Tax Alert

A focus on topical tax issues – July 2013

In this issue

A taxing holiday: mixed-use assets update

By Ian Fay and Saralaya Frost

The long weekend away at your mixed-use holiday home may no longer be as relaxing as it once was with the proposed mixed-use assets rules being one step closer to law. The pain might be even worse if there is a mixed-use boat moored there or if you jetted there on a mixed-use aircraft.

Under the soon to be "old" rules, current practice is for taxpayers to claim deductions for expenses incurred in relation to assets which are used for both a private and business purpose for the periods when the assets are available for the income earning activity, regardless of whether they are actually used. This has meant that significant deductions are claimed for expenses in relation to assets that are mainly used for private purposes, which has spurred the Government into action to make a change.

The "new" rules move away from the available for income earning activity concept. Instead deductions will be based on how much the asset was used to earn income relative to total days used.

Since these changes were first announced, some fine tuning has been recommended by Officials to soften the impact of the proposed rules in response to submissions made to the Finance and Expenditure Committee. The key changes to note are:

- The scope of what will fall into the mixed-use assets rules has been narrowed to only include land (and improvements – namely holiday homes and baches) and boats and aircraft (with a cost of more than $50,000).
- Probably most beneficial to taxpayers is a proposed transitional period for boats and aircraft in order to give owners a chance to shift these assets out of complex structures. The consession proposed at this stage is to remove any tax liability that would arise from depreciation recovery when an asset is sold or deemed to be sold for more than book value but less than cost. Under the concession, when the assets are transferred to shareholders in proportion to their shareholding they will be deemed to transfer at tax book value for depreciation purposes (but not for deemed dividend purposes). Taxpayers will likely have until the start of their 2015 income year to make this transfer to take advantage of the concession.

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- Asset owners are able to opt out of the rules if the asset earns less than $4,000 in a year – up from a previously proposed $1,000. Interestingly though, if the asset is owned by a company then this option is not available.

- It is proposed that the mixed-use assets rules will apply to land (and improvements) from the start of the 2014 income year, which for those with a March balance date has already commenced. However, the application to boats and aircraft is from the start of the 2015 income year, to allow taxpayers to utilise the transitional period.

- If an asset that was subject to the mixed-use assets rules is destroyed or damaged and has to be replaced, as long as the replacement is substantially the same, any losses that were ring-fenced will be able to be offset against earnings from the replacement asset.

- Use by associates is considered private use of an asset as well as where less than 80% of the market value rent is received.

- Fringe benefit tax will not apply where the mixed-use assets rules do – this will avoid any double taxation on the use of the asset. However, Officials have rejected submissions that the deemed dividend rule should also not apply.

In the first draft of the proposed rules, special (very complex) rules were included to quantify interest deductions available to companies that hold the assets subject to the mixed-use assets rules. Taxpayers lobbied to get the complexity reduced; however, these submissions were not successful.

The Bill is expected to be enacted later this year.

The “new” rules move away from the available for income earning activity concept. Instead deductions will be based on how much the asset was used to earn income relative to total days used.

Thin capitalisation proposals. It ain't law yet – thankfully

By Troy Andrews and Sam Mathews

In January 2013, Inland Revenue released an issues paper on the thin capitalisation rules, suggesting a raft of changes. Tightening up the thin capitalisation rules is one way New Zealand can play its part in tackling the taxation of multi-nationals and the global tax base erosion and profit-shifting (BEPS) problem. As part of Budget 2013, the Government announced that it agreed to these proposals in principle, but acknowledged that there was detail to work through. As a first step towards that detail, Inland Revenue published a consultation document ("Thin capitalisation review: technical issues") on 6 June 2013 to comment on submissions received on the earlier paper and to raise further points for discussion.

The proposals are not a mere tinkering of the rules. They have the potential to give rise to significant changes depending on the structure used. New industries are likely to become subject to the rules (e.g. securitisation and private equity owned groups). The proposals are far reaching, introduce new and uncertain tax concepts, and could have significant unintended outcomes. All taxpayers need to review their position before the legislative process starts as the opportunities to voice concerns will soon become limited.

Non-resident investors "acting together"

One of the key proposals is to widen the inbound thin capitalisation rules. The current rules apply to a New Zealand resident company where a single non-resident holds an ownership interest of 50% or more or has control by any other means. The proposal is to also include companies where non-residents are "acting together" and hold a combined interest of 50% or more.

The January issues paper proposed that "acting together" would not be exhaustively defined. In response to concerns about uncertainty, Officials are now proposing a more prescriptive definition. The proposal is that non-resident shareholders will be acting together if:

- Shareholders (directly or indirectly) hold debt in the entity in proportion to their equity; or
- A shareholders' agreement sets out how the entity should be funded (for an entity with fewer than 25 shareholders); or
- Non-resident shareholders are "effectively co-ordinated" by a person or group of people, such as a private equity manager or managers.

On each of these tests, there are points of interest and potential concern.

Officials believe the proportionality test is appropriate as it is only likely to occur when there is coordination between shareholders. There are interesting comments in the paper about the test being similar to the substituting debenture rules (under section FA 1). These comments suggest that where the thin capitalisation rules did apply then the substituting debenture rules could be turned off.

The change brings the whole question of the purpose of the substituting debenture rules into stark reality. Many commentators have questioned the need for such rules. Suggesting that the substituting debenture rules should be turned off when the thin capitalisation rules apply confirms that they have limited purpose. If Inland Revenue is only turning these rules off in certain circumstances, then this does create an unfair bias to some taxpayers. Under the proposal some taxpayers would be subject to the substituting debenture rules, and others wouldn't, depending upon whether the thin capitalisation rules apply. Instead, let's have the full debate on the purpose of the substituting debenture rules and whether they should be repealed.

The shareholder agreement test has been limited from the initial proposal to only apply where the entity is not widely held and the agreement 'sets out how the entity should be funded'. It is an interesting policy step that a shareholders agreement is perceived as 'acting together' and is the start of a slippery slope to other similar tax concepts like the associated persons' tests. A shareholders agreement is common practice in many jurisdictions and we aren't convinced of the linkage. Some shareholder agreements provide a mechanism to resolve disputes or limit the gearing levels of a company.

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It would be ironic if an agreement that limited the debt funding options could actually be a trigger for the thin capitalisation rules applying. There are likely to be a number of grey areas and grey examples in applying this test as to what constitutes 'how an entity is funded'. If Inland Revenue is concerned about shareholder agreements they should set out the spectrum of possible agreements, and with clear definitions identify those they take issue with. Taxpayers need careful definitions – not legislation against labels.

The third limb of the test is more of a catch all for private equity groups, where numerous entities (e.g. partnerships) invest together and are effectively co-ordinated by a single person or group of people. This is the key target for Inland Revenue. Inland Revenue remain concerned with what they view as a threat to the integrity of the rules. There are still questions that should be answered, like when should it be tested, and who can be the 'person' (e.g. can the company raising equity be a coordinator?). Unfortunately, 'effective coordination' is a new tax concept and it will take some experience and clear examples to be effective.

Despite some positive steps being made, concerns around the uncertainty of the "acting together" test and the potential overreach of the rules are likely to remain under the new proposals. We expect a number of submissions to be made – again – asking for certainty.

Exclusion of related party debt when calculating 110% safe harbour

The inbound thin capitalisation rules effectively deny interest deductions to the extent the New Zealand group's debt-to-asset ratio exceeds the higher of 60% and 110% of the entities worldwide group debt-to-asset ratio.

The January paper proposed that shareholder linked debt should be excluded from an entity's worldwide group ratio. What constitutes 'a shareholder link' is again likely to be a new tax concept which taxpayers will need to understand how to apply. The proposal sets out that debt will be shareholder linked where the lender has an income interest in the group, or where funds are provided by the group / shareholder to another entity for the purpose of providing funds to the group. There is also discussion around extending this to where shareholders provide 'security' for third party borrowing. This is complex, and to apply this in practice is probably impossible for some.

A simple example of a multinational having 'funding' from a bank, and that bank's trading arm holding a single share in that multinational company, would require forensic analysis to find. Nonetheless, the paper suggests that this would be shareholder linked debt. For some taxpayers, the easier answer will probably be to 'never' rely on the world-wide group ratio – which doesn't seem like a good policy outcome.

Officials have offered an exclusion to the above rule for listed companies with listed debt (and the shareholder has a less than 10% interest). Exclusions are welcome, but if you are a listed company without listed debt, this won't apply.

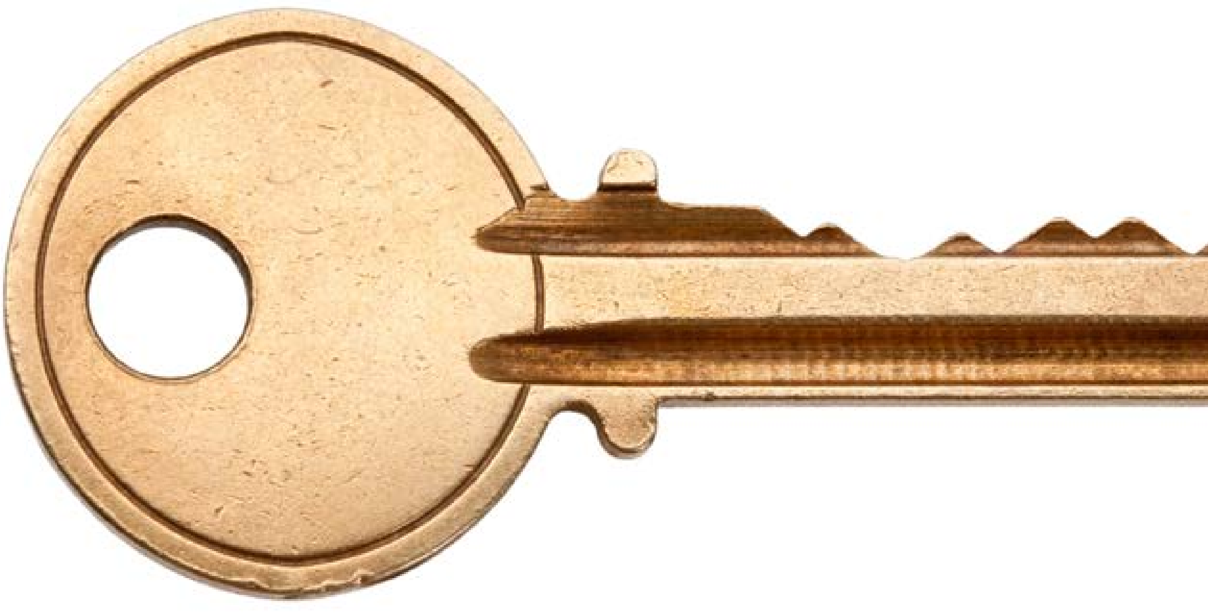
Extension of the rules to trusts

The January paper proposed to extend the thin capitalisation rules to apply to trusts. This would be the case where 50% or more of the total settlements are made by a group of non-residents "acting together", or by an entity subject to the inbound thin capitalisation rules.

In the recent paper, Officials are proposing that the "acting together" test would remain as described in the original issues paper (i.e. not exhaustively defined). It's not clear exactly how this would be legislated for, and again there may be lingering uncertainty.

More concerning is the extension of the criteria for being subject to the rules. Officials are proposing that the thin capitalisation rules will apply to the trust if the person that has the power to appoint or remove trustees is a non-resident or within section FE 2 (i.e. subject to the thin capitalisation rules) or if 50% of settlements are made by such a person. The concern is that the reference to section FE 2 extends this to the outbound thin capitalisation rules too. An example of our concern is demonstrated by a New Zealand individual that holds an interest in a CFC or FIF (controlled foreign company, or Foreign Investment Fund – which applies the attributed FIF income method), who is also the appointer / settlor of a family trust that holds New Zealand rental properties (100% leveraged by the bank and the individual). The current rules would likely disallow a significant amount of interest deduction in the trust. Hopefully this is not the policy intention and enough examples are thought through and highlighted to Inland Revenue to ensure that this isn't their policy target. If it is their target, then there are bigger issues to grapple with – and hopefully we get the opportunity of another consultation paper!

A natural reaction to the January paper was concern over its applicability to the securitisation industry. Officials considered these comments and responded with confirmation that a securitisation trust should be within these rules. No doubt, submissions will again be made for there to be an exemption. However, if this is not successful some consideration needs to be given to ensuring that the rules work appropriately for these trusts. There are lots of securitisation trust assets that should benefit from the on-lending concession. However, as a number of assets won't fall within this concession (e.g. in the money hedging instruments and trade receivables / rental strips) – this is likely to be a real issue for financial institutions to work through.



The proposal is that when the thin capitalisation rules apply to trusts, that trust (in itself) will be both the New Zealand group and the worldwide group. In testing the worldwide group debt percentage, the 'shareholder linked debt' issue that was discussed above for companies is wider for trusts – all associated party debt is excluded. This has implications for securitisation trusts where the originator provides a credit enhancing subordinated loan. Or in the example above with the individual's rental property trust – that individual's loan to the trust would fall out. A better approach may be to extend the rules to apply to trusts – only for settlors / appointers that are within the inbound thin capitalisation rules – and when the rules do apply, group the trust with that inbound thin capitalisation group.

Other proposals

Two of the other proposed amendments are also briefly mentioned in the paper:

1. The proposal to discount an asset's value where interest is capitalised (and a deduction has been taken for tax purposes) has been slightly modified to only apply to non-fair valued assets.

2. The inability to obtain an uplift in an asset value arising from an internal reorganisation was also mentioned – but only to dismiss submissions and confirm the view that this rule should go ahead.

It is disappointing to see that Officials have not backed down on these proposals. Departing from the accounting treatment is a major change for the thin capitalisation rules and is likely to greatly increase compliance costs for affected taxpayers. The accounting values were originally designed to be the proxy for determining what an arm's length lender would lend to the entity. If Inland Revenue wish to whittle the accounting values down the whole basis for the safe harbour comes into question.

The paper is also silent on the last proposal that New Zealand resident individuals or trustees will be required to consolidate with the holdings of their underlying outbound groups. We presume that this will be going ahead.

Concluding remarks

The purpose of the June paper was to respond to a number of submissions made on the January consultation paper. There has not been a substantial movement in what is being proposed and the devil will be in the detail.

These are complex proposals and will mean that some taxpayers could face landslide changes that they should be turning their mind to. There may be limited action that they can undertake to stop the policy momentum (and the response timetable is very short). We would suggest focussing on making sure that the policy limits are tested and understood.

Hopefully the proposed law will be presented in a way that is able to be applied – rather than resulting in the abandonment of legitimate concessions (i.e. the worldwide group debt percentage). There will also be new industries (like securitisation) that are suddenly faced with having to fit their structure into thin capitalisation rules. Going forward this should be doable – but the real question is where is the discussion on transitional rules?

The paper is silent on how current structures will be reflected in the rules. If Inland Revenue expect taxpayers to look back and unpick decades of transactions to test for capitalised interest, or internal reorganisations – then the next round of submissions could be quite animated. No doubt with the backdrop of the BEPS as the underlying reason for these changes, Officials may feel very bullish about these proposals as there is the need for New Zealand to be seen to be making changes in this space. Let's hope they listen to common sense in the process.

The consultation paper seeks feedback by 28 June and can be accessed **here**. It is likely that Inland Revenue will accept late submissions.

If you have any questions regarding the proposals, please contact your usual Deloitte adviser.

Deloitte**private**

We're all about you

Deloitte Private: Putting the customer first

By Cassandra Worrall

Thanks to the levelling effect of the cloud and related technology, New Zealand businesses have more opportunities to grow and reach more people in more places. This digital-social revolution has had a profound impact on the way businesses communicate with their customers. Most importantly, the customer remains 'front and centre' in the business relationship and savvy Kiwi companies are taking notice, taking chances and achieving success.

With so many opportunities, locally and overseas, now available to start ups and growing businesses the future is looking bright for New Zealand's burgeoning SME sector. Proof is our Deloitte Fast 50 index which has become a barometer of success for New Zealand's fast-growing businesses.

However, despite our experience in this sector, feedback from private businesses was they viewed Deloitte as too corporate to be relevant to them. So earlier this year, with the help of digital brand agency, Aamplify, we decided to do some more formal research, the results of which confirmed this earlier feedback.

Some private businesses saw the Deloitte brand as 'aloof' and were worried that we didn't have the flexibility to meet the unique needs of growing Kiwi businesses. Sure, Deloitte's expertise was recognised, but they wanted a service that was more personal and accessible. They wanted to talk to a real person and not a corporation.

Launched last month, Deloitte Private is our response. We have realigned parts of our internal structure to remove barriers commonly associated with a large firm and make it simpler to do business with us. We have put our private clients and family businesses front and centre through creating a dedicated Private team. And we are focusing on the areas where we were told support was needed -- coming up with innovative solutions to everyday business challenges, navigating technological change and advising companies about the best ways to go global.

So with Kiwi businesses as our focal point, we've also created a dedicated Deloitte Private website – **www.deloitteprivate.co.nz**. Its design makes it easier to tap into our collective expertise and connect with individuals from our Private team.

Still, Deloitte Private is more than just a new look and feel. It's a shift in the culture and values of a large part of our business in direct response to the customer. And with a network of over 240 professionals around the country, we are endeavouring to remain focused on the needs of New Zealand SMEs, but with the experience, expertise and connections of a truly global organisation and all the technological innovation that goes with it.

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Proposed GST changes a step closer to enactment

By Vlad Skibunov

On 7 June 2013, the Finance and Expenditure Committee reported back to Parliament on the Taxation (Livestock Valuation, Asset Expenditure, and Remedial Matters) Bill ("the Bill"), introduced on 13 September 2012. Among other things, the Bill proposes GST changes which will have far-reaching implications to both New Zealand resident and non-resident businesses.

GST refunds for non-residents

One of the major GST amendments proposed by the Bill concerns the ability of non-resident businesses to claim GST incurred on goods and services acquired in New Zealand. This is a fundamental and positive change for non-residents. Under the current rules, in order to claim GST on goods and services acquired in New Zealand, a person must be registered for GST and must use the goods or services for, or have them available for use in, making taxable supplies in New Zealand. This last requirement often acts as a barrier for claiming GST deductions by non-residents who incur GST costs while in New Zealand, but who do not actually make any taxable supplies in New Zealand. An example of where this may arise is a non-resident business sending its employees to a conference or training course in New Zealand.

In contrast to New Zealand rules, many foreign GST jurisdictions, e.g. the European Union member states, provide for a mechanism that allows non-resident businesses to obtain a refund for GST incurred. The New Zealand Government has recognised that current limitations on the ability of non-resident businesses to claim GST refunds on costs incurred in New Zealand may reduce the competitiveness of New Zealand service providers and jeopardise their ability to attract overseas commercial customers. As such, the proposals in the Bill are aimed to make it easier for non-residents to obtain New Zealand GST refunds.

In summary, a non-resident business will be able to register with Inland Revenue for a "special GST registration" regime and claim GST refunds if:

- The non-resident is not carrying on or intending to carry on a taxable activity in New Zealand.
- The non-resident is registered for a 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.
- The amount of the non-resident's input tax in the first period is likely to be more than $500.
- The non-resident's taxable activity does not involve performance of services which will be likely to be received in New Zealand by a person who is not registered for GST.

The special GST registration regime will only apply to non-resident businesses that do not carry on a taxable activity in New Zealand. Non-resident businesses that do carry on a taxable activity in New Zealand will still be able to register for GST and claim GST deductions under the normal GST registration rules.

Once Inland Revenue receives the GST return under the special GST registration regime, it will have 90 working days to issue a refund of GST or request further information. This is different from the typical requirement to issue a GST refund within 15 working days and will act as a revenue protection measure.

In the original version of the Bill, the proposed legislation contained an outright prohibition for any non-resident business to register with a New Zealand resident business as a GST group. Following a number of opposing submissions to the Finance and Expenditure Committee, including from Deloitte, objecting to such drastic change (GST grouping with New Zealand residents is often used by non-resident businesses to reduce their compliance costs and provide certainty as to the GST treatment of their supplies), the reported-back version of the Bill removed the outright prohibition on the GST group registration between residents and non-residents. However, to register with a resident as a GST group, the non-resident must be registered for GST under the normal GST registration rules rather than under the proposed special GST registration regime.

Under the new rules, the Commissioner will be able to deregister the non-resident if she considers that requirements for the GST registrations are no longer met.

Deloitte recognises the importance of business to business (B2B) neutrality, and is supportive of the proposed reforms to remove the existing barrier to GST refunds which will help encourage non-residents to undertake business with New Zealand businesses. We expect that the proposed changes should have a positive fiscal impact given the economic benefits of attracting more business to New Zealand.

The new non-resident GST registration rules will apply from 1 April 2014.

An opt-out provision to agency rules

Currently, the GST Act only allows one tax invoice to be issued when an agent supplies goods or services on behalf of a principal supplier. Often, however, accounting systems automatically issue invoices when goods and services are supplied, which may technically result in a breach of the GST legislation. The Bill proposes to allow principal suppliers and their agents to opt out of the agency rules in the GST Act and individually issue a tax invoice in relation to what will be treated as two separate supplies – that is, a supply from the principal supplier to the agent, and from the agent to the customer.

Deloitte welcomes the proposal to allow principals and agents to opt out of the agency rules. We note, however, that the proposed rules will only apply to suppliers and their agents. We have a number of clients that act as buyers' agents for their customers and which experience the same concerns. We have already notified Inland Revenue regarding the inconsistency and will be looking to work together with them with the view of expanding the proposed rules to buyers' agents.

The new agency rules will apply from the date of enactment.

Mixed use assets

Claims for income tax and GST deductions on purchases of goods and services which may be used for both private and income-earning purposes (such as holiday houses, boats and aircrafts) are becoming subject to much greater scrutiny from Inland Revenue before they are being approved. Specifically, Inland Revenue is often concerned that deductions are being over-claimed in respect of what in essence is a private asset.

A significant part of the Bill is concerned with the introduction of the new income tax rules (see feature article) and the corresponding GST rules in respect of claiming deductions for land, boats and aircraft. The Bill provides a formula which will need to be used in order to calculate the extent to which deductions will be available. In respect of GST deductions, we expect that following the enactment of the new rules we will see much greater level of reluctance for the GST refunds to be paid out by Inland Revenue in respect of holiday houses, boats and aircraft. As such, to increase the likelihood of a GST deduction being approved, businesses must be prepared to provide substantive evidence of the proposed business use of an asset.

Next steps

The Bill is expected to be enacted in the next few months. We recommend that businesses consider these and the other proposals in the Bill and consider whether they may apply to their circumstances.

Please contact your usual advisor to discuss your tax position.

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Exporting goods to related parties in Australia? Be aware of changes to the approach by the Australian Customs and Border Protection Service

By Jeanne du Buisson

The Australian Customs and Border Protection Service ("Customs and Border Protection") have recently released its revised Practice Statement which deals with valuation advice in respect of goods imported into Australia between related parties with particular emphasis on transfer pricing adjustments. While it is recommended that valuation advice be obtained by importers who import from related parties, it is a requirement that valuation advice be obtained where there is a retrospective transfer pricing adjustment. This updated Practice Statement applies from 1 April 2013 and is relevant to all businesses that export goods to related parties in Australia.

The Practice Statement also notes the approach that Customs and Border Protection will take when reviewing these transactions. In particular it outlines the procedural and documentary requirements for obtaining valuation advice. Valuation advice issued by Customs and Border Protection provides certainty to the importer that the transfer price of the goods meets the customs value requirements, and the valuation advice is valid for five years from the date of issue. The application of the Practice Statement is onerous on importers where the imported goods are subject to retrospective transfer pricing adjustments. We have highlighted below some of the material implications for importers, either where valuation advice is sought/obtained upfront or where valuation advice is not obtained but the importer is subject to a Customs and Border Protection audit. Customs and Border Protection will require that:

- Adjustments to the customs value be made to each import declaration line and within the range advised in the valuation advice;
- Composite transfer pricing adjustments should be deconstructed as to demonstrate what proportion of the relevant transfer pricing adjustment relates to the imported goods;
- There must be an actual transfer of funds relating to the adjustments; and
- Any transfer pricing study is consistent with Customs and Border Protection's valuation methodologies, that is, a transaction based approach and not a profit split.

Why is valuation advice important for Customs where goods are subject to transfer pricing?

The purpose of valuation advice is to ensure that the valuation method, and therefore the price of the goods which forms the basis of the customs value, is correct. If the customs value of the imported goods is correct, then the correct amount of Customs duty and GST will likely be paid on these imported goods.

Valuation advice is recommended for importers of goods into Australia who import from a related party and is required when there is a retrospective transfer pricing adjustment which affects the custom value of previous imports.

The Practice Statement increases the evidentiary burden on importers who apply for valuation advice, particularly if the goods are subject to retrospective transfer pricing adjustments. The importer must demonstrate that the price of the imported goods was made at arm's length, and that the relationship between the purchaser and the vendor did not influence the price of the goods. An importer can demonstrate this by means of a "test values" test or a "circumstances surrounding the sales" test.

It is important to note that this Practice Statement could potentially affect the Customs duty payable by the importer.

If you are in the business of exporting goods into Australia to a related party then you should consider the new statement and how your transfer pricing agreements or adjustments between you and the related party could impact on the Customs value of the imported goods.

We know that NZ Customs is aware of the Australian Practice Statement and is still considering their approach from a New Zealand perspective. To date the practice of NZ Customs has been more lenient than that now prescribed for Australia.

Our indirect tax specialists are available to discuss the impact of this revised Practice Statement and any issues your business may have in relation to customs duty treatment of related-party importers.

Further accolades for Deloitte's New Zealand tax team

Deloitte tax partner and indirect tax leader Allan Bullot has been recognised by International Tax Review as a leading GST specialist in New Zealand. This is according to their latest international guide to Indirect Tax Leaders.

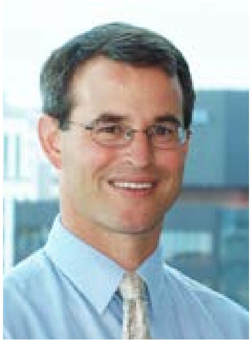
International Tax Review notes that governments around the world are increasingly relying on indirect taxation like GST and VAT to make up for decreasing revenue from direct taxation. They further state:

"While taxpayers generally welcome the shift from direct to indirect taxation, it carries with it its own compliance costs and issues to navigate such as exemptions, reduced and zero rates, market distortions, place of taxation and measures to tackle fraud."

This sentiment is certainly in line with the current tax environment in New Zealand. Inland Revenue now have greater expectations on businesses to have formal GST policies and procedures in place, including the need for reconciliations and regular GST reviews. As with all these types of Inland Revenue review questions, it is always easier to put GST policies in place at a time of your choosing, rather than as a hasty response in advance of an impending Inland Revenue visit.

Allan's recognition is the latest in a string of international accolades for Deloitte New Zealand's tax team, including dominating the latest New Zealand list in the Euromoney Guide to the World's Leading Tax Advisers and an impressive showing in the 2012 Asia Women in Business Law Awards.

Please get in touch with your Deloitte GST team member contact if you need assistance on any GST risk related issues you may have.



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September tax bill reported back

On 6 June 2013, the Finance and Expenditure Committee reported back on the Taxation (Livestock Valuation, Assets Expenditure and Remedial Matters) Bill that was first introduced into the house in September 2012. This is the bill that contains the mixed-use assets reforms and the GST cross-border business-to-business neutrality changes (see article on these changes elsewhere in this issue).

This is also the bill that had the FBT on car park proposals (i.e. salary trade off proposals) tacked on to it via a supplementary order paper introduced in December 2012 and on which the Government back-tracked earlier this year. These are gone from the bill, save an amendment to clarify that vouchers provided by charities to employees will be a form of a short-term charge facility and subject to FBT over a certain threshold. Other measures included in the bill include:

- Amendments to change the way lease inducements and lease surrender payments are taxed (reported on in our **December 2012 Special Tax Alert**). No significant changes are proposed other than minor technical amendments to clarify application of the rules.
- Changes to the rules to prevent a taxpayer from electing to treat certain excepted financial arrangements as financial arrangements.
- Correcting the mismatch in the tax treatment of fair dividend rate foreign currency hedges.
- Reducing the time period for claiming refunds to four years from the end of the year in which an assessment is made.
- Clarification of the definition of dividend to exclude share splits, rights issues and premiums paid under bookbuild arrangements.
- Repeal of the transitional imputation penalty tax.
- A remedial amendment to the associated persons rules to ensure a trustee is not "associated with" a person who holds the power of appointment or removal in their professional capacity only and who is not eligible to benefit under the trust.

At the time of writing this article, the bill had yet to have its second reading and so enactment may still be some time away.

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