

# Tax Alert

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## A focus on topical tax issues– March 2014



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## Last minute foreign super amendment welcome

*By Jono Boyce and Kirsty Hallett*

Do you have foreign superannuation entitlements? An amendment to the proposed foreign superannuation tax rules makes taking advantage of the 15% concession easier for taxpayers.

In our February 2014 Tax Alert, we outlined the actions required by taxpayers to take advantage of the new rules which tax interests in foreign superannuation schemes as set out in the Taxation (Annual Rates, Foreign Superannuation and Remedial Matters) Bill. The Bill was passed through Parliament last week with a late, but much welcomed amendment providing additional flexibility for taxpayers to take advantage of the 15% concessional rule.

Readers will recall that while the new rules will apply from 1 April 2014, a concession is available where a withdrawal or transfer to a New Zealand or Australian scheme is made before 1 April 2014. Under the concession, your taxable income in New Zealand is limited to 15% of the amount transferred or withdrawn. People who choose this option can include 15% of their transferred or withdrawn foreign superannuation in their 2013–14 or 2014–15 income tax return and have their marginal tax rate for that income year applied to that amount.

As the rules were originally drafted it was necessary for the transfer of funds to have been completed prior to 1 April 2014 to benefit from this exemption, which having regard to the timeframe between the rules being announced and 1 April 2014 is simply not possible for many taxpayers.

A late amendment to the rules has been introduced providing additional flexibility for taxpayers wishing to avail themselves of the concession. Specifically, the availability of the 15% concession has been extended to those whose funds haven't actually been transferred to a New Zealand or Australian scheme before 1 April 2014, but where it can be shown that an application has been lodged before that date. This is a welcome amendment as fund transfers can be a lengthy process.

As a result of this amendment taxpayers who had previously ruled out benefiting from the concession due to the time it may take to arrange a fund transfer may wish to re-consider their options. As we have previously alluded to, there is no single answer to what course of action should be taken as the best choice for any particular taxpayer will depend on your personal circumstances.

A special report on the changes to foreign superannuation will be published in March and information on the new Act will be published in a further Inland Revenue Tax Information Bulletin. For more guidance or to discuss the application of the concession or the new rules in further detail please contact your usual Deloitte advisor.



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## Tax year-end matters

By Veronica Harley and Iain Bradley

With the end of financial year soon upon us, it is timely to think about year-end tax issues. Busyness, staff changes and changes in tax law mean these matters can be easily overlooked.

These issues are also relevant for taxpayers with balance dates other than 31 March. Furthermore, there are some 31 March issues that affect all taxpayers regardless of balance date. A few of these issues are outlined below in the hope of making this time of year run smoothly.

### Income matters

It is useful to consider whether there have been any new sources of income, unusual or one-off receipts during the year and to consider whether these items are income, or conversely treated as income when they may not be taxable. Readers should be cognisant of recent changes in tax rules that may impact on this year. For example, lease inducement receipts derived on or after 1 April 2013, which must now be recognised as income.

Timing matters also. By this, we mean that in what tax year should income be returned? Generally, income is returned in the period it is "derived." Often credit notes, disputed sales and rebates which give rise to timing issues can be easily overlooked.

Special rules can apply to particular types of receipts, for example, certain insurance receipts and capital contribution amounts received. Income may also be derived over multiple years, especially in the case of long term projects. Common timing issues that arise include determining when retention monies, work-in-progress balances, deposits and progress payments have been earned for tax purposes on long term contracts.

### Claiming the full entitlement of deductions

As with income, the rules relating to claiming deductions are not always straightforward, particularly in relation to items of capital expenditure that cannot be deducted. The starting point is to review large or unusual expenditure items. The capital-revenue boundary is not always black and white in this regard. Common capital-revenue boundary issues that require review



include expenditure on repairs and maintenance and certain types of legal fees. Although with respect to legal fees, if the total amount spent in a year is equal to or less than \$10,000, the expenditure will be deductible regardless so there is no need for the capital-revenue analysis in this case.

Other areas which may require consideration include feasibility costs and research and development expenditure. Has a software development project gone awry and been abandoned? In which case the costs of unsuccessful development are deductible in the year the project is abandoned. Also if any lease induction payments have been made after 1 April 2013, these are now confirmed as automatically deductible for the payer.

Other common items that are not deductible include penalties and fines and 50% of entertainment expenditure. With respect to entertainment expenditure, it can be useful to check how entertainment expenditure is coded and treated in the accounts so the correct amounts are picked up. There are also some exemptions that apply here – for example, entertainment incurred overseas is 100% deductible.

With regard to timing issues, the general rule is that expenditure is deductible when it is "incurred," therefore much like with income, expenses may need to be recognised in different tax periods. Prepayments of expenditure (e.g. rent, insurance, consumables, service contracts, etc.) should be considered.

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## Often credit notes, disputed sales and rebates which give rise to timing issues can be easily overlooked.

Bad debts are deductible as an expense only in the year that they have been written off. Therefore it is prudent practice to review bad debts and physically write any genuine bad debts off for tax purposes before year end. Also be aware that it is possible to write off partial bad debts if it is believed a portion of the debt may be recovered.

### Tax Depreciation

The tax depreciation rates for new assets acquired should be reviewed. Depreciation on new assets purchased is calculated to include the full month of purchase. A common error is to calculate depreciation from the day of purchase.

Tax depreciation can also be claimed on certain intangible rights to use software, designs, patents and copyrights. Assets costing under \$500 (low value assets) can be claimed as a deduction. Although there is a fishhook with this rule in that if several low value assets are purchased together at the same time from the same supplier and have the same depreciation rate, then they must be depreciated.

It can also pay to review assets which are no longer used, as a deduction may be able to be claimed.

### Trading stock

The value of trading stock should be reviewed at year end. Generally trading stock will be valued at cost price. Market selling value which takes into account factors such as obsolescence, slow moving stock, etc. may be used only if it is lower than cost. Where market selling value is used, it must be substantiated with sufficient evidence such as sales records from before and

after balance date. Your Deloitte advisor can help you determine whether you have sufficient support to use market selling value.

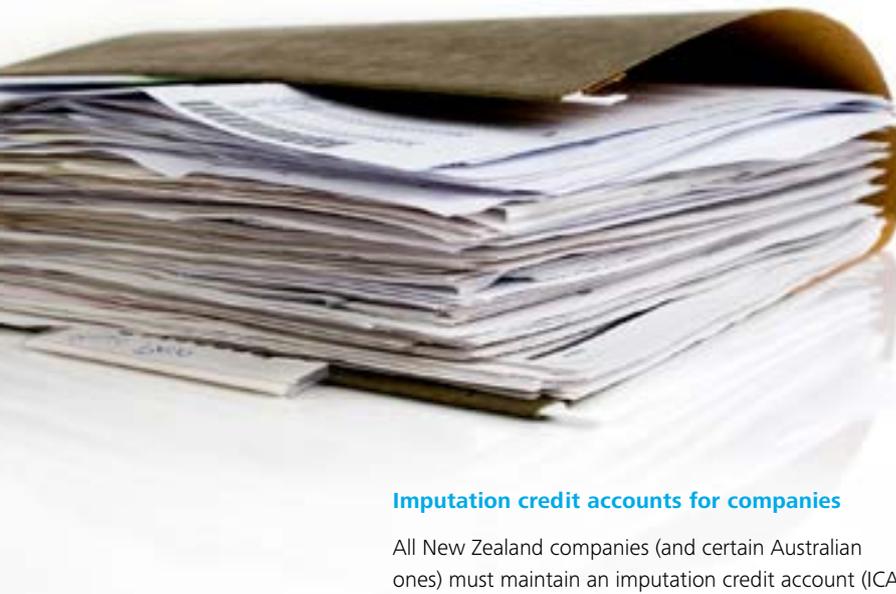
It is possible to change valuation methods, but consistency rules apply. Smaller taxpayers may qualify to use low-turnover valuation methods which involve less compliance.

### Using (and hopefully not losing) your losses

If you have tax losses from prior years – these may be able to be carried forward and offset against income this year, depending on the type of entity that has incurred the losses. Continuity of shareholding rules will apply for companies that have losses from past years. Additionally companies may be able to utilise losses from other group companies, subject to grouping and continuity rules. Therefore a key point to check for companies is whether there has been any change in the ultimate shareholding which could cause a forfeiture of losses. It is important to notify your tax advisor of any changes in shareholding prior to any shareholding change so that action can be taken to preserve or manage the use of losses if possible.

Inland Revenue has noted that the utilisation of uncharacteristically large losses is a red flag which will attract attention. Common errors include the failure to adjust losses following a tax audit and incorrectly passing on trust losses to beneficiaries.





### Imputation credit accounts for companies

All New Zealand companies (and certain Australian ones) must maintain an imputation credit account (ICA) which is a memorandum account that records the level of imputation credits a company has. An annual return is filed to 31 March regardless of balance date. The balance of the ICA must not be in debit at 31 March or a penalty may be applied. A debit balance will generally arise because a company has paid out more imputation credits to shareholders than it had available or there has been a breach in shareholding continuity which results in forfeiture of imputation credits.

It is advisable to run a check prior to 31 March on this account so that any action to bring the account into credit can be taken.

### Transfer pricing for related party transactions

Transfer pricing is definitely on Inland Revenue's radar presently as it steps up resource in this area. All intercompany or related party transactions and loans should be reviewed. Another key issue that can arise is the lack of documentation to support transfer prices.

### Thin capitalisation and interest deductions

Thin capitalisation rules are intended to protect the New Zealand tax base from over allocation of interest expenditure to New Zealand. The rules can apply to both outbound investments by a New Zealand resident as well as inbound investment by a non-resident.

Underlying the rules is a safe-harbour debt to asset ratio mechanism. If the safe harbour threshold is exceeded, a proportion of interest deductions are added back as income. It is prudent to calculate the ratio prior to the year end in order to determine if action is required in this regard. Your Deloitte advisor can help you determine whether the rules apply to you.

### Provisional tax

As the tax year is almost concluded, provisional taxpayers that are on to it will be able to accurately calculate what the likely tax result will be for the year and make any final adjustments to their third provisional tax instalment due on 7 May 2014. For those taxpayers on the standard uplift, making voluntary instalments can be a good way of managing any use of money interest that may be payable. Also it could pay to consider using tax pooling to manage any use of money interest exposure.

### Tax return filing

Tax returns are required to be filed by 7 July each year unless the taxpayer has a late balance date (i.e. a balance date from 1 April to 30 September.) In the case of late balance dates returns must be filed on the 7th day of the 4th month after the end of the taxpayer's year. Taxpayers that are registered with a tax agent are granted an extension of time for filing.

Taxpayers on an agent's list should also be aware that this extension of time may be withdrawn by Inland Revenue for persistent non-filing by the extended date. A period of good compliance is necessary before the Inland Revenue will allow a taxpayer to extend their filing date again.

The four year time bar rule applies from the end of the tax year in which the taxpayer files the tax return. Therefore for tax returns filed on 31 March 2014, the time bar period expires on 31 March 2018 meaning the Commissioner is prevented from increasing the assessment after this date, unless the returns are fraudulent or omit income. Note that filing a return just one day later on the 1 April 2014 will extend the time bar period by another whole year.

### Conclusion

This has been a quick run through of a few of the key issues which should be top of mind at this time of year. For further information about these and other issues that may be relevant to your business, please contact your usual Deloitte tax advisor.



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## GST Refunds for non-residents

By *Jeanne du Buisson*

A special GST registration regime for non-residents is coming into effect on 1 April 2014. The regime will enable non-resident businesses that do not make taxable supplies in New Zealand to claim GST incurred on goods and services acquired in New Zealand (something that has not been possible previously). We have set out below practical points to consider surrounding the registration and refund process.

### Summary

In summary, a non-resident business will be able to register with Inland Revenue under the special GST registration if:

- The non-resident is not carrying on or intending to carry on a taxable activity in New Zealand; and
- The non-resident is registered for consumption tax in its own jurisdiction, or, if their jurisdiction does not have a consumption tax, is carrying on a taxable activity that would render them liable to register for GST in New Zealand if the taxable activity was carried out in New Zealand; and
- The amount of the non-resident's input tax in the first period is likely to be more than NZ\$500; and
- The non-resident's taxable activity does not involve the performance of services which is likely to be received in New Zealand by a person who is not registered for GST.



### Practical Issues

Below are some of the practical points to consider regarding the special GST registration:

Registration needs to be completed via a paper form which will be available on Inland Revenue's website from 1 April 2014. Additional documents such as passport photos, business numbers and bank account statements will also need to be submitted as part of the registration process;

- The first GST return (which also needs to be completed via a paper form) must be submitted along with the paper registration form available on Inland Revenue's website from 1 April 2014;
- Businesses will have a special code added to their Inland Revenue records so that no correspondence will be sent regarding other tax types;
- Physical copies of tax invoices need to be included when the first GST return is submitted and we understand that Inland Revenue will be performing strict review processes before authorising a refund;
- Once Inland Revenue receives the GST return, it will have 90 working days to issue a refund or request further information;
- Once Inland Revenue accepts the first GST return, businesses will be able to register for myIR (Inland Revenue's online system) and file the GST returns online;
- Businesses are required to file GST returns for each taxable period (i.e. 1, 2 or 6 months), including 'nil' GST returns, otherwise they will risk being deregistered; and
- If the business is deregistered it will not be able to re-register for GST for another 5 years.

Please contact your Deloitte advisor for further information

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In case you missed it last month, we are currently updating the Deloitte tri-fold tax desk top tax calendar and collecting orders for this. Rather than sending this out automatically this year, we are asking subscribers who would like one to contact us to order one so we have correct postal address details. The calendar will be available in early April. To order the tax calendar please email Angela Harris [angelaharris@deloitte.co.nz](mailto:angelaharris@deloitte.co.nz) or order this from our website <http://www.deloitte.co.nz>



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