zealand Trade and Enterprise are assisting New Zealand exporters in navigating the everchanging global economy. Deloitte's Tariff Navigator workshops help provide guidance to exporters in understanding customs compliance, transfer pricing and international tax considerations.

If you are an exporter and interested in participating in a tailored workshop for your business, reach out to your usual Deloitte advisor.

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The One, Big, Beautiful Bill – the potential tax impacts for New Zealand residents

By Sam Mathews and Harrison Cohen

Disclaimer: *This article is a generic, high-level summary of the potential tax impacts of the Bill only. The proposals in the Bill are complex, and US tax advice should be sought to fully understand the potential impacts for you and your business.*

You've probably heard references in the media to "The One, Big, Beautiful Bill" (the Bill) that is making its way through the US legislative process.

What you may not be aware of are the potential tax impacts of the Bill for New Zealand groups with US subsidiaries, New Zealanders investing in the US, and New Zealanders doing business in the US. The question is – how big and how beautiful could these impacts be?

So what is the "The One, Big, Beautiful Bill"?

The Bill is a "budget reconciliation bill" that contains a number of proposed legislative changes, including tax changes, spending cuts and welfare reform.

Amongst the tax changes is the proposed introduction of new Internal Revenue Code Section 899 which contains a number of provisions designed to retaliate against what the US considers unfair foreign taxes on US companies and their subsidiaries.

A budget reconciliation bill is essentially an expedited process for considering bills that would implement policies included in a Congressional budget resolution.

What does Section 899 do?

Section 899 contains provisions that could increase taxes on persons from a "discriminatory foreign country". A discriminatory foreign country is a country that, broadly, has what is considered by the US to be an "unfair foreign tax".

An unfair foreign tax includes a digital services tax (DST) or an undertaxed profits rule (UTPR). The New Zealand government has officially scrapped the DST as part of the recent Budget announcements.

The UTPR is part of the Pillar Two rules, which is the global minimum tax of 15% developed by the OECD, the G20, and the rest of the "Inclusive Framework." New Zealand adopted the Pillar Two rules, including the UTPR, from 1 January 2025.

As such, based on the current rules and wording of the Bill, New Zealand would be considered to be a discriminatory foreign country.

If New Zealand is a discriminatory foreign country, what does this mean?

If New Zealand is a discriminatory foreign country, the Bill (if implemented in its current state) could increase a variety of taxes for New Zealand shareholders and investors into the US, or New Zealanders doing business in the US. Broadly, taxes are scheduled to increase by 5% every year, up to a maximum 20% over the *statutory* rate.

By way of an example, the gross amount of US dividends received by a New Zealand resident typically bears US tax at a rate limited by the NZ-US double tax agreement to 5% or 15%. The Bill would generally increase the rate by 5% for every year that New Zealand is a discriminatory foreign country, up to a maximum of 50% (which is a 20% increase on the 30% statutory US rate).

US taxes on New Zealand groups with US branches, or New Zealand residents doing business in the US more generally, would also increase in a similar manner.

In addition to this, the BEAT (Base Erosion and Anti-abuse Tax) rules for US companies or groups majority-owned by residents of a discriminatory foreign country are also modified. The BEAT is a minimum tax that is meant to prevent companies operating in the US from avoiding a domestic US tax liability by shifting profits out of the US. The Bill's so-called "super BEAT" proposals could apply to non-publicly-held companies or groups (whether US or otherwise subject to US corporate income tax) that are majority owned by New Zealand residents, and could result in additional tax US liabilities for the US (or other US corporate income tax-paying) companies in some instances.

It is worth noting that the increased rates of tax would not apply to income that is explicitly excluded by internal US law from the application of the specified tax. For example, the portfolio interest exemption can exempt New Zealand investors in US debt (e.g. US Treasury Bills), and debt-like investments, from US tax on the income from those investments. This outcome is believed not to be impacted by the Bill in its current form.

When could the Bill become law?

There is a lot of water yet to go under the bridge. The House of Representatives passed the Bill on 22 May and it is now before the Senate. As a budget reconciliation bill, there are certain conditions that must be met for a simple majority in the Senate to be able to pass the Bill. There may be changes to the Bill as it goes through the Senate process, and the Senate would obviously have to pass the Bill. We understand that President Trump is aiming to sign the Bill into law on or before US Independence Day (4 July).

When would the provision apply?

There is some complexity in the potential application date for New Zealand residents, shareholders and investors (which is not covered here), but the rules could apply from as early as 1 January 2026, which obviously isn't too far away.

Given the significance of these proposed rules on the global tax landscape, there could also be changes to the UTPR/Pillar Two rules which could potentially impact whether countries like New Zealand that have adopted the rules are considered to be discriminatory foreign countries.

Looking ahead

The Bill has the potential to have material tax impacts on New Zealand groups with US subsidiaries or branches, New Zealanders investing in the US, and New Zealanders doing business in the US.

If this is you, you should consider how these changes could impact you, as well as monitoring the progress of the Bill including what (if any) changes are made to the Bill by the Senate, as well as any potential changes to the Pillar Two rules.

If you have any questions or would like to discuss how the Bill could apply to your US subsidiaries, investments or business, please contact your usual Deloitte advisor.

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Tax losses and anti-avoidance: Decoding Inland Revenue's finalised guidance

By Campbell Rose, Vyshi Hariharan and Lily Li

Inland Revenue has recently finalised its guidance on when specific anti-avoidance rules may apply to taxpayers relying on the business continuity test (BCT) to carry forward tax losses. In October 2024, we reviewed the Inland Revenue's draft guidance and in this article we explore what has changed in the final version.

In 2022 the Inland Revenue published specific guidance on the BCT rules (IS 22/06), however it did not comment in any detail on the anti-avoidance rules. This new guidance is therefore a welcome clarification on when the Inland Revenue considers the anti-avoidance rules could apply, including through a number of examples.

A brief recap of the BCT rules

The BCT rules were announced in 2020 and enacted in 2021, as part of a COVID-19 relief package, and supplemented the shareholder continuity test for loss carry-forward.Under the general BCT, losses are not forfeited when there is a breach in shareholder continuity (49%), provided there is no "major change" in the nature of the loss company's business activities within five years following the breach; or if there is a major change, provided it is one of four "permitted changes".

A number of specific anti-avoidance measures were introduced alongside the BCT rules, to prevent the rules being applied in a way that Parliament had not intended. For a detailed explanation of the specific anti-avoidance measures, please refer to our October 2024 article.

Key additional guidance/changes to the draft guidance

Shifting costs out of the loss company

The specific anti-avoidance rule in s GB 3BAC of the Income Tax Act 2007 (ITA) counteracts an arrangement to remove costs (and so deductions) from a loss company, with the main or sole purpose of tax avoidance.

Inland Revenue had previously noted in the draft guidance that:

> *"a key consideration in determining whether an arrangement has a sole or main purpose of tax avoidance for the purposes of [this rule] will be the existence or otherwise of intra-group recharges for expenditure shifted out of the loss company and the level of any such recharge".*

In the finalised guidance, Inland Revenue has clarified that this rule only applies to ***existing*** costs. If, for example, the loss company received services under an agreement with a member of its previous (pre-ownership change) group and was not charged for those services, then the rule would not be triggered by the absence of a recharge for those services in the new (post-ownership change) group.

Deloitte view

We acknowledge that a recharge may be required to ensure that costs are not inappropriately shifted out of a loss company, and we welcome the clarification that the cost shifting rule is focussed on pre-existing costs. In practice, however, Inland Revenue's expectation that all expenditure is recharged (to at least recover the service provider's costs) may be administratively burdensome. It would have been useful to see a de-minimis threshold introduced to exclude clearly immaterial costs from the practical application of this rule.

IS 25/14 does not comment on how intra-group recharges should be considered in the context of a loss company that is or becomes a member of a consolidated income tax group (noting that intra-group transactions are usually ignored in such a group). We have raised this with Inland Revenue , and understand that the issue has been referred to Inland Revenue's Policy team for full consideration. Further guidance on this matter would be welcomed.

Relationship with the general anti-avoidance provision

The draft statement had noted that s BG 1 of the ITA (the general anti-avoidance provision) may also apply to an arrangement that is the same, similar or close to an arrangement covered by the specific anti-avoidance rules.

Inland Revenue has included further commentary on this issue in the guidance, noting that the general anti-avoidance provision may apply to arrangements that avoid tax in a way that is 'different' from arrangements caught by the specific anti-avoidance rules. For example, Inland Revenue indicates that even if parties are not 'associated' (under black letter law) when entering into an arrangement (a requirement under the cost-shifting and income-injection specific anti-avoidance rules), the general anti-avoidance provision may apply.

Deloitte view

The passing reference to a single potential s BG 1 scenario, without further examples or commentary on the features that may cause s BG 1 to b e invoked, creates uncertainty. Ideally Inland Revenue would publish an item (perhaps a "Question We've Been Asked") in this regard; or taxpayers seeking valuable certainty could engage with Inland Revenue through applying for a private binding ruling.

Understanding Parliament's purpose

The guidance includes further commentary on understanding Parliament's purpose for specific provisions used or circumvented by an arrangement (being the carry-forward and grouping/commonality rules). In doing so, the guidance references the Minster of Revenue's statements in August 1991, when the loss carry-forward and grouping rules were first introduced.

Deloitte view

Despite the BCT rules including a purpose provision and specific anti-avoidance measures, Inland Revenue clearly considers they may also look to material published decades ago – when the broader loss carry forward and grouping rules were introduced - when determining whether a sole or main purpose of tax avoidance exists. As noted above, obtaining a private binding ruling would provide valuable certainty where post-merger integration and synergy-related arrangements are being considered in a transaction context.

Artificiality and contrivance

Example 7 in the draft guidance discussed an arrangement involving the injection of income into a loss company relying on the BCT rules, and whether tax avoidance is the sole or main purpose of the arrangement. The finalised guidance expands on certain additional facts and commentary in this example.

Deloitte view

The finalised example indicates that, in Inland Revenue's eyes, the bar for artificiality and contrivance - which in turn indicates that tax avoidance could be the main purpose - is not high.

Deloitte's overall view

Inland Revenue's finalised guidance on the specific anti-avoidance rules is welcomed. However, some areas are still not addressed (e.g. recharges within a consolidated group); and in some cases the guidance gives rise to uncertainty (e.g. the reference to the general anti-avoidance provision with limited practical guidance on its scope for application).

Businesses should implement appropriate tax governance and control frameworks (with real time documentation) when applying the BCT rules.

Please contact your usual Deloitte advisor if you would like to discuss this further or are relying on the BCT rules to carry forward tax losses. In a transaction setting, we recommend undertaking the BCT and specific anti-avoidance analysis early, to avoid unwelcome surprises post-completion; and also to identify whether a binding ruling application could be warranted to achieve a greater degree of certainty.

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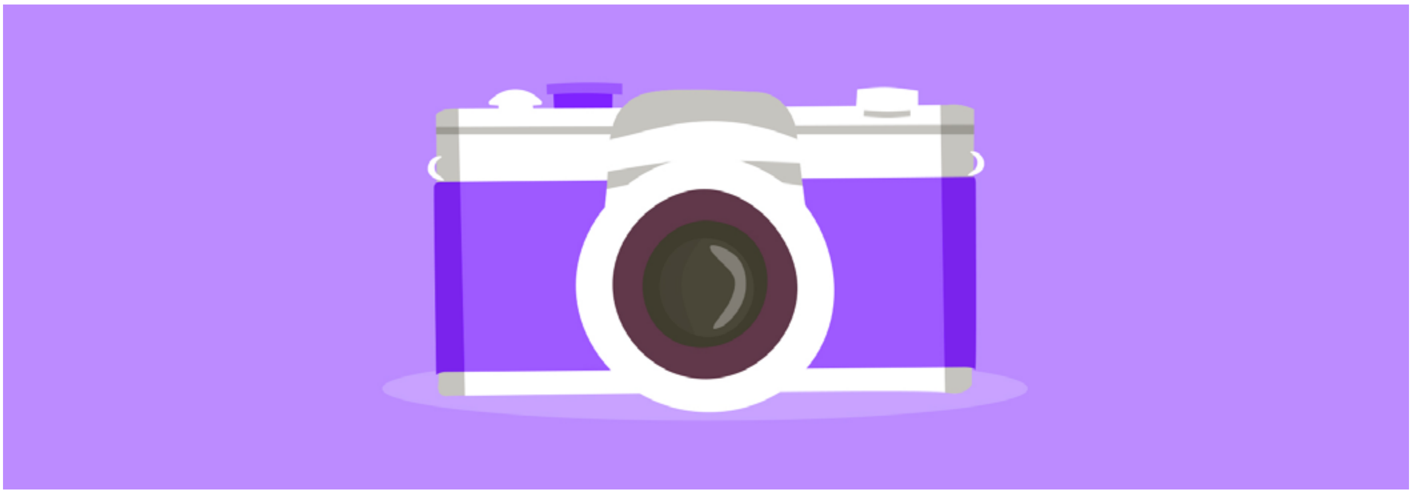
Snapshot of recent developments



Tax legislation and Policy Announcements

Act Commentary: Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025

On 9 May 2025, Inland Revenue published the Act commentary for the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025. It largely replicates the commentary for the Bill, with updates where changes have been made.

Policy consultation: Increasing certainty and preventing debt in the Working for Families schemes

As part of the Budget, Inland Revenue have issued new policy consultation on a set of proposals for improving Working for Families. The intention is to make Working for Families more accurate which would help prevent families from going into debt. One of the main proposals is to make improvements to the way Working for Families entitlements are calculated. This would involve switching from asking people to estimate their income for the year ahead, to instead calculating entitlements by using actual income earned and over a shorter period, such as a month.

Inland Revenue has also published:

- An information sheet, which summarises the full discussion document.
- A short set of summarised submission questions seeking feedback which focus on the topics of most interest to families receiving Working for Families.
- A set of answers to frequently asked questions about the proposals.

The closing date for submissions is 3 July 2025.

Discharge of Digital Services Tax Bill

On 20 May 2025, Minister of Revenue Hon Simon Watts announced that the Government had discharged (discontinued) the Digital Services Tax Bill from the legislative programme.

Inland Revenue Statements and Guidance

Inland Revenue: Public remedials log updated

The public remedials log has been updated for April 2025.

Inland Revenue: Public Guidance Work Programme (May 2025)

On 1 May 2025, Inland Revenue issued the updated Public Guidance work programme. The items that are expected to go to public consultation next are:

- PUB00478: Income tax – Business activity
- PUB00508: Income tax – PIE income from land activities

Tax Information Bulletin: May 2025

On 1 May 2025, Inland Revenue published TIB Vol 37, No 4 (May 2025), which covers:

New legislation

- GST on accommodation and transportation services supplied through online marketplaces
- SL 2024/240: Tax Administration (FamilyBoost Tax Credit—Extension of Dates to File Return of Income) Order 2024; SL 2025/8: Tax Administration (FamilyBoost Tax Credit—Extension of Dates to File Return of Income) Order 2025
- SL 2025/15: Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2025

Determinations

- AE 25/01: Participating jurisdictions for the CRS applied standard
- DET 25/01: GST on supplies through electronic marketplaces – hostel and motel opt-out agreement criteria
- FDR 2025/03: Determination the fair dividend rate may not be used to calculate FIF income by investors in Institutional Cash Series plc: BlackRock ICS US Dollar Liquidity Fund – Premier (Dis) Shares
- FDR 2025/04: Determination the fair dividend rate method may not be used to calculate FIF income by investors in Institutional Cash Series plc: BlackRock ICS US Treasury Fund – Premier (Dis) Shares

Rulings
- BR Prd 25/01: Taxi Limited
- BR Prd 25/02: Electric Bikes NZ Limited

Operational statements
- OS 25/01: Cash collateral is "money lent"
- OS 25/02: Valuation of livestock

Operational position
- OP 25/01: Commissioner's operational position on the GST treatment of fees paid in relation to managed funds

Interpretation statements
- IS 25/05: GST treatment of fees paid in relation to managed funds
- IS 25/06: Employer obligations for employee share scheme benefits paid in cash
- IS 25/07: PAYE – How an employer funds the tax cost on an employee share scheme benefit
- IS 25/08: Income tax - implications of residential property moving between the standard tax rules and the mixed-use asset rules
- IS 25/09: Tax treatment of losses on amalgamation
- IS 25/10: Income tax and GST Amalgamations
- IS 25/11: Income tax – Partnerships (including limited partnerships) – general guidance
- IS 25/12: Income tax – Using the cost method to determine foreign investment fund (FIF) income
- IS 25/13: Income Tax and GST – forestry activities registered in the Emissions Trading Scheme

Questions we've been asked
- QB 25/01: Income tax – Which rules apply if I rent out my home, part of my home, or a separate dwelling on my property as short-stay accommodation?
- QB 25/02: Income tax – Which rules apply if I have a dwelling I sometimes rent out as short-stay accommodation and also sometimes use privately?
- QB 25/03: Income tax – How do the mixed-use asset rules apply if I provide short-stay accommodation?
- QB 25/04: Income tax – How do the standard tax rules apply if I provide short-stay accommodation?
- QB 25/05: Income tax – If property held in a trust is rented out for short-stay accommodation, who declares the income and what deductions can be claimed?
- QB 25/06: How does an amalgamated company calculate its available subscribed capital following an amalgamation?

Technical decision summary
- TDS 25/07: GST – Zero-rating, input tax deductions, shortfall penalties

Draft Interpretation Statement: Income tax - Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust

On 5 May 2025, Inland Revenue published PUB00494: Income tax - Whether money or property received by New Zealand tax residents from overseas is income from a foreign trust and fact sheet. The Interpretation Statement considers the income tax treatment of amounts of money/property that New Zealand tax residents receive from a person overseas, including through inheritance. It addresses how to determine whether the person who transfers the money/property is a trustee of a trust and when the resident taxpayer has derived beneficiary income or a taxable distribution from a foreign trust. This will replace IS 19/04: Income tax – distributions from foreign trusts.

The deadline for comment is 19 June 2025.

Draft General Article: Tax on any fees paid to a member of a board, committee, panel, review group or task force

On 6 May 2025, Inland Revenue issued ED0259: Tax on any fees paid to a member of a board, committee, panel, review group or task force. This is an update of GA 21/01. How taxation applies to any fees paid to members depends on the personal circumstances of the individual member and the terms of their contract/appointment.

Inland Revenue: Update on Debit interest charging from terminal due date instead of provisional tax date/s issue

On 6 May 2025, Inland Revenue advised that they are still addressing the issue of debit interest being charged on provisional tax from the wrong due date. Inland Revenue are still analysing taxpayer data regarding other provisional tax issues. Inland Revenue plans to work out remediation and take any necessary actions by the end of May.

Inland Revenue: Baycorp pilot - clients of tax agents

On 6 May 2025, Inland Revenue provided an update on the debt recovery pilot. During the design phase, Inland Revenue excluded any clients of tax agents. However, an error meant that a small number of tax agent clients were included in the selection. Inland Revenue do not intend to include clients of tax agents in the future.

Inland Revenue: April 2025 meeting with tobacco industry representatives

On 7 May 2025, Inland Revenue advised that they had attended a meeting with representatives from the tobacco industry in April 2025. The World Health Organisation requires parties to be completely transparent when dealing with the tobacco industry. The purpose of the meeting was to discuss the illicit trade of tobacco in NZ. Along with Inland Revenue officials, the meeting was attended by representatives from Imperial Tobacco and British American Tobacco.

Questions We've Been Asked: Land sale rules

On 9 May 2025, Inland Revenue issued seven updated Questions We've Been Asked on the land sale rules, primarily to reflect changes to the bright-line test for disposals of residential land. They have also been updated for formatting, plain English and consistency.

The main changes relate to the bright-line test having reverted to being a 2-year test. There are also updates to reflect changes to other settings around the bright-line test, such as the main home exclusion, rollover relief and terminology in the legislation.

- QB 25/08: When is land acquired for a purpose or with an intention of disposal so that the amount derived from the sale is income?
- QB 25/09: When do I have a "regular pattern" of transactions that prevents me from using exclusions from the land sale rules for my residence or for my main home?

- QB 25/10: On what date is a person treated as acquiring land for the purposes of the land sale rules?
- QB 25/11: When is the bright-line start date for the 2-year bright-line test?
- QB 25/12: How does the bright-line test apply to the sale of a subdivided section?
- QB 25/13: When is the sale of a lifestyle block excluded from the bright-line test?
- QB 25/14: When does the business premises exclusion to the bright-line test apply?

Questions We've Been Asked: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons?

On 9 May 2025, Inland Revenue issued QB 25/15: How do the bright-line rollover relief provisions apply to transfers of residential land between associated persons? It explains how the bright-line test and rollover relief provisions apply to transfers of residential land between associated persons on or after 1 July 2024. It considers the effect of rollover relief and sets out the criteria that need to be met for rollover relief to apply. This Questions We've Been Asked may be relevant in a wide range of situations as the rollover relief provisions can apply even if the bright-line test does not apply to the transferor.

Inland Revenue: Compliance activity uncovers $150m undeclared tax

On 9 May 2025, Inland Revenue announced they have uncovered more than $150 million in undeclared income tax and GST from the property sector. The $153.5 million discrepancy for the first nine months of the current financial year is almost the same as the discrepancies for the whole of the 2023-2024 financial year.

Inland Revenue: 5th anniversary of the Small Business Cashflow loans – time to repay

On 12 May 2025, Inland Revenue advised that it was the 5th anniversary of the Small Business Cashflow (Loan) Scheme, and all loans should now be repaid. More than 129,000 businesses were issued loans totalling $2.4 billion. The average amount approved was $17,000.

From June, Inland Revenue will default a loan if it has not been paid off. Default interest (calculated based on use of money interest of 10.88% plus standard interest rate of 3%) will be charged.

Interpretation Statement: Look-through companies and disposal of residential land under the bright-line test

On 12 May 2025, Inland Revenue published Interpretation Statement 25/15: Look-through companies and disposal of residential land under the bright-line test and fact sheet. The Interpretation Statement explains how the bright-line rules (including the main home exclusion and rollover relief) apply in different situations involving residential land and transfers involving a look-through company.

Inland Revenue: Depreciation overview

Inland Revenue has published a new depreciation overview page on the tax technical website. The overview is organised by the following subjects:

- Depreciation determinations
- General principles
- Residential rental property chattels
- Buildings
- Other assets
- Estimated useful life
- Change of use event where a business becomes a charity

Inland Revenue: Overseas-based Student Loan borrowers' repayment increases

On 13 May 2025, Inland Revenue announced it has collected more than $207 million in repayments since July last year from student loan borrowers living overseas – a 43% increase on the same period the previous year. Much of this can be attributed to an increase in student loan compliance funding in last year's budget.

Inland Revenue: GST registrations for non-active companies

On 14 May 2025, Inland Revenue announced it is no longer going to automatically reject GST registrations for non-active companies. Instead they will send a web message asking that you click 'reply' and attach a copy of the IR434 – Non-active company reactivation form.

There's a link to this form in the web message. You'll have 20 working days to respond to this web message.

When Inland Revenue get the IR434 they will complete the company reactivation and the GST registration at the same time.

When Inland Revenue get a request for back-dated GST registration, Inland Revenue will also send a web message asking for evidence to prove that there has been business activity.

Inland Revenue: GST listed services rules

On 15 May 2025, Inland Revenue published two draft Questions We've Been Asked on GST listed services rules:

- PUB00496: ***GST listed services rules: When is a supply of listed services made through an electronic market?***

  This Questions We've Been Asked discusses one of the key requirements for when the GST listed services rules apply. That is, the supply must be made by an underlying supplier to a recipient through an electronic marketplace operator. It explains that this requirement is satisfied when the marketplace is involved in, and facilitates, supplies between underlying suppliers and recipients.

- PUB00496: ***GST listed services rules: How do the rules apply when there is a supply of listed services and other goods or services?***

  This Questions We've Been Asked discusses some issues with identifying the relevant supplies for the GST listed services rules. It explains what listed services are and how to apply the GST listed services rules if a supply includes listed services with other goods or services.

Submissions close on 27 June 2025.

Inland Revenue: Taxation of transfers from overseas pension schemes

On 15 May 2025, Inland Revenue reminded that from 1 April 2026 a person transferring their overseas pension fund to certain New Zealand superannuation schemes can elect to have the scheme pay the tax due on the transfer on their behalf. More information can be found in the Bill Commentary from the Taxation (Annual Rates for 2024-25, Emergency Response, and Remedial Measures) Bill. Inland Revenue said more information will be made available on its website leading up to 1 April 2026.

Inland Revenue: Two-step verification update

On 20 May 2025, Inland Revenue issued a couple of reminders in regard to two-step verification (2SV) becoming compulsory for tax agents and intermediaries.

Questions We've Been Asked: How do the income tax rules apply when a close company provides short-stay accommodation?

On 23 May 2025, Inland Revenue issued QB 25/16: Income tax – How do the income tax rules apply when a close company provides short-stay accommodation? It explains that the income tax consequences for a close company that provides short-stay accommodation depend on whether the mixed-use asset rules or the standard tax rules apply.

There are also income tax consequences for shareholders or employees who have use of the dwelling without paying market rent. Shareholders are treated as receiving non-cash dividends and employees (including shareholder-employees) are treated as receiving employment income.

Technical Decision Summary: Distribution and resettlement of trusts (private ruling)

On 30 April 2025, Inland Revenue issued TDS 25/09: Distribution and resettlement of trusts. The Tax Counsel Office considered an arrangement involving the distribution and resettlement of assets from several family trusts on to new family trusts. It confirmed the income tax treatment of various elements of the arrangement.

Technical Decision Summary: Source of income and foreign tax credits (adjudication)

On 1 May 2025, Inland Revenue issued TDS 25/10: Source of income and foreign tax credits. The dispute two individual taxpayers who were shareholder employees and directors of a New Zealand registered company that provided services in New Zealand. The issue was whether the shareholder employee's salary had a New Zealand source. The Tax Counsel Office determined there was a New Zealand source and there was no entitlement to foreign tax credits as the shareholder employees were not tax resident when the income was derived.

Technical Decision Summary: Deductions, zero-rating and shortfall penalties

On 8 May 2025, Inland Revenue issued TDS 25/11: Deductions, zero-rating and shortfall penalties. It concerned a company registered for GST on a payments basis that purchased a business from another company with the same shareholder and directors. Amongst other issues, it was concluded that the taxpayer was entitled to an input tax deduction for the purchase (though not all of the subsequent input tax deductions were valid) and an income tax deduction could not be claimed for the purchase of the business.

Technical Decision Summary: Deductions and shortfall penalties

On 8 May 2025, Inland Revenue issued TDS 25/12: Deductions and shortfall penalties. It dealt with a similar issue to TDS 25/12. It resulted in the taxpayer being liable for gross carelessness shortfall penalties.

Technical Decision Summary: Income tax – land transferred within a consolidated group (ruling)

On 19 May 2025, Inland Revenue published TDS 25/13: Income tax – land transferred within a consolidated tax group. It concerned a holding company, part of a consolidated company that included an active company selling land. The holding company was to be liquidated and the issue concerned intragroup transactions. The Tax Counsel Office concluded that the sale proceeds were not taxable, sections FC 1 and FC did not apply, and section BG 1 did not apply.

OECD Updates

OECD release Taxing Wages 2025

On 30 April 2025, the OECD published Taxing Wages 2025. The Tax Wedge for the average single worker in New Zealand (% of total labour cost) for a New Zealand worker was amongst the lowest at 20.78%.

Common errors made by Multinational Enterprise groups in preparing Country-by-Country reports

The OECD have issued an updated version of its common errors made by Multinational Enterprise groups in preparing Country-by-Country reports.

Report on Tax Incentives Principles released

The Platform for Collaboration on Tax, a joint initiative between the IMF, the OECD, the World Bank Group and the UN, released a new report on Tax Incentives Principles. The document is the result of a public consultation opened in February 2025 and lists a series of guiding principles for policymakers to design tax incentives in a way that maximises their benefits while minimising risks to revenue, fairness, and governance.

Updated Transfer Pricing Country Profiles

On 22 May 2025, the OECD has published updated transfer pricing country profiles reflecting the current transfer pricing legislations and practices of 11 jurisdictions and issued for the first time the profiles of Azerbaijan and Pakistan. These latest country profiles present country-specific information on the transfer pricing treatment of hard-to-value intangibles and the simplified and streamlined approach for baseline marketing and distribution activities.

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

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