# Tax Alert

A focus on topical tax issues

November 2016

# Compliance focus for Multinational Enterprises

By Iain Bradley and Robyn Walker

Inland Revenue has released an updated compliance focus document ("the Document") for multinational enterprises. Although the document is targeted at multinational enterprises, it will also have relevance for New Zealand based enterprises expanding offshore and high-wealth individuals with complex affairs.

It's three years since this document was last updated and in that time a lot has happened, particularly with a lot of progress made on the Base Erosion and Profits Shifting project (commonly known as BEPS), New Zealand's response to it and the misconceptions being perpetuated by some in the media.

## In this issue:

### Managing compliance

Inland Revenue is very keen to dispel these misconceptions. In fact, the Commissioner of Inland Revenue acknowledges the contribution made by multinational enterprises to the overall tax take. The 600 largest taxpayer groups (known as Significant Enterprises), whose tax affairs are reviewed every year, actually contribute more than $6 billion of tax to New Zealand annually.

For the last four years, Significant Enterprises have been required to submit a basic compliance package annually comprising the group structure, financial statements and tax reconciliations which are all examined closely. Further, for the last two years, foreign-owned groups have been required to complete an international questionnaire designed to help Inland Revenue improve their understanding of major international tax risks for New Zealand. As a result of this questionnaire, Inland Revenue reports the following facts (in respect of 292 foreign owned groups).

- Most foreign owned companies have ultimate ownership in Australia (77%), followed by the US, then Japan.
- 79% had transfer pricing documentation.
- Only 14 groups exceeded the 60% thin capitalisation threshold.

The Document notes that the coverage will expand next year to all foreign-owned Significant Enterprises with over $30 million of turnover. However, there is perhaps a surprising statistic to come out of this questionnaire, and that is the fact that only 48% had tax governance documentation.

### Corporate tax governance

This is the hot topic of the moment, particularly since the OECD's Forum on Tax Administration has released guidance on tax control frameworks which has been recommended by Inland Revenue. Inland Revenue also recommend that boards of directors consider endorsing a set of overarching tax principles and cite as an excellent example the Business & Industry Advisory Committee's (BIAC) Statement of Tax Principles for International Business.

At a minimum, the following questions should be routinely addressed by Boards.

- Is there a documented tax strategy and has it been kept up to date?
- Have effective systems, procedures and resources been put in place to manage risks and, if so, is a clear statement made in the annual report to that effect?
- Is annual reporting sufficiently transparent such that all stakeholders have the capability to analyse and effectively interpret the information provided on taxes paid?

This recommendation comes on the back of a comment made by Revenue Minister Woodhouse earlier this year that "major multinationals have been "deafeningly silent" in the wake of allegations that some had been shirking their fair share of the tax burden". Multinationals have been reluctant to get into this debate publically because they are damned if they do and damned if they don't. It is hoped that if Significant Enterprises start explaining their tax positions in more detail in documents such as their annual reports, it will go some way to clearing up this misconception.

### Areas of focus

While the tax environment and culture towards paying a fair share of tax has shifted significantly for multinational enterprises in the past five years, there are still issues on Inland Revenue's radar.

**International financing arrangements**

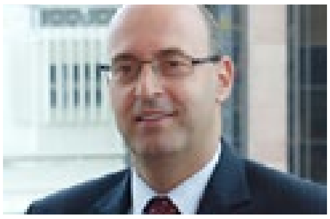
Cross border financing forms a significant part of associated party dealings by New Zealand members of multinational groups. Key risks include pricing interest and guarantee fees at non-market rates, or having inadequate loan documentation.

**Transfer pricing**

Transfer pricing remains a key issue and all inbound and outbound associated party transactions are closely monitored. Unexplained losses, loans in excess of $10 million principal and guarantee fees, cash pooling arrangements, payment of unsustainable royalties and/or service charges are among the issues that will attract scrutiny.

The profitability of foreign-owned wholesalers and distributors is monitored, particularly those that purchase and on-sell goods to other firms without any significant transformation.

Inland Revenue endorses the OECD recommendation that transfer pricing documentation be held in two forms: a master file providing a high level overview of the multinationals' global business operations and transfer pricing policies, and a local file providing detailed information regarding material related party transactions.



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There is increased scrutiny of transfer pricing issues by other tax authorities as countries continue to update their transfer pricing rules. To minimise issues, multinationals should know the nature and extent of all overseas operations and all cross-border associated party transactions, check margins to ensure they reflect commercial reality, fully document any market development strategies and be prepared to explain swings in profitability.

**Controlled foreign companies (CFCs)**

Recent reviews have focussed on the active business test calculations as well as calculations of taxable income or losses attributed from CFCs. The Document helpfully lists the common compliance issues to watch out for in this regard.

**Familiar red flags**

The 10 familiar red flags make a repeat appearance in the Document. These comprise a useful checklist of particular issues that will attract attention from Inland Revenue such as an effective tax rate that is substantially less than 28%, use of low or no tax jurisdictions, differences in accounting treatments, large tax benefits, cross-border mismatches, complexity, derivation of large capital gains or claiming of large tax credits, uncharacteristic tax losses, ownership changes and material variances between years in profitability or tax payable.

## New Zealand's response to BEPS

The Document would not be complete without mentioning New Zealand's response to BEPS. BEPS is a global problem which requires a global solution and New Zealand is certainly playing its part, having already signed up to the automatic exchange of information and tax rulings between tax authorities, country by country reporting and the endorsement of new transfer pricing guidelines.

The Government is also committed to strengthening New Zealand's domestic tax rules. For example, GST is already being collected on remote sales of services (a.k.a the Netflix tax), the foreign trust disclosure rules have been arguably rushed through in response to political pressure and the rules regarding NRWT on related party debt are undergoing a major overhaul.

And, as reported in our last Tax Alert, hybrid mismatches are currently being consulted on, with new interest limitation rules to be consulted on next year. Later this year, the Government is expected to sign up to a multilateral instrument which will amend the signatory countries' network of tax treaties to insert a new anti-treaty abuse article, a new permanent establishment definition, anti-hybrid entity rules and dispute resolution articles.

How successful these measures are in tackling BEPS will depend on the extent to which other major countries also buy in and adopt the reforms. New Zealand can make very little impact if we operate in isolation and we also risk becoming uncompetitive.

## Conclusion

The Compliance Focus Document for multinationals is an important document that companies and Boards of Directors need to be aware of. We certainly endorse Inland Revenue's call for companies to ensure they have tax governance documents in place and think Boards need to seriously consider providing more transparency in annual reports around tax principles, the taxes paid and how tax risks within the business are managed. Some New Zealand companies are already starting to lead in this respect.

Note, the Compliance Focus Document is not available electronically until 18 November. If you would like to receive a copy please contact your usual Deloitte tax advisor for more information.

BEPS is a global problem which requires a global solution and New Zealand is certainly playing its part

# Australian GST to apply to low value goods from 1 July 2017

## By Allan Bullot

The question of how GST should apply to online purchases of low value goods is back in the news again.

On Friday 4th November, the Australian Government released its long awaited details on how GST and low value goods imported into Australia will apply from 1 July 2017. These rules are brutally pragmatic and will have a significant impact on many New Zealand businesses.

Currently, sales of goods by New Zealand businesses to end consumers in Australia do not normally suffer any Australian GST if the goods are valued at under AUD 1,000 and are shipped directly from New Zealand to the end consumer in Australia.

Any New Zealand business that sells goods via the web or over the phone to Australian consumers will need to consider these changes and potentially register for Australian GST and charge the Australian GST at 10% on low value goods shipments from 1 July 2017. The critical factor will be whether the registration threshold of AUD 75,000 of low value goods sold to Australian consumers is exceeded in any single year.

Sales of low value goods to Australian GST registered businesses will not be impacted by these proposed changes, nor will sales to consumers if the registration threshold is not exceeded.

The way the new rules will work where there are mixed shipments of low value goods and other goods that are above the AUD1,000 threshold will be complex.

The reach of this legislation is very broad, and entities that operate as a mail forwarding platform into Australia, or an electronic distribution platform for sales of goods into Australia, can be deemed to be the supplier that needs to register for and collect the 10% Australian GST.

New Zealand businesses impacted by these changes will likely have significant software changes as well as pricing and marketing decisions to make in a relatively short time.

The Australian approach is by no means perfect. It will also be interesting to see how the New Zealand Government reacts to the Australian changes, and there is a reasonable chance that New Zealand will look to implement some form of these changes for online sales of goods to private consumers in New Zealand in the future.

The days of consumers being able to purchase low value goods over the internet and import them with no GST do seem numbered for both Australian and New Zealand consumers.

Submissions on these proposed changes close on 2 December 2016.

As these rules progress we will keep you updated through Tax Alert. Please contact your usual Deloitte advisor if you wish to discuss this issue further.

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# PAYE Reporting proposals finalised

By Robyn Walker and Veronica Harley

On 3 November 2016, the Government announced the finalised details of how the administration of PAYE is to be modernised as it looks towards a digital future as part of the Business Transformation Project. Inland Revenue's systems and processes are being redeveloped to take advantage of modern digital technology and the expectation is that most taxpayers will follow suit over the next few years. Broadly, employers and payroll intermediaries will file PAYE information directly from their payroll system.

With effect from 1 April 2019, all employers above the electronic filing threshold, all payroll intermediaries and employers using payroll software will file PAYE information on a "payday basis" which will be the second working day after payday. The electronic filing threshold is to be reduced from $100,000 of PAYE and ESCT to $50,000 of PAYE and ESCT. However those employers who are above this threshold, but who cannot access digital services (e.g. because of poor internet service) can apply for an exemption from filing their PAYE information electronically.

The due dates for the actual payment of PAYE over to Inland Revenue will not change (i.e. large employers pay twice per month by the 5th and 20th, with small employers paying by the 20th), but employers will have the additional option to pay over the deductions on payday.

Employers will be able to file directly from payroll software or continue to use Inland Revenue's Secure IR online service which is to be upgraded. As noted above, the rules must be applied from 1 April 2019; however employers could choose to apply these rules early from 1 April 2018.

The payroll subsidy that is paid for using a listed PAYE intermediary will cease from 1 April 2018 as part of these changes.

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Employers who fall under the electronic threshold can still file a paper version of the PAYE information, although the due date for filing this information will be seven working days after payday. These employers will need to ensure that information is posted to arrive within this time. This could be a risk given the reduced postal services these days.

Inland Revenue is encouraged by the positive feedback from the recent trial of filing GST returns directly through accounting software where participants reported it was easier, quicker and cheaper to comply. However Inland Revenue makes it clear that it will not be providing free payroll software nor will it be subsidising the cost of purchasing payroll software. However, Inland Revenue will significantly improve its e-services which will be similar to online banking to encourage as many people as possible to file this information electronically.

Some fear that with an automatic transmission of information to Inland Revenue via payroll software that information might be accidentally transmitted before it is finalised or approved, or it might contain errors. However Inland Revenue counter this objection by stating that the operator will know when they have logged onto Inland Revenue's system and when information is being transmitted to Inland Revenue.

Inland Revenue has heard concerns from taxpayers that more frequent filing of information could lead to an increase in errors. Inland Revenue has stated they will be undertaking further consultation in this area and will be considering the circumstances in which employers may correct errors in a subsequent return.

As part of preparing for these changes, the Government is proposing to make some changes to facilitate the calculation of PAYE, deductions and contributions with effect from 1 April 2018. Among the changes will be an option to treat holiday pay paid in advance as a lump sum as if it was paid over the pay period to which it relates, rather than as an extra pay.

The proposed changes to improve PAYE administration are to be included in a tax bill to be introduced into Parliament in 2017.

With effect from 1 April 2019, all employers above the electronic filing threshold, all payroll intermediaries and employers using payroll software will file PAYE information on a "payday basis" which will be the second working day after payday

# Farmers to face increased compliance costs

By Susan Wynne and Brad Bowman

Farmhouses are the administrative base for most farms. Throughout the country they are often the boardroom for business meetings, an office for meeting professional advisers, a bathroom and kitchen for employees, and even a space for mixing livestock formula. Since the 1960s, Inland Revenue has allowed a deduction of 25% of farmhouse expenses without any evidentiary support where a farmhouse is part of a farming business. This is in contrast to the limitation on claiming private expenditure as a business expense that applies to other taxpayers.

Fifty plus years later, a review of historical Public Information Bulletins and Taxation Information Bulletins has prompted Inland Revenue to reconsider a number of long-standing policies that allowed some farmers to claim deductions for what would otherwise be non-deductible private expenditure.

Inland Revenue released a draft interpretation statement on the deductibility of farmhouse expenditure for public consultation on 14 October 2016. In the draft interpretation statement, Inland Revenue has largely moved away from allowing expenses as deductions without the need to substantiate the claim. This position has been taken as Inland Revenue's "*main concern is to allow farmers to deduct farmhouse expenses that are business related, while ensuring that deductions are not claimed for expenses that are private in nature*". Instead farmers should generally determine the deductions of farmhouse expenditure under the ordinary deductibility principles (including the general permission, general limitations and specific deductibility provisions under Part D of the Income Tax Act 2007 ("ITA 2007")).

Fifty plus years later, a review of historical Public Information Bulletins and Taxation Information Bulletins has prompted Inland Revenue to reconsider a number of long-standing policies that allowed some farmers to claim deductions for what would otherwise be non-deductible private expenditure

It is important to note that the draft interpretation statement only applies to farming businesses, so its discussion focuses on determining the deductible expenses to this kind of business.

A factor in determining if farmhouse expenses are deductible is who is living in the farmhouse. The draft interpretation statement identifies a number of scenarios and discusses the deductibility of farmhouse costs in each of those situations. In general if the farmhouse is provided to an employee or rented at market value then mortgage interest and other expenses related to that property should be fully deductible to the farming business (note, you should be separately considering if there are any tax issues from the provision of accommodation to employees; refer to our July 2014 Alert for further information). If the farmhouse is provided to someone who is not an employee or not paying rent then no deduction for expenses related to that property may be allowed. The exception would be mortgage interest may be deductible if a company owned and operated the farm. If a sole trader or partnership owns or leases and operates the farm then apportionment of expenses would be required.

Where apportionment is required, the draft interpretation statement discusses dissecting or separating expenses into those that are clearly related to the farming business and those that may relate to the farmhouse and have a non-deductible private element. Where expenses relate to the farm as a whole, including the farmhouse, apportionment based on the cost or value of the farmhouse compared to the farm as a whole is suggested. The traditional apportionment methods used for home office expenses based on area used and time usage is not considered appropriate given a farmhouse may represent a small area of the farm but a high proportion of the farm cost or value.

As a concession to minimise compliance costs a distinction is made between farming businesses where the cost of the farmhouse including curtilage and improvements is 20% or less (Type 1 farms) of the total cost of the farm compared to those where the value is more than 20% (Type 2 farms) of the total cost of the farm. It is proposed that the cost of the farmhouse and farm would be used for this calculation but if this was unknown then a valuation, either a formal valuation or a reasonable estimate, could be used instead. The draft interpretation statement also suggests that the Type 1/

Type 2 calculation should only be required once unless circumstances changed. The example given in the draft interpretation statement was if private use improvements were made to the farmhouse, but potentially there could be a number of scenarios which could require this calculation to be updated.

For farmers who live in Type 1 farms, which are considered to have a low private use element, the draft interpretation statement provides the following concessions:

- 15% of general farmhouse expenditure (including rates) is deductible without evidentiary support. This percentage is suggested to be a more realistic amount than the previously used 25%. Type 1 taxpayers may claim a higher deduction if the deduction can be substantiated and they wish to undertake the calculations required.
- 100% of interest expenditure in relation to Type 1 farmhouses is deductible.

Type 2 farms are given no such concessions and must calculate the actual business use of the farmhouse to claim any farmhouse deductions, including interest.

Another long standing concession allowed farmers to claim 100% of the costs of telephone rental where the farm business phone was based at home. It is proposed that this policy is also modified and that all farming businesses may claim only 50% of fixed line telephone charges as deductible, unless they can show actual business use is greater. This is consistent with the operational position for other taxpayers running businesses from home.

Taxpayers need to be aware of the new concession levels, as they amount to a change in a policy that has been in place for well over 50 years.

Once finalised, Inland Revenue are expected to apply the new interpretation statement from the beginning of the 2017-18 income year.

### Deloitte comment

There is no doubt that the proposed changes are intended to level the playing field so that farming businesses operate under the same rules as other taxpayers when it comes to the deductibility of private expenses. The difficulty is that this comes with a compliance cost to farming businesses compared to the current approach which is straightforward to apply. Inland Revenue has acknowledged the need to balance the strict application of the law, equity between taxpayers and protecting the integrity of the tax system against compliance costs and has attempted to provide a practical approach for those farming taxpayers considered low risk, being Type 1 farms.

Inland Revenue has also provided some useful commentary on the approach to apportioning expenses as well as giving a number of examples in the draft interpretation statement which are always useful guidance.

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Taxpayers with Type 1 farms may still be able to apply a flat rate of 15% to determine deductible farmhouse expenditure. However, this is not without its compliance costs, as establishing and tracking the cost or value of the farmhouse and improvements compared to the total farm may be difficult in some cases. The concession does not apply to taxpayers whose farms will qualify as Type 2 and those taxpayers will be required to apportion actual farmhouse expenditure between business and private use. This exercise would likely add compliance costs to the preparation of a tax return for a farming business. In reality this will be more of an issue for smaller operations that are benefiting under the current approach compared to the larger scale farming operations where the expenses concerned and the impact of the change in available percentage from 25% to 15% is less material.

As noted above, Inland Revenue's main concern is to ensure that taxpayers are deducting farmhouse expenditure in accordance with ordinary deductibility principles and not simply applying an arbitrary rate defined by historic policy. This aim has merit. Ironically, the draft interpretation statement still provides for a flat rate (albeit lower) and includes an additional arbitrary threshold (i.e. distinguishing Type 1 farms based on a 20% or less cost threshold). The draft interpretation statement is also silent on any evidence which suggests that 15% is more representative of a farmhouse's business use than the previous 25%. So although it has good intentions, we consider that the new policy continues to be arbitrary in some respects.

Finally, we note that the draft interpretation statement does not consider relevant proposals included in the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill ("the Bill"). The Bill proposes to insert a new section into the ITA 2007 providing an optional alternative method for calculating the deductions for premises that are used for both business and private purposes (which would include farmhouses). The proposed new section would allow taxpayers to apportion any interest, rates and/or rent in accordance with the business portion of the premises. Additionally, taxpayers would be allowed a notional deduction based on a rate prescribed by Inland Revenue for every square metre of business use. Like the draft interpretation statement's application date, the proposed section would apply from the beginning of the 2017-18 income year. We consider that taxpayers would benefit if the draft interpretation statement was updated to include comments in relation to the proposed section's application, as the draft interpretation statement would not otherwise be entirely complete and representative of the law at the time of its application.

Inland Revenue are looking for comments in relation to the draft interpretation statement. Submissions close on 22 December 2016.

If you have any questions in relation to the draft interpretation statement, please don't hesitate to contact your usual Deloitte advisor.

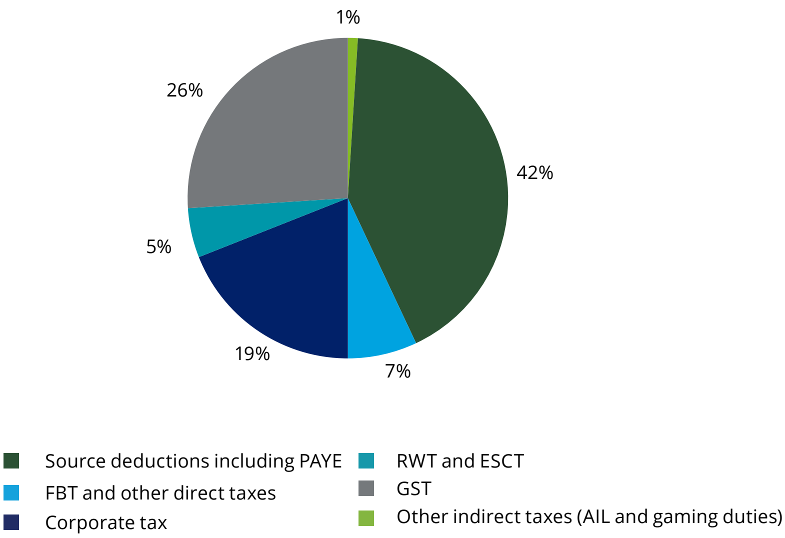
# Facts and figures as Inland Revenue reports on its performance

## By Veronica Harley

Recently, Inland Revenue released its 2016 Annual Report. It's a document that's full of facts and figures that not only explains how much revenue has been collected and where it has been spent, but also sets out performance targets and results and outlines the Department's strategic intentions. It's also a large document of 140 pages so we've summarised a few key facts and interesting takeaways below. That said, the document is not unsurprisingly presented to give a positive view of Inland Revenue's performance against targets.

### Protecting New Zealand's revenue

This year $63.4 billion in tax revenue was collected. The diagram shows a breakdown of the main revenue sources.




In order to protect New Zealand's revenue, focus has been on areas of non-compliance which includes the hidden economy, property, employer deductions and aggressive tax planning arrangements by international and multinational organisations. Differences of $1.2 billion were identified through investigations. Specifically:

- Readers may have noted the recent marketing campaign focusing on the hidden economy and in particular on the construction and hospitality sectors where there is a greater risk of people not reporting cash revenue;
- There has been emphasis on residential property speculation in new developments, particularly in Auckland;

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- Regions and some suburbs with high property turnover are being closely monitored. An agreement signed with Land Information New Zealand in October 2015 enables it to send information collected from property buyers and sellers to Inland Revenue;
- A new specialist team was put in place to help investigate employer compliance concentrating on unpaid employer deductions (i.e. PAYE. KiwiSaver, child support and student loans) with particular emphasis on those employers making deductions but not passing them on to Inland Revenue;
- Several long running aggressive tax planning litigation and dispute cases were successfully closed during 2015-16. These included an international financing case and another case where a promoter of a tax avoidance scheme had a $17 million penalty imposed;

- There is an extensive international compliance program in place to address base erosion and profit shifting (BEPS) issues such as international pricing and financing arrangements. The report notes that "this year we have seen good compliance from multinationals in respect of their international tax planning arrangements", and

- Inland Revenue has a "significant enterprises" compliance program focussing on nearly 600 taxpayer groups, 50% of which are foreign-owned with a further 25% involved in international operations. There is acknowledgement that these organisations make a significant contribution to New Zealand's revenue – over $6 billion of tax. Performance data from this segment is closely monitored, including tax payments, operating margins and interest expenditure.

### Making it easier

A major focus this past year has been to "make tax simpler" as part of the Business Transformation Project and to make it easier to help taxpayers meet payment obligations. Improving digital services is a key strategy to enable this with improvements to the website. Inland Revenue says it is now much easier and quicker to find answers to simple questions. This is a key part of helping taxpayers comply and manage their own tax affairs.

There have also been improvements with the myIR secure online service accounts service. It is now possible for customers using MYOB and XERO to use this software to submit GST returns directly into the Inland Revenue's system after a successful pilot was run earlier this year. Certainly at the smaller end of town, users of such software are reporting time and compliance saving benefits. We are about to enter stage 2 of the Business Transformation project which looks to streamline income and business tax. This is the major part of the project where taxpayers will see and experience the most change. Time will tell, but it will be important that taxpayers engage fully in this phase to ensure that compliance costs are not shifted to employers and significant enterprises.

**Some numbers at a glance:**

| | |
|---|---|
| **Returns and investigations** | |
| 85% | The percentage number of tax returns that are filed on time |
| 382,000 | The number of company tax returns filed in the year ended March 2015. |
| 88% | The percentage of returns filed between July 2015 and March 2016 without errors |
| $1.2 billion | Tax difference discrepancies discovered through Inland Revenue investigations |
| $10.1:$1 | Actual return on investment for specific budget funding initiatives (hidden economy, property compliance and complex technical issues) |
| $166 million | Tax position differences resulting from the hidden economy investigations |
| **Rulings, adjudications and litigations** | |
| 28 | The number of published or finalised public items providing the Commissioner's interpretation of the law |
| 100% | Percentage of taxpayer ruling applications where a draft ruling is completed within three months of receipt. [Deloitte comment: The document is silent on how many taxpayer rulings were received so it's hard for readers to know whether that's good in the context of the number received] |
| 79 | Completed prosecutions for tax evasion, knowledge and Crimes Act Offences. |
| **Sundry** | |
| $63.4 billion | Tax revenue collected |
| >2million | The number of active myIR accounts which means taxpayers are saving time by using the online service |
| .54 | The correlation between donation rebates claims from Inland Revenue and donation levels recorded at the Charities Service. This is down from the previous tax year (.58). |
| 2.1 million | The number of employer monthly schedules with PAYE deductions filed by 200,000 employers |
| 2.6 million | The number of people enrolled in KiwiSaver |
| $1.1 billion | Overdue Student loan debt, 91.5% of which is owed by overseas-based borrowers |

# A snapshot of recent developments

## DTA update: China, Korea, Luxembourg and Ukraine

Members of the New Zealand Government have met with Officials from Luxembourg and Ukraine to advance negotiations of double tax agreements ("DTAs") with the two countries. It has also been announced that New Zealand's DTAs with China and Korea are being re-negotiated to modernise the current DTAs, which are 30 and 35 years old respectively.

## IS 16/04: Income tax – Treatment of the receipt of lump sum settlement payments

On 26 October 2016, Inland Revenue released the finalised Interpretation Statement IS 16/04, which considers the income tax treatment of lump sum settlement payments received to settle claims that are both capital and revenue in nature. The statement also considers the approach to apportioning such a payment. IS 16/04 concludes that, where a single undissected lump sum payment is received, the payment should be apportioned between its capital and revenue elements. While the apportionment must be done on an objective basis, the parties' agreement as to how the settlement payment is made up will generally be an appropriate basis for apportionment.

## IS 16/05: Income Tax – Foreign tax credits – How to claim a foreign tax credit where the foreign tax paid is covered by a double tax agreement?

On 1 November 2016, Inland Revenue finalised Interpretation Statement IS 16/05, which explains how to claim a foreign tax credit where a DTA applies. The statement provides that a foreign tax will be covered by a DTA where it is:

- Expressly listed in the "Taxes covered" article of the DTA; or
- A tax on income or capital as defined by the DTA; or
- For taxes enacted after the commencement of the DTA, "identical or substantially similar" to one of the taxes covered by the DTA.

Where the tax in question is covered by the DTA, there is a process (i.e. various articles) to work through in order to determine whether a foreign tax credit is available. Where the DTA says a foreign tax credit is available, subpart LJ of the Income Tax Act 2007 will then operate to calculate the amount of the credit.

## Draft SPS: Retrospective adjustments to salaries paid to shareholder-employees

Inland Revenue has released a draft Standard Practice Statement, which considers the Commissioner's approach to exercising her discretion under section 113 of the Tax Administration Act 1994 with respect to retrospective adjustments to salaries paid to shareholder-employees. Generally speaking, the Commissioner will only exercise her power to amend an assessment for salaries paid to shareholder-employees where there is an agreement that the shareholder's salary is calculated with respect to the company's profit and it can be shown that there is an error in the company's profit.

## SPS 16/04: Payment of shortfall penalty using losses

Inland Revenue has recently finalised Standard Practice Statement SPS 16/04, which sets out the Commissioner's practice regarding the use of losses to pay shortfall penalties. SPS 16/04 establishes that losses can only be applied to penalties on income tax. The statement also details conditions for using losses, how losses can be used for group penalties and the correct value of an individual or company's losses when paying a penalty.

## Standard for the use of a valid electronic signature on documents provided to the Commissioner

In accordance with obligations under the TAA 1994, Inland Revenue has released a standard for the use of valid electronic signatures on documents provided to the Commissioner. The standard provides that taxpayers may only use an electronic signature when submitting documents and information to Inland Revenue where they are using Inland Revenue's online services or where they provide an electronic signature using software that complies with the requirements set out in the standard.

## Draft QWBA: Depreciation treatment for "buildings with prefabricated stressed-skin insulation panels"

Inland Revenue has released a draft Question We've Been Asked, which considers what buildings would come within the depreciation asset class "Buildings with prefabricated stressed-skin insulation panels" (also known as sandwich panels). The question has come about because use of sandwich panels has grown from merely being used as a cost-efficient element in the construction of buildings where hygienic food storage is required to being used as unprotected weather cladding and insulation for the building.

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