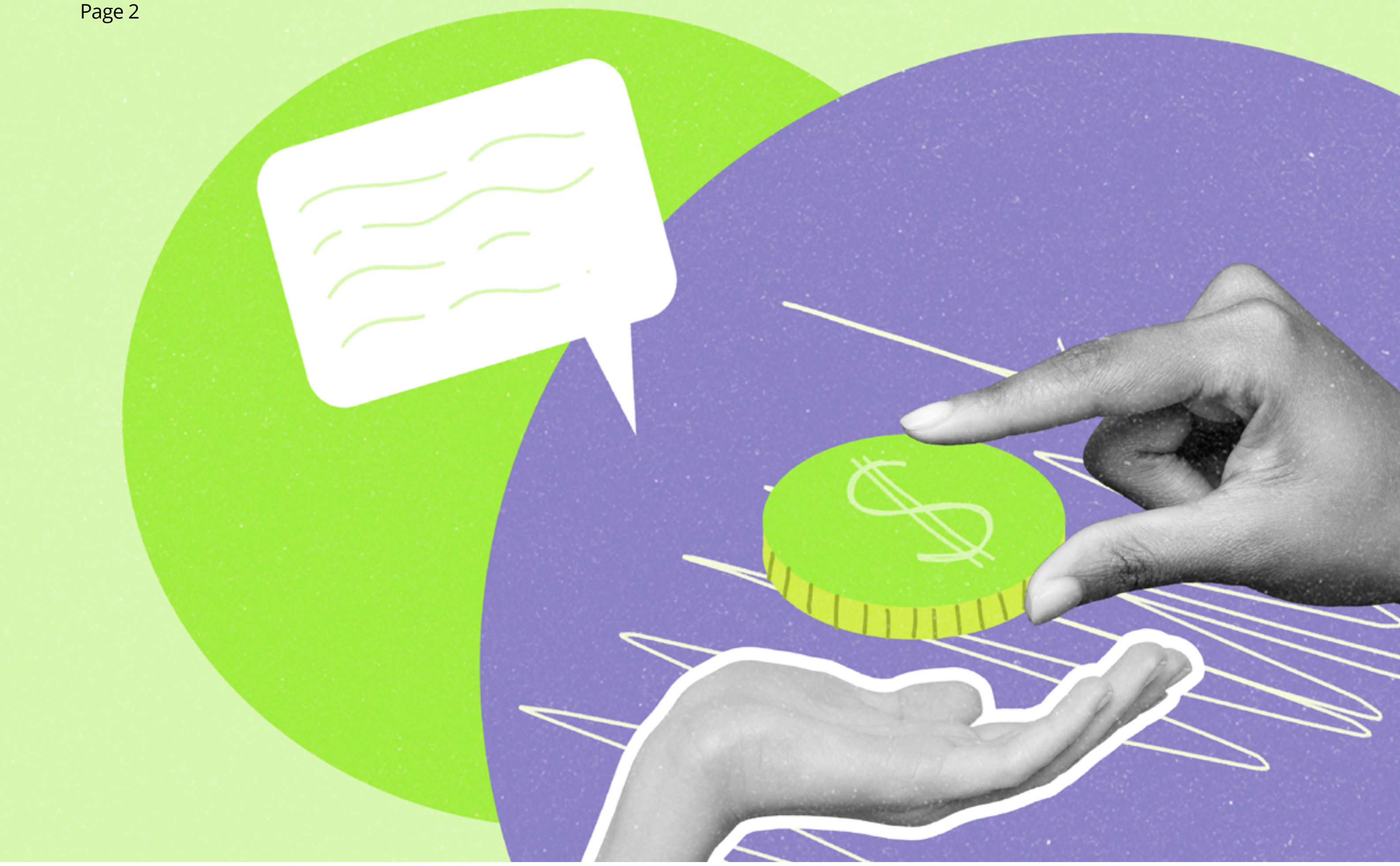
Tax Alert

March 2025

Taxation and the not-for-profit sector: Have your say

Page 2



Taxation and the not-for-profit sector: Have your say

By Robyn Walker

On 24 February 2025, the Inland Revenue released an officials' issues paper (the paper) seeking thoughts on the taxation of charities and not-for-profits. The charitable sector is unlikely to be surprised by this move as this review has been clearly signalled by the Government, with an expectation of announcements being included in the 2025 Budget (being delivered on 22 May). However, the breadth of the proposals may take other not-for-profit organisations by surprise, with questions raised about the continuation of tax exemptions for many other organisations.

The paper seeks feedback on a number of questions related to three main areas, with submissions due by **31 March 2025**.

1. Charity business income tax exemption

The ability for charities to run businesses which compete with the private sector has long been a point of contention, with the issue getting a head of steam since the 2023 Election.

The paper does not put forward any concrete proposals but is more interested in soliciting views on the topic. Paraphrased questions for submitters include:

- What are the most compelling reasons to tax, or not to tax, charity business income?
- If the tax exemption is removed for business income, what are the most significant practical implications?
- How can you define what business income is unrelated to charitable purposes?
- If business income is taxed, what is an appropriate threshold to carve out small-scale business activities?

The paper is focused on businesses which are "unrelated" to the charitable purpose of the organisation, with diary farms and beverage manufacturers cited as examples. The concern is also focused on charities which accumulate income for many years before applying it to a charitable purpose.

Many charities are in the position of needing to have some form of "business" to supplement variable or declining donations.

The paper doesn't elaborate on when a business is unrelated, or whether managing passive assets / investments in a professional manner amounts to a business. The paper indicates there could be relief for charities which apply business income for charitable purposes, but could require charities to maintain a special memorandum account to track how business profits have been applied.

Given charities are required to supply extensive information to maintain charitable status, charities may want to consider reviewing financial statements to identify areas of uncertainty, examples of why surpluses are accumulated for the future, current costs to comply with charities law and potential compliance costs of additional tax rules. If business and charitable activities are contained within a single entity, consideration should be given to how easily, or not, expenditure can be allocated between activities.

2. Donor-controlled charities

This chapter highlights that there are no special tax rules which relate to donor-controlled charities and this presents an opportunity for tax avoidance and other mischief (such as circular arrangements, inflated prices, significant lags in charitable activities vis-à-vis receipt of donation tax credits, etc).

The paper summarises some approaches taken in other jurisdictions to require a minimum amount of charitable actions on an annual basis (such as distributing 5% of the market value of assets each year).

Again, there is no specific proposal put forward, with the Issues Paper asking for feedback on a number of areas (paraphrased below):

- Should there be different tax rules for donor-controlled charities, and how would you define these?
- Should there be any investment restrictions, and if so, what?
- Should there be a requirement for a minimum distribution each year?

While it is understood why there could be concerns in this area, the paper doesn't provide details of existing (non-tax) rules which already prohibit inappropriate non-arm's length transactions.

3. Integrity and simplification

The final chapter contains proposals on some issues which may take some by surprise, with these being less well signalled in advance and having potential impacts on many organisations with no profit-making motive who are currently spared tax compliance costs.

The paper covers not-for-profit member transactions, a variety of tax exemptions for different bodies, the FBT exemption for charities, and possible simplifications for volunteers and donors.

Proposals put forward include:

- Taxing mutual associations on transactions with members and member subscriptions (this may impact 9,000 organisations);
- Removing tax concessions for friendly societies and credit unions;
- Removing specific tax concessions, mainly introduced in the 1950s. These cover local and regional promotional bodies, herd improvement bodies, bodies promoting scientific and industrial research, veterinary service bodies;
- Removing the Fringe Benefit Tax (FBT) exemption for charities;
- Treating payments of honoraria to volunteers as salary or wages rather than as schedular payments.

Many people may not be overtly familiar with the term "mutual association", but this is a body or an association of people acting together to further an objective, which might be to share costs and to provide services to each other. Common examples of mutual associations include clubs, societies, trade associations, professional and regulatory bodies, unions and industry councils. Inland Revenue have issued a statement clarifying that the changes are not intended to apply to the over 20,000 amateur sports clubs and societies.

In relation to FBT, while there is a proposal to remove the current exemption for charities, it is also noted that there is a policy review of FBT in progress. Therefore it is difficult to assess the potential impact of this change. We recommend charities keep an eye out for, and participate in, the separate consultation on this regime when it occurs.

The paper also cross references to a recent review of Donations Tax Credits. This review showed there were problems with taxpayers being aware of the regime and a potential lack of evidence that the credit is effective at stimulating donations.

How to make a submission

This paper presents an opportunity for charities and not-for-profits to have a say on these important issues, albeit in a fairly compressed timeframe. Given the existence of an income tax exemption, many impacted parties may be unfamiliar with the process of making a submission on a paper like this.

For a good submission we recommend you consider:

- Summarising the reason for your interest in the topic.
- Provide a summary of what your not-for-profit does (if relevant).
- Provide your overall views on each major topic you are interested in.
- Provide answers to some, or all, of the specific questions for submitters, to the extent you have views. Clearly showing the question and answers to these specific questions will help officials with preparing feedback summaries.
- Feedback on expected practical consequences of changes (such as expected compliance costs) or thoughts on potential unintended consequences will likely be valued by Officials more than general statements about whether the proposed are supported or opposed.
- Provide a clear executive summary or conclusion with your overall views.

It's important to note that submissions may be made public, or can be requested under the Official Information Act 1982.

Submissions must be made by **31 March**. They can be emailed to policy.webmaster@ird.govt.nz or posted to:

> Taxation and the not-for-profit sector
> C/- Deputy Commissioner, Policy
> Inland Revenue Department
> PO Box 2198
> Wellington 6140

For more information please contact your usual Deloitte advisor.

Contact

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

The latest update on tax legislation

By Amy Sexton and Robyn Walker

Earlier this month the Finance and Expenditure Committee (the FEC) issued it's report which scrutinises the Taxation (Annual Rates for 2024-25, Emergency Response and Remedial Matters) Bill (the Bill). In our September 2024 article we discussed the items in the original Bill which included a number of policy changes as well as remedial items.

We outline some of the key FEC report recommendation areas and their suggested modifications (which are usually accepted by the Government) below:

Generic response to emergency events

- Options for Orders in Council to specific start dates and later dates for end dates for emergency event periods.

Qualifying recognised overseas pension schemes

- Making 'scheme pays' optional for KiwiSaver providers.
- Changes to the timing requirements for notification of foreign superannuation withdrawals from "QROPS" to the Inland Revenue.

Approved issuer levy (AIL) retrospective registration

- Remove the two year timeframe for retrospective registration, replacing this with the "duration of the delay in applying for the registration" as a factor that the CIR may consider when determining if the delay is an oversight.
- Expand the CIR's discretion to allow retrospective registration.
- Add AIL to the list of taxes for which the CIR has the discretion to allow tax pooling to satisfy new liabilities.

New Zealand Business Number information sharing

- Specify the sharing and use of information is limited to specific duties and functions of MBIE.

GST remedials

- Extension of the zero-rating rules to a wider range of temporarily imported goods and commercial vessels.
- Clarify that the limitation on final deduction for non-taxable use of land supplied by a property developer applies only to typical property development activities, and not to retirement villages.

Trust remedials

- Ensure the minor beneficiary rule does not apply to beneficiary income derived from any discretionary trust, provided they otherwise meet the disabled beneficiary trust definition.
- Amend the corporate beneficiary rule to exclude foreign-sourced amounts of beneficiary income derived by a non-resident company if the company does not have a New Zealand resident shareholder.

Partnership remedials

- Remove the requirement for a limited partnership to carry out a 'taxable activity' for it to be eligible for RWT exempt status.
- Make it clear the amendments to 'voting interest' apply specifically for the purposes of particular associated persons tests.

Land rules remedials

- Amending the bright-line start date on partition to the date the co-owner acquired their first interest in the undivided land.
- Add a savings provision for parties who have relied on a binding ruling in relation to the income-spreading rule on disposal of land to the Crown.

International tax remedials

- Amend the effective date of the amendment that clarifies that the transfer pricing and dividend rules apply concurrently to be the date of the day after the Act receives Royal assent (not retrospectively).

FamilyBoost remedials

- Several remedial amendments to ensure that the FamilyBoost regime is fit for purpose

Employer-funded flu vaccinations

- Extend the exemption to include reimbursements for all benefits that would qualify for the FBT health and safety exemption if they were non-cash.

Share-lending arrangements

- Making the deferral of income derived from share-lending arrangements to the following income year optional.

This is only a summary of some of the FEC recommendations, as the reported back Bill compromises over 200 clauses. If you have some spare time on your hands, full analysis of the Bill submissions and recommended changes be found in the Inland Revenue's report to the FEC.

The remaining steps to turn this Bill into law is expected to happen promptly, with the second reading of the Bill taking place on 4 March, and the Committee of the Whole House stage starting on 5 March (which included the Minister tabling an Amendment Paper with additional remedial changes). The remaining steps are a third reading and receiving Royal Assent.

Please contact your usual Deloitte advisor if you have any questions on the Bill.

Contact

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

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

Same same, or different? The deductibility of R&M on a recently acquired asset

By Hiran Patel and Navroz Singh

Businesses and their accountants will be aware of interpretation statement 12/03 *Deductibility of repairs and maintenance expenditure* (IS 12/03) which provides guidance on the general principles for repairs and maintenance deductions. However, questions remained about the deductibility of expenditure on repairs to "recently acquired capital assets". Inland Revenue has recently released draft guidance through a "Question We've Been Asked" (QWBA) on this specific issue: "PUB000459 Can I claim a deduction for expenses I incur on repairing a recently acquired capital asset?"

Spoiler alert – the answer is, no, you cannot! The QWBA confirms that the capital limitation rule in s DA 2(1) of the Income Tax Act 2007 prevents businesses from claiming a deduction because the expenses are of a capital nature. However, if the capital asset is an item of depreciable property, businesses may be able to add the amount of the expenditure to the cost of the asset for depreciation purposes.

So, what's new?

Inland Revenue introduces the concept of "initial repairs" in the QWBA. Initial repairs involve work carried out on a capital asset that has recently been acquired where the expenditure is non-deductible capital expenditure. The nature of initial repairs refers to work involved to ensure that the capital asset is suitable for use as intended within a taxpayer's business. These repairs are non-deductible, even if the same repair work incurred by a previous owner before sale, would have been deductible for that previous owner.

The QWBA includes an example of initial repairs to a commercial building complex (example four).

***Example Four** (replicated from PUB000459)*

MetroHub Properties Ltd acquired a commercial complex comprising several separate buildings. MetroHub intended to use the complex for the purpose of deriving commercial rental income as part of its existing commercial property portfolio.

When MetroHub acquired the complex, all but one of the buildings were tenanted and producing rental income. One multi-storey building, however, had been unoccupied for years and was in a run-down condition.

MetroHub incurred expenditure in the year of purchasing the complex to repair the multi-storey building so it was in a condition for renting out. The work comprised interior cleaning, rubbish removal and redecorating, repairs to the roof, guttering and downpipes, replacing broken windows and maintaining the exterior grounds.

The repairs in this case involved initial repairs because they were required to restore and maintain the functionality of the multi-storey building to the level that MetroHub could use it for the intended purpose of leasing.

This outcome applies, even though parts of the complex are capable already of functioning as intended, and as a whole the complex could be seen as not in need of repair for that purpose.

However, in this case, the relevant asset identified for repairs and maintenance purposes as the object of the expenditure determines the relevant intended use and this is the multi-level building and its surrounding land, not the entire commercial complex.

This expenditure would be added to the cost of the asset (and in this case, subject to a 0% depreciation rate if allocated to the building structure).

While this approach is consistent with ordinary tax principles, businesses should take care when identifying the item of depreciable property. From 1 April 2024, the depreciation rate for all commercial buildings is 0%. As such, identifying the relevant asset being worked on is important in the context of residential and commercial buildings. Fortunately, we have recently written an article on the Inland Revenue guidance on identifying relevant assets.

Wait… am I no longer allowed an immediate deduction for repairs?

It is important to note that the QWBA does state that an initial repair does not include work that remedies normal wear and tear arising from a taxpayer's use of an asset in carrying on a business. For example, if a building had been tenanted and a window broke, any expenditure incurred in replacing the window is likely to be repairs and maintenance even if it is undertaken shortly after the asset is acquired. This expenditure should be immediately deductible.

The key distinction here is whether the costs are a necessity to restore the functionality of an asset so it can form part of the business structure of the taxpayer's income earning activity. In the window repair example above, the asset (the building) was already part of the taxpayer's income earning activity.

If the facts in example 4 (above) from the QWBA were varied and the same costs were incurred by the previous owner, who had owned the building for 20 years, it is likely that expenditure such as interior cleaning, rubbish removal and replacing broken windows will be of a repairs and maintenance nature and immediately deductible, given the building would not be considered to be "recently acquired" (see comments below).

The QWBA accepts that expenditure can be apportioned between an initial repair and repairs for normal wear and tear. The only caveat to this is that if the normal wear and tear repair element was "simply ancillary" to an initial repair, the entire amount is treated as an initial repair and treated as capital in nature. The QWBA does not provide guidance as to what "simply ancillary" means and so the facts and circumstances of a situation must be considered.

Ok, so how long do I have to wait before all repairs are deductible?

Inland Revenue have not provided any material guidance on what comprises a "recently acquired" asset. However, the QWBA does state that shorter the time between purchasing the asset and undertaking repairs, the stronger the inferences that the repairs were needed to restore and maintain the asset's relevant functionality to enable the business's intended use.

We expect that Inland Revenue have deliberately refrained from providing specific criteria to prevent taxpayers from waiting until this criteria has lapsed or has been met and then undertaking repairs.

So where to from here?

The QWBA makes it clear, as is the case in all capital/revenue distinction questions, that all the facts and circumstances of the specific situation need to be considered. This includes:

- The state of repair or disrepair of the asset at the time the business acquired it;
- Whether the asset was in a fit state for use as intended in the business;
- The price of the asset or its value at acquisition* and whether this was, or can be assumed on a reasonable basis to have been, affected by the state of repair or disrepair of the asset;
- The previous use of the asset in comparison with the business's intended use;
- The nature and extent of the repair work carried out;
- The timing of the work; and
- Whether the business has made any use of the asset before or during the period between acquisition and when the relevant work is completed.

*The purchase price of any secondhand asset is usually reflective of a number of factors, and this may include its state of disrepair. The purchase price would then be relevant in the context of initial repairs to the extent it is indicative of the state of the asset at the time.

These considerations are largely consistent with the earlier general principles guidance in IS 12/03.

This QWBA is a useful reminder of complexities of the deductibility of repairs and maintenance expenditure. Next time you incur expenditure repairing a "recently acquired" asset or have any questions on repairs and maintenance deductibility, we recommend reaching out to your Deloitte tax adviser.

Contact

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

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

The end of the tax year is in sight, are you ready?

By Susan Wynne, Andrea Scatchard and Amy Sexton

As 2025 continues to speed on by, another tax year (for standard 31 March balance dates) is quickly drawing to a close and there are some key tax issues for businesses to consider as you work through year-end returns.

Year end tax issues

Bad debts

Debtors not likely to pay?

Unrecoverable debts can only be treated as deductible bad debts if they have been fully written off in your accounts before year-end.

Imputation credit account

What is the balance of your imputation credit account?

A company's imputation credit account must have a nil or credit balance on 31 March, regardless of financial balance date. A debit balance on 31 March will result in penalties. It is a good idea to carefully monitor this, especially if:

- imputed dividends have been paid out;
- tax refunds have been received; or
- there has been a loss of shareholder continuity.

Depreciation

Have you checked your fixed asset register to ensure the correct Inland Revenue tax depreciation rates are being used?

New assets should be depreciated from the beginning of the month of acquisition, rather than from the date of purchase. Pooled assets can be depreciated from the start of the year of acquisition. If you are writing off assets, make sure they are disposed of by year-end.

The ability to claim tax depreciation on commercial and industrial buildings has been removed effective 1 April 2024 for 31 March balance date taxpayers. Check your fixed asset register and consider whether you need to update the depreciation rates of any relevant building assets. Businesses with significant building assets may need to consider the effect of increased taxable income on their final provisional tax payment.

Low-value assets

Purchased low-value assets during the year?

Most assets that cost less than $1,000 are considered "low-value assets" and can be immediately deducted, rather than depreciated. There is a catch however and multiple low-value assets purchased at the same time from the same supplier must have a combined cost of less than $1,000 to utilise the immediate deduction.

Trading stock

Have you done a stocktake?

A stocktake should be done at balance date and obsolete trading stock may be able to be valued at its market selling value (where this is lower than cost and you can substantiate the valuation).

Tax Losses

Do you have losses to carry forward?

Be aware of the shareholder continuity rules and business continuity rules if there have been shareholder changes during the year. A breach of both can result in your tax losses being forfeited.

Other tax issues to consider

Fourth-quarter FBT returns

31 March is also the end of the FBT year, regardless of your financial balance date for most employers. Annual FBT returns and returns for the March quarter are due to be filed by 31 May 2025. This is an opportunity to use the various alternate rate options available to reduce FBT payable from the standard 63.93% rate.

Mileage calculations

If you reimburse staff for mileage, 1 April is the date when baseline odometer readings should be taken. This reading will help determine which mileage reimbursement rate applies.

For more on this see our June 2024 article.

GST mixed-use taxable and non-taxable supplies

If you are GST registered and have assets that are used to make both GST taxable and GST exempt/non-taxable supplies, you may need to make an annual change of use adjustment in the GST return period that includes your balance date.

There is also a transitional rule that expires on 31 March 2025 that may allow you to elect to opt certain assets out of the GST net, for more on this see our February 2025 article.

UOMI and Tax pooling

With the Inland Revenue use of money interest rate currently at 10.88% on outstanding tax payments, tax pooling may offer a way to reduce the effective rate of interest. Tax pooling can also provide the flexibility to make your tax payments at times that suit your own cashflow patterns.

For more on UOMI and tax pooling see our February 2025 article.

Tax on KiwiSaver contributions

If you have employees, you need to review the ESCT rates that apply to your employer KiwiSaver contributions as these may change on 1 April based on earnings levels over the last 2 years.

Personal tax rates & thresholds / FBT rates / ESCT rates

With Budget 2024 changing personal tax thresholds from 31 July 2024, the 2024/25 year was a "transitional year", with composite rates in play. From 1 April 2025, the tax rates and thresholds move to the new rates.

You can read more about the consequential personal tax threshold changes in our June 2024 article.

Also helpful is the Deloitte 2025-2026 Tax Calendar which includes, amongst other important tax information:

- Tax payment and filing dates
- Provisional tax and terminal tax dates
- Personal, ESCT and FBT tax rates and thresholds

Year-end is a busy time and navigating all of the tax rules and obligations can be a nuisance for people who understandably just want to focus on running their businesses. If you have questions or would like help managing your end-of-year tax affairs, reduce your stress and get in touch with your usual Deloitte advisor.

Contact

Susan Wynne
Partner
Tel: +64 7 838 7923
Email: swynne@deloitte.co.nz

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

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

Shortfall penalties – the carrot or the stick?

By Amy Sexton, Campbell Rose and Robyn Walker

You would have to have been living under a rock if you had not heard of, or experienced, the significant increase in Inland Revenue's risk review and audit activities.

This is due, in large part, to a funding boost in the 2024 Budget for "investment in compliance activities". Regardless of this increase in investigation activities, New Zealand's tax system is still based on self-assessment and voluntary compliance. For this system to work for everyone it requires taxpayers to be honest and diligent when taking tax positions. One of the ways of encouraging this honesty and diligence (and discouraging the opposite) is the shortfall penalty regime.

Shortfall penalties – what are they?

Shortfall penalties are imposed to encourage taxpayers to voluntarily comply, and to penalise those who do not. If a taxpayer pays an amount of tax that is lower than what Inland Revenue determines is owed, including by overstating a tax benefit, (a tax shortfall), that taxpayer may be charged a penalty, imposed as a percentage of the tax shortfall.

The shortfall penalty framework sets a progressive level of severity, based on the nature of the breach and culpability of the taxpayer:

PENALTY TYPE	PERCENTAGE OF TAX SHORTFALL	APPLIES WHEN:
Not taking reasonable care	20%	Taxpayer does not take "reasonable care" in taking a tax position and that tax position results in a tax shortfall.
Unacceptable tax position	20%	Viewed objectively, the tax position fails to meet the standard of being about as likely as not to be correct*. **To apply, the tax shortfall must exceed the greater of $50k and 1% of the total tax for the relevant return period.*
Gross carelessness	40%	Doing or not doing something in a way that in all the circumstances suggests or implies a complete or a high level of disregard for the consequences.
Abusive tax position	100%	Is an "unacceptable tax position" and, when viewed objectively, a taxpayer enters into or acts in respect of arrangements or interprets or applies tax laws with a dominant purpose of taking, or supporting the taking of, tax positions that reduce or remove tax liabilities or give tax benefits.
Evasion or similar act	150%	Evades the assessment or payment of tax by the taxpayer or another person under a tax law or a similar act, or knowingly uses a tax deduction for a purpose other than the payment of tax.
Promoter penalty	The sum of the tax shortfalls arising as if the promoter had been party to the arrangement.	Applies to a "promoter" who has sold, offered, issued or promoted an arrangement to 10 or more persons, where a shortfall penalty for an abusive tax position is imposed on a party to the arrangement as a result.

To ensure the penalty is proportionate to the seriousness of the non-compliance, there are circumstances where a shortfall penalty may be reduced or eliminated, including:

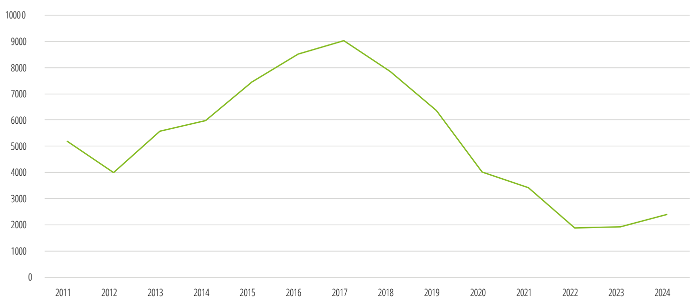
- 100% reduction (in cases of not taking reasonable care or unacceptable tax position) when a full voluntary disclosure is made prior to notification of an audit
- 75% reduction (in the case of other penalties) when a full voluntary disclosure is made prior to notification of an audit
- 75% reduction if there is a "temporary shortfall" when a taxpayer has reversed or corrected a shortfall permanently (or will do so within a prescribed timeframe)
- 40% reduction when a voluntary disclosure is made post notification of an audit, but before the audit commences
- 50% reduction for taxpayers with "prior good behaviour"

Trends in shortfall penalties

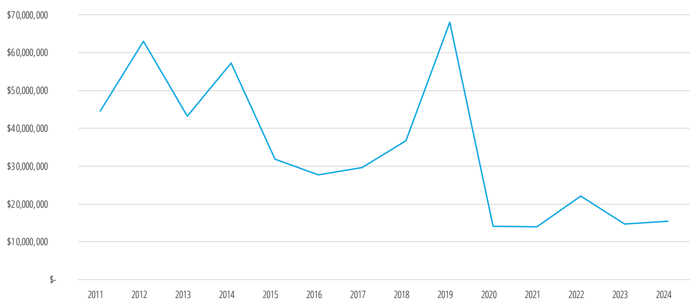
Inland Revenue is required to report the shortfall penalties imposed during each financial year (ended 30 June) to the Ministers of Finance and Revenue. We have been keeping records of the trends in shortfall penalties being imposed since 2011. Since a peak in 2017, there has been a steady drop in the total number of shortfall penalties imposed, which coincided with Inland Revenue's Business Transformation project and, from 2020, its COVID-19 pandemic response work.

While it is too early to see the real impact of Inland Revenue's recently increased compliance funding and activity on the level of shortfall penalties imposed, from 2022 there has already been a slow increase in the overall number of shortfall penalties imposed. This trend upwards is not matched by the overall total dollar value of shortfall penalties imposed, which shows more fluctuation. Inland Revenue has explained that this fluctuation was due to penalties imposed on one taxpayer for an avoidance arrangement in 2022 – demonstrating the potentially material impact of the "abusive tax position" penalty where it is successfully applied by Inland Revenue. It is worth noting in this regard that the courts have generally upheld the imposition of shortfall penalties by Inland Revenue – but not in all cases, particularly where issues such as the capital/revenue distinction, rather than general anti-avoidance cases with "sharp" facts, are involved.

Total number of shortfall penalties

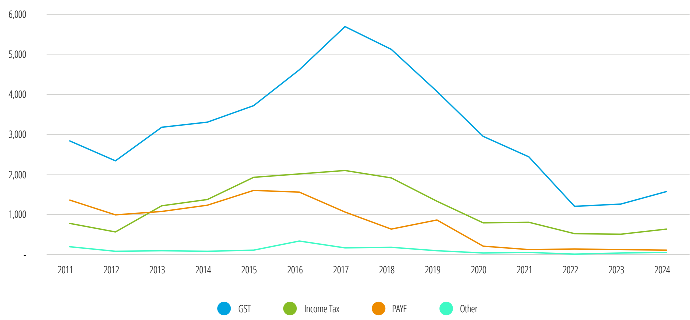


Total dollar value of penalites imposed

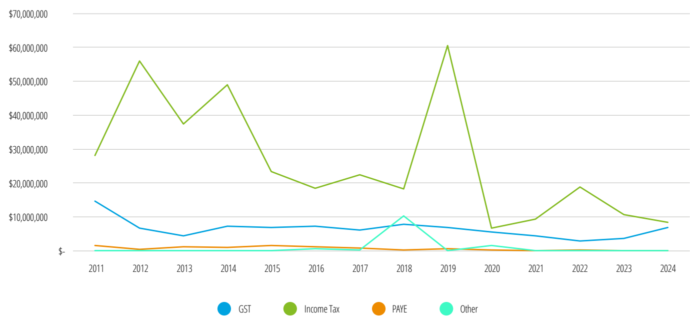


Once again, GST continues to be the tax type with the highest number of shortfall penalties imposed, while income tax remains the tax type with the highest "dollar value" of shortfall penalties imposed.

Incidence of penalities by tax type



Dollar value of penalities by tax type



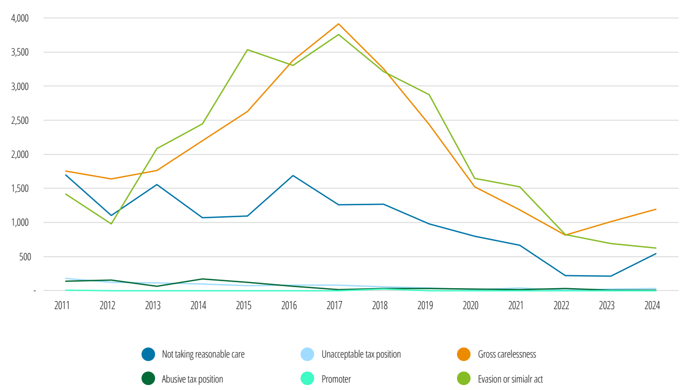
Up until 2022 the most common shortfall penalty imposed (by number) was for evasion (150%), and for actual dollar value was abusive tax position (100%). However, since 2022 there has been a noticeable change. Gross carelessness (40%) has now leapfrogged evasion to be the most commonly imposed shortfall penalty by number – it is worth noting that this penalty cannot be eliminated through a voluntary disclosure prior to notification of an audit. There has also been a noticeable increase in the number of not taking reasonable care (20%) penalties imposed.

Evasion (150%) has taken over as the penalty with the overall highest dollar value – this is presumably due to Inland Revenue's focus on the cash economy, particularly in certain sectors.

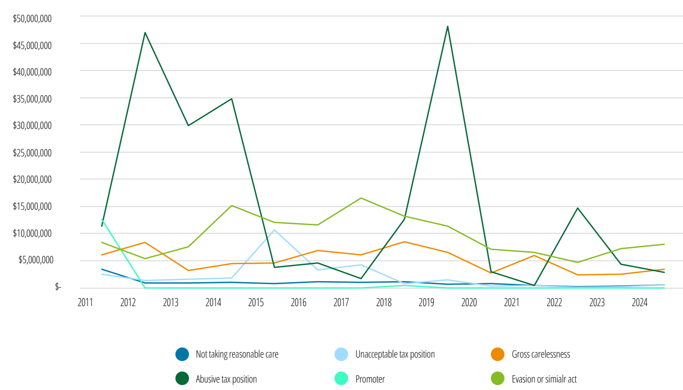
With Inland Revenue's increased scrutiny of businesses and their tax positions, we expect the trend towards not taking reasonable care (20%) and gross carelessness (40%) penalties to continue – particularly if tax compliance processes and governance have become somewhat complacent during the COVID-19 period.

What may seem at odds with this general upwards trend for shortfall penalties is the continued flat line for the unacceptable tax position (20%) penalty. However, this can be explained by the special administrative rules for this penalty, which mean that any tax shortfall must exceed the greater of $50,000 and 1% of the total tax in the return before it can be imposed; and the fact that a more detailed analysis must be undertaken by Inland Revenue in terms of establishing that the statutory and case law position is such that the relevant tax position cannot be "about as likely as not" to be correct.

Number of penalities by penalty type



Dollar value of penalties by penalty type



How do I ensure that these penalties are not imposed

The simplest answer to ensuring that shortfall penalties are not imposed is to continue to be voluntarily compliant. Establish sound tax governance (and implement it fully, including a tax risk controls framework, and regularly ensuring it remains fit-for-purpose), get good tax advice from the start, keep accurate records, file returns on time and, if you identify any errors, tell your tax advisor and make a full and complete voluntary disclosure. We cover this in more detail in our August 2024 Tax Alert article.

What are we seeing happening in practice now

In our experience we are seeing Inland Revenue imposing virtually automatic "not taking reasonable care" penalties for errors, regardless of the nature of the error or the taxpayer. A recent example of where this shortfall penalty has been applied incorrectly is in a Technical Decision Summary published at the end of February 2025. In this case Inland Revenue's Customer and Compliance Services (CCS) position prevailed in the disputed tax issue (a deduction from output tax for GST). However, CCS had imposed a not taking reasonable care shortfall penalty on the taxpayer. It was determined in adjudication that the taxpayer was not liable for this shortfall penalty as the taxpayer had done what a reasonable person would have done in the circumstances.

What we find concerning in this case is that the issue under dispute was described by the adjudicator as being "significant and complex" and the taxpayer obtained tax advice from an external, approved tax advisor. In our opinion, the imposition of the not taking reasonable care shortfall penalty in this instance (based on the facts described in the Technical Decision Summary) does not follow existing Inland Revenue guidance, good practice and case law. We have also seen questionable shortfall penalties imposed for very small amounts of tax shortfall, meaning in practice that taxpayers are unlikely to challenge those penalties on a cost/benefit basis.

Existing Inland Revenue guidance on shortfall penalties is 20 years old and we are happy to see that the Tax Counsel Office has on its "items currently being worked on" work programme the updating of guidance for the not taking reasonable care and unacceptable tax position penalties. Guidance for abusive tax position, evasion and gross carelessness are also on the work programme but are recorded as "not currently being worked on". We hope that the Tax Counsel Office is able to progress all the shortfall penalties guidance documents this year.

In the meantime it is hoped that Inland Revenue's internal consistency protocols for the imposition of shortfall penalties are being robustly and equitably applied, and that more generally an appropriate level of oversight is being applied to the decision-making of imposing these shortfall penalties (which in some cases will involve staff members new to the world of investigations and tax technical analysis).

If you have any questions about shortfall penalties, Inland Revenue investigations or voluntary disclosures please contact your usual Deloitte advisor.

Contact

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

Campbell Rose
Partner
Tel: +64 9 303 0990
Email: camrose@deloitte.co.nz

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

Remote working in New Zealand: Sun, sand, and tax!

By Stephen Walker, Emaad Tariq and Tessa Petau-Ah Poe

Working remotely under the new visitor visa rules in New Zealand sounds like a dream come true, doesn't it? The idea of setting up your laptop on the pristine sands of Piha beach, listening to the majestic sound of the Tui while earning a living is certainly appealing. However, before you dive headfirst into this sunny remote working adventure, there are a few key things you need to keep in mind to ensure you stay on the right side of the tax authorities – for both you and your boss!

Understanding the visitor visa rules

Thanks to recent changes in New Zealand's visitor visa rules, working remotely for a foreign employer in beautiful Aotearoa has become more accessible than ever. As of 27 January 2025, all visitor visas now permit employees to work remotely in New Zealand, provided they meet the guidelines set by Immigration New Zealand. This is great news for digital nomads and remote workers seeking a change of scenery.

So whilst navigating the immigration side of things has become easier, it's important to remember that tax rules have not changed and still apply as they always have. So, how will your income be taxed when you start working remotely from New Zealand, especially when you're already subject to taxes in your home country on that income? Let's take a look.

New Zealand taxation for remote workers

Fortunately, there are two key tax exemptions from New Zealand tax that could apply, depending on the duration of your stay, for either business or pleasure, in New Zealand.

Visiting for 92 days or less

If you are not already a tax resident of New Zealand, and your stay here is 92 days or less in aggregate within any 12-month period, employment income paid to you from offshore is usually exempt from New Zealand tax. This means you can focus on meeting your tax obligations in your home country without being concerned about additional tax requirements in New Zealand.

However, there are two important exceptions to this rule to bear in mind:

1. If your income is not taxed in your home country under a tax system similar to New Zealand's income tax, the exemption may not apply, and you could be liable for tax in New Zealand.
2. Certain professionals, such as those involved in the entertainment or sporting industries, may not qualify for this exemption. If you fall under this category, seeking upfront advice from a New Zealand tax advisor is strongly recommended.

Visiting for 93 to 183 days

For visits lasting between 93 and 183 days in aggregate in any 12-month period, if you are a tax resident in a country that has a double tax agreement (DTA) with New Zealand, you may be eligible for further relief from New Zealand income tax on your remote work income.

See here for a current list of 41 countries with which New Zealand has a DTA. The specific terms of each DTA may vary, but generally, they will consider your income exempt from New Zealand tax if certain conditions are met. These conditions typically include:

- Being present in New Zealand for less than 183 days in any 12-month period.
- Ensuring that the payer of your income is not tax resident in New Zealand or that your income is not attributable to a taxable presence (a permanent establishment) they (or you) have in New Zealand.

The concept of a permanent establishment is a complex one, and to understand if this exemption can apply to you, it is important to understand whether the payer of your income has one already in New Zealand, and if not, whether your planned activities and duration of stay in New Zealand could create one for them (or you, if you are a sole trader). If a New Zealand permanent establishment does arise, then the 93-to-183-day exemption above would not apply, and as well as your income being taxable in New Zealand, the payer of your income could also have tax obligations in New Zealand in relation to their business profits.

Typically, if you are working remotely in New Zealand on one of these new visas due to personal choice, for the offshore payer, who has no business need for you to be here and has no other presence in New Zealand, the risk of creating a permanent establishment should be low (if you are not habitually undertaking contractual negotiation and signing activities from New Zealand). Again, if you are unsure as to the permanent establishment risks, specific tax advice should be sought.

If visiting for more than 183 days, or an exemption does not apply

While relishing your extended stay in New Zealand, if you come to the realisation that you have exceeded a presence of 183 days in aggregate in any 12-month period or none of the exemptions above can apply to you, things get a bit more complicated. It is very likely your income will become taxable in New Zealand, even if you do not trigger New Zealand tax residency. Where this is the case, and the payer of your income is not otherwise doing business in New Zealand or otherwise reporting payments here, the periodic income reporting and withholding obligations could fall to you instead. In addition, your income may still be subject to withholding tax in your home country and so steps need to be taken in your home country to ensure you do not suffer double taxation, even if temporarily. If this situation applies to you, then you should seek specialist tax advice to ensure you understand how you will be taxed, your compliance obligations both here and back home, and any steps required to minimise exposure to double tax and disruptions to your net cash flow.

As you can see tax residency can be complex and very fact specific, if you have any questions please contact your usual Deloitte advisor.

Contact

Stephen Walker
Director
Tel: +64 9 303 0892
Email: stewalker@deloitte.co.nz

Emaad Tariq
Consultant
Tel: +64 9 956 9751
Email: etariq@deloitte.co.nz

Tessa Petau-Ah Poe
Consultant
Tel: +64 9 306 4441
Email: tepetauahpoe@deloitte.co.nz

Snapshot of recent developments

Tax legislation and Policy Announcements

NZ-Slovenia DTA available

On 22 January 2025 the New Zealand - Slovenia: 2024 Income Tax Agreement and Final Protocol was published. This is the first income tax treaty between New Zealand and Slovenia. It will enter into force upon the exchange of ratification instruments, and its withholding tax provisions will apply in both jurisdictions from the first day of the third month following its entry into force. Its other tax provisions will apply in Slovenia from January 1 of the year following its entry into force and in NZ from April 1 of the year following its entry into force.

GST policy proposal for NZ racing industry

On 31 January 2025, Racing Minister Rt Hon. Winston Peters announced public consultation on GST policy proposals to make the New Zealand racing industry more competitive. The change relates the ability to claim GST deductions in a joint venture. Whilst the press release only references the racing industry the discussion document is not limited to the racing industry. The consultation document will be published in the next few months.

Donation Tax Credit regime regulatory stewardship review findings and response

On 10 February 2025, Inland Revenue issued the findings and its response to the Donation Tax Credit regime's regulatory stewardship review.

Order in Council commentary: Taxation (Use of Money Interest Rates) Amendment Regulations 2024

On 12 February 2025, Inland Revenue published commentary attached to the Order in Council which changed use of money interest (UOMI) rates in January 2025.

Inland Revenue Statements and Guidance

Determination: the FDR method may not be used by investors in the Aggregate Bond ETF share class

On 28 January 2025, Inland Revenue issued FDR 2025/02. Any investment by a New Zealand resident investor in the NZD hedged (Accumulating) share class of the iShares Core Global Aggregate Bond UCITS ETF, a sub-fund of iShares III public limited company, to which none of the exemptions in s EX 29 to 43 of the Income Tax Act 2007 apply, is a type of attributing interest for which the investor may not use the Fair Dividend Rate method to calculate foreign investment fund income for the interest.

The determination applies for the 2024-2025 income year and subsequent income years.

Inland Revenue to call re myIR security update

On 29 January 2025, Inland Revenue announced it will be calling some customers to help them set up two-step verification (2SV) in myIR ahead of this becoming compulsory. If a taxpayer receives a call and is unsure whether it is from Inland Revenue, then they can either request that the person send them a web message to their secure myIR account to verify that it is Inland Revenue calling or call Inland Revenue back on 0800 775 247.

Determination: the FDR method cannot be used by investors in NZD Hedged Dividend Aggregate Bond Fund

On 29 January 2025, Inland Revenue issued FDR 2025/01. Any investment by a New Zealand resident investor in shares in the JPM Aggregate Bond Fund – NZD Hedged Dividend Class X shares, to which none of the exemptions in ss EX 29-43 of the Income Tax Act 2007 apply, is a type of attributing interest for which the investor may not use the Fair Dividend Rate method to calculate FIF income for the interest.

This determination applies for the 2024-25 income year and subsequent income years.

However, under s 91AAO(3B) of the Tax Administration Act 1994, this determination does not apply for a person and an income year beginning before the date of the determination unless the person chooses that the determination applies for the income year.

TIB: Volume 37, Number 1 (February 2025)

On 31 January 2025, Inland Revenue published TIB Vol 37, No 1 (February 2025), which covers:

Commissioner's statement

- Notice of withdrawal: Tax treatment of computer software

Determinations

- DET 24/04: Amortisation Rates for Listed Horticultural Plants

Rulings

- BR Prd 24/04: Kiwibank Limited
- BR Prd 24/05: Air New Zealand Limited

Interpretation statements

- IS 24/10: Income tax - Share investments
- IS 25/01: Income tax - deducting costing of travel by a motor vehicle between home and work
- IS 25/02: FBT - travel by motor vehicle between home and work

Case summaries

- CSUM 25/01: Goodricke v Commissioner of Inland Revenue [2024] NZHC 3639
- CSUM 25/02: Goodricke v Commissioner of Inland Revenue [2024] NZHC 3818 (Costs)
- CSUM 25/03: Commissioner of Police v Cheng [2024] NZHC 3242

Technical decision summaries

- TDS 24/21: Accommodation provided to an employee
- TDS 24/22: Transitional residency and cryptoassets
- TDS 24/23: Depreciation loss on asset no longer used
- TDS 24/24: Share scheme taxing date

Inland Revenue: Updated Public Guidance work programme

The Public Guidance work programme has been updated for February 2025.

Inland Revenue: e-notification myIR title changes

On 10 February 2025, Inland Revenue announced they have reviewed the titles of myIR letters and have made changes to improve clarity. The changes will be in stages from 12 February to early April 2025. The changes are:

- New titles for around 80% of letters.
- Updates to style and format.
- An updated mail type code reference list on website.

Please note, if you receive an email alert for a letter and are delayed logging in to view the letter, its title may not match the email alert. Your alert will still take you to the current version of the letter in myIR, even if the title is different.

Inland Revenue: Small Business Cashflow (Loan) Scheme

On 11 February 2025, Inland Revenue announced the Small Business Cashflow (Loan) Scheme will reach its 5-year anniversary and will expire for taxpayers who have a 5-year loan. Any unpaid loan balance (plus interest) at the end of the loan's term will automatically default. Inland Revenue will treat this as overdue debt. Inland Revenue may also charge default interest on overdue loans.

Inland Revenue has started to contact these taxpayers to discuss loan balances, making payments, or, where the debt has defaulted, negotiating payment of debt.

If a taxpayer is linked to a tax agent, Inland Revenue will contact the tax agent first.

Inland Revenue: eInvoicing webinar

On 11 February 2025, Inland Revenue invited anyone interested to join a virtual presentation on eInvoicing on Tuesday 11 March from 11am to 11.45am. The Ministry of Business, Innovation, and Employment (MBIE) and Inland Revenue will be presenting. Register for the event here.

Inland Revenue changing its third-party card payment processor to Worldline

On 12 February 2025, Inland Revenue announced it is changing its third-party card payment processor from Windcave to Worldline. There will be minor look and feel changes for taxpayers making payments in myIR, including being redirected to a new Worldline hosted payment page to complete the payment. Taxpayers that have previously saved their card information will need to re-enter their full card details the first time they make a payment after the change to Worldline. They will have the option to save their card details for future payments.

Technical Decision Summary: Financing arrangement to fund the refurbishment of a capital asset

On 13 February 2025, Inland Revenue issued TDS 25/02: Financing arrangement to fund the refurbishment of a capital asset. It relates to a proposed financing arrangement to fund the refurbishment of a capital asset. The Tax Counsel Office ruled no deemed dividend arose under the arrangement, amongst other conclusions.

Inland Revenue: Tax agents survey results

On 17 February 2025, Inland Revenue shared some of the key findings from the July-September 2024 quarter of its ongoing tax agents voice of the customer (TAVOC) survey.

Inland Revenue: Planning for system outage

On 17 February 2025, Inland Revenue announced it is planning to close some of its systems (myIR, SPK2IR, Gateway Services) from Friday 14 March 6pm. Systems are expected to be available again by Sunday 16 March 4pm. This will not affect any saved drafts or web requests in myIR.

Inland Revenue: Community detention for tax fraud

On 17 February 2025, an Auckland man was sentenced to community detention for tax fraud after falsely claiming COVID relief money. The man applied for a loan under another person's name which was paid into a bank account listing that person as the account holder. Immigration records showed the named person had left New Zealand seven years earlier and had not returned.

Inland Revenue: Increasing focus on payday filing

On 18 February 2025, Inland Revenue said that in late February it will be writing to employers to check that they have filed the employment information (EI) needed for a month where nothing has been filed but Inland Revenue think's something should have been. Inland Revenue will now do this regularly.

Late filed EIs can incur penalties and interest. Some employers may get a warning rather than a 'check-in' letter. If employers continue not to file EIs they may incur non-filing penalties and interest.

Draft Interpretation Statement: GST – taxable activity

On 24 February 2024, Inland Revenue issued PUB00476: GST – taxable activity. It sets out the Commissioners (CIR) view on the meaning of "taxable activity". The CIR has discussed this concept in numerous public items, but generally in a specific context such as subdivisions of land, horse racing or horse breeding. This statement is of more general application.

Section 6 of the GSTA85 defines "taxable activity". The key elements discussed in this interpretation statement are:

- what constitutes an "activity";
- when an activity is being "carried on";
- what "continuously or regularly" means;
- the significance of the words "whether or not for a pecuniary profit";
- what is meant by the requirement that the activity "involves or is intended to involve, in whole or in part, the supply of goods and services ... for a consideration";
- the reference to the activity being "carried on in the form of a business, trade, manufacture, profession, vocation, association, or club";
- the inclusion of public authorities, local authorities and public purpose Crown-controlled companies;
- the application of s 6(2) ("anything done in connection with the beginning or ending ... of a taxable activity"); and
- the exclusions from the definition of "taxable activity" in s 6(3), particularly the exclusions for any activity carried on essentially as a private recreational pursuit or hobby (ss 6(3)(a) and 6(3)(aa)).

Submissions close 4 April 2025.

Deloitte Global Perspectives

Deloitte Global Report: Tax Transparency & Reporting: How Can We See More Clearly?

On 5 February 2025, Deloitte Global published its latest tax policy insight: Tax Transparency & Reporting: How Can We See More Clearly?

The article combines the thinking of our Deloitte subject matter experts from around the world and provides an assessment of the current requirements, highlights key findings from our 2024 Survey, and outlines three possible futures for tax transparency and reporting:

1. Simplifying and unifying existing frameworks
2. Focusing on modern tax administration
3. Moving beyond transparency

OECD Updates

OECD releases latest peer review results on preferential tax regimes under BEPS Action 5

On 5 February 2025, the latest results by the Forum on Harmful Tax Practices (FHTP) peer review of preferential tax regimes and no or only nominal tax jurisdictions were released, highlighting the progress made by jurisdictions in addressing harmful tax practices through the implementation of the international standard under BEPS Action 5.

Tax and Development Case Study: Strengthening the capacity to tackle tax avoidance in Kazakhstan

The OECD had published a case study illustrating how Kazakhstan has benefitted from support in international tax capacity building, particularly addressing tax avoidance in the mining sector and improvement it its legal transfer pricing framework.

OECD Tax and Development Days 2025

The OECD Tax and Development Days are being virtually held on 12-13 March 2025. Information and registration details can be found here.

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

Deloitte.

Sign up to the
Tax Alert at deloitte.co.nz

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

Amy Sexton

+64 (9) 953 6012

asexton@deloitte.co.nz

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

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

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

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

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

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

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

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

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