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Tax Alert

June 2017

Material advancement and tangible progress on feasibility expenditure

By Robyn Walker

After many years (and many tax articles) of analysing the tax deductibility of feasibility expenditure based on Inland Revenue interpretation statements and case law, we have moved to a new phase of determining whether it is feasible to change the law to deal with black hole and feasibility expenditure.

On 25 May 2017, the Government released a discussion document Black hole and feasibility expenditure for consultation. This document seeks to move the law on from the current position (refer to our March 2017 Tax Alert) to a brave new world where the tax system does not create economic distortions and tax consequences are not

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an obstacle to businesses innovating and pursuing opportunities for growth.

This represents material advancement and tangible progress on this long standing issue.

Timelines

Before delving into the detail, it's important to note there are no application dates proposed in the document, instead submissions are sought on why the application date shouldn't just be the date of enactment of the resulting legislation (which would probably still be a minimum of 12-18 months away).

We suggest a retrospective application date back to 27 July 2016 (the date of the Supreme Court judgment in Trustpower) would be appropriate in the circumstances.

What is proposed

The discussion document contains two main proposals:

- **For live projects**: applying International Financial Reporting Standards (IFRS) accounting treatment to feasibility expenditure; i.e. allowing a deduction for feasibility which is expensed under IFRS, and deferring the deduction of expenditure capitalised under IFRS until depreciation deductions are available.

- **For abandoned projects**: allowing a deduction for previously capitalised expenditure that would have been part of the cost of a depreciable asset, had the project not been abandoned. A deduction would be available in the year in which the amount is fully expensed under IFRS rules (i.e. there has been a total impairment of the asset).

Live projects

Critical to the new rules is understanding what constitutes "feasibility expenditure". The document doesn't go so far as to provide a draft definition for comment, rather it provides the substance of the proposed definition, being "expenditure to determine the practicality of a proposal, prior to commitment to developing the proposal". This definition takes us back to the "good old days" prior to the Trustpower cases, but still leaves the potential for continued ambiguity and disputes unless "commitment" is itself defined.

The document notes there will need to be some exclusions from the rules, such as where there are existing rules that already specifically allow deductions. It is also suggested that any expenditure on a capital project that would not be able to be depreciated should be excluded from the rules, on principle. Fortunately this notion is dismissed on the basis that it may be impossible to determine this during early stage feasibility. This sensibly leaves open the ability for expenditure kicking the tyres on potential business acquisitions (which could take place through the purchase of assets or shares) to fall within the rules. However, the document suggests that feasibility should not include expenditure that would form part of the cost of

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depreciable property, if the proposal is successful. Rather such expenditure would either be depreciated (if successful) or dealt with under the new abandoned project proposals if unsuccessful.

Abandoned projects

The position under current rules is best illustrated in a graph taken from the document. Under current rules until a project has reached the point that there is an asset "available for use" (and therefore depreciable), if the project is abandoned any capitalised expenditure becomes black hole expenditure.

Under the proposed rule, the capitalised expenditure would be an allowable deduction when it would have formed part of an item of depreciable property had it been completed. To qualify the item would need to be totally impaired under NZ IAS 36.8 or NZ IAS 16.7. The deduction would not be limited to feasibility expenditure but would also cover a range of other costs that had been capitalised to the asset that is abandoned.

In the event the impaired asset is reinstated as an asset in the future, any amount previously deducted would need to be returned as income.

Not using IFRS?

For businesses not using IFRS, it is proposed that taxpayers can apply the same rules provided the IFRS standards would have been met, had they been applied.

What next

Submissions have been called for and remain open until 6 July 2017. We encourage you to consider whether these proposals adequately address black hole issues your business faces and make a submission. For more information contact your usual Deloitte advisor.

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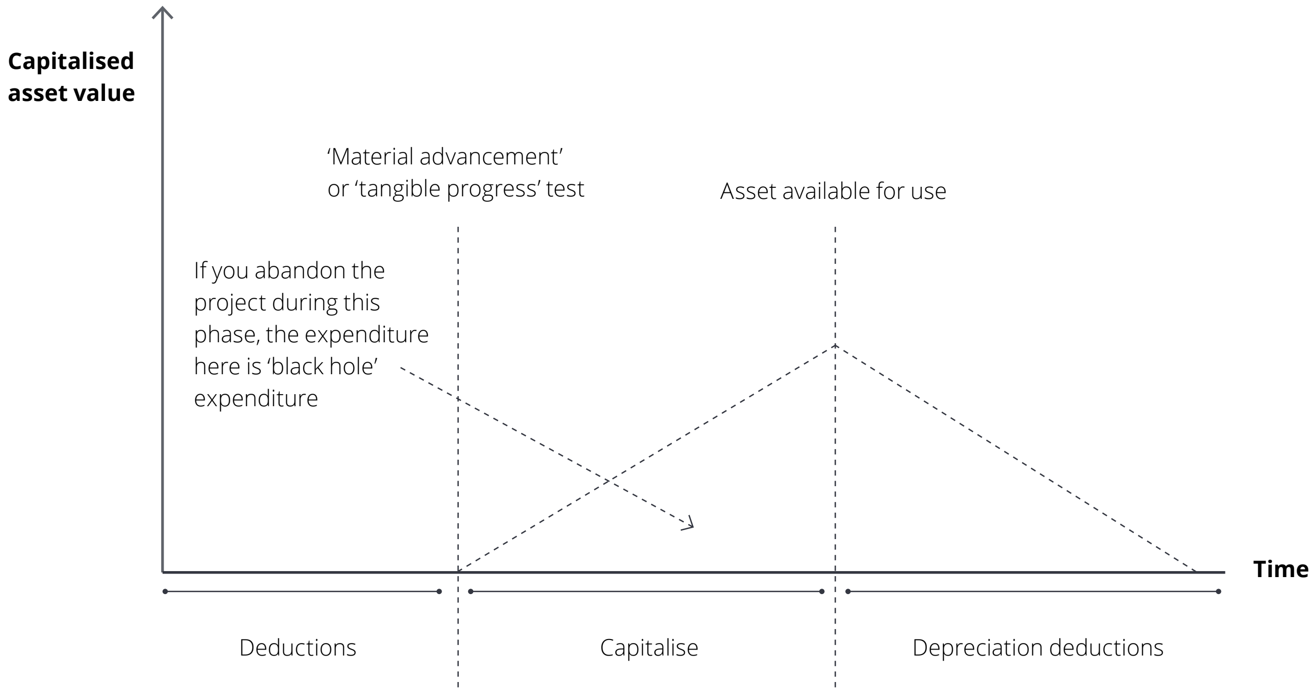

Figure 1 Feasibility expenditure in a project timetable - "material advancement or tangible progress" formulation – Taken from Black hole and feasibility expenditure: a Government discussion document (page 8)

New Zealand implications of Australian debt pricing decision

By Graeme Fotheringham and Bart de Gouw

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Introduction

The recent decision of the Australian Full Federal Court ("Full Court") in the Chevron case is likely to have ramifications for New Zealand entities with cross-border related party debt. Although not binding in New Zealand, the case provides one of the few insights as to how a court views the transfer pricing rules on the issue of related party debt and has been closely followed by the New Zealand Inland Revenue. New Zealand entities with both inbound and outbound cross border related party debt should consider these loans in light of the decision.

Case Summary

On 21 April 2017, the Full Court rejected an appeal by the taxpayer involving a credit facility extended to Chevron Australia Holdings Pty Ltd (CAHPL) by a US resident subsidiary of CAHPL. This is the first Australian transfer pricing court case on the issue of related party loans. The case involved approximately $340m in tax and penalties covering the 2004-08 period.

The US subsidiary had borrowed the funds ($2.5b AUD equivalent) externally in USD at an interest rate of around 1.2%, with the benefit of a guarantee from the ultimate parent company, Chevron Corporation (CVX). The US subsidiary then on-lent the funds to CAHPL at an interest rate of 1 month AUD LIBOR + 4.14% (which equated to around 9% in the period under review). This interest rate was based on a stand-alone credit rating of CAHPL and a transfer pricing analysis using the actual terms and conditions of the facility.

The Australian Tax Office (ATO) issued CAHPL with transfer pricing assessments on the basis that the interest rate on the loans was considered to be in excess of an arm's length rate.

The Full Court upheld the earlier decision, of the Federal Court, that CAHPL had not shown that the interest paid under the Credit Facility agreement was equal to or less than arm's length. CAHPL therefore failed in proving that the amended assessments imposed by the Commissioner of Taxation (the Commissioner) were excessive.

Key Points from the case

The case was extremely complex involving multiple facets of tax law. However there are a number of key points from the case that have relevance to the pricing of related party debt in the New Zealand context.

Pricing the actual transaction vs hypothetical third party loan

The court rejected an approach to transfer pricing which involved working out accurate pricing for the transaction which actually occurred between the related parties. Instead, it suggested an approach that substituted the actual transaction with one which reflected how a company in the taxpayer's position (i.e. the borrower) would achieve the same commercial aims in an arm's length transaction.

Consideration is wider than just price

In considering what transaction the borrower would have entered into with a third party lender, the court considered not only the price (i.e. interest rate) of the transaction but also the real world commercial terms and conditions of the lending that would have applied to such a transactions. In particular, it reached

Inland Revenue will also no doubt have been encouraged by the court's approach that it is not only the price of the actual transaction as documented that needs to be arm's length but also the terms and conditions of the lending arrangement

the view that CAHPL, if it had been acting independently and dealing with a third party lender, would have been expected to have given security and operational and financial covenants to obtain the loan. Such provisions would have had the effect of lowering the interest rate on the borrowing.

The court therefore decided the arm's length principle is more than the simple pricing of a given transaction (given the actual terms and conditions), but rather also encompasses the question of whether an independent party, acting in its own best interests, would have entered into a transaction on those terms and conditions.

Parental Support

The court also rejected Chevron's approach that when pricing the related party debt, CAHPL should be considered as standalone entity, completely separate from the wider corporate group. The court instead held that when considering the hypothetical loan CAHPL would have entered into with a third party borrower, CAHPL should also be assumed to be a subsidiary of a major multinational.

The implications of implicit and explicit parental support on the loan pricing were not discussed in any detail by the court. However, it was noted that where an explicit guarantee was provided by the parent to the subsidiary borrower, guarantee fees paid could form part of the consideration for the loan.

Therefore, when pricing related party loans post Chevron, consideration should still be given as to whether adjustments are required to reflect both implicit and explicit parental support.

Burden of proof

If the Chevron dispute had involved a New Zealand taxpayer and been heard by a court in New Zealand, the job of Inland Revenue would have been more difficult than that of the ATO. Under current New Zealand transfer pricing rules, the burden of proof in transfer pricing cases lies with the tax authorities. Under Australia law, the burden of proof lies with the taxpayer.

In the Chevron case, the onus of proof was therefore on CAHPL to prove that the assessments issued by the ATO were excessive. As such, the ATO were not obliged to argue every technical aspect of their assessments.

It is worth noting that one of the proposals in the New Zealand government's recent BEPS discussion document – *Transfer Pricing and Permanent Establishment Avoidance* – is to shift the burden of proof from the Commissioner of Inland Revenue to the taxpayer in transfer pricing cases. If such a change was to go through, this may make it easier for Inland Revenue to bring such cases to court in New Zealand in future.

Relevance to New Zealand

BEPS Proposals

Although the Chevron case is not binding in New Zealand, the case has been closely followed by Inland Revenue. Many of the principles from the findings of the court in Chevron have been included in the BEPS discussion drafts issued by the government in March 2017, covered in the March 2017 Tax Alert.

In addition to the proposed changes to the burden of proof discussed above, the government is proposing to introduce reconstruction provisions into the New Zealand transfer pricing rules. The wording in the BEPS reconstruction proposal echoes the findings in Chevron with regard to hypothesising the "real world" commercial conditions of a third party transaction. Had the Chevron transaction involved a New Zealand taxpayer, Inland Revenue may arguably have been able to apply the New Zealand anti-avoidance rules to reconstruct the arrangement. However, introducing similar provisions into the transfer pricing rules would give Inland Revenue another weapon in their armoury to combat perceived avoidance.

Inland Revenue will also no doubt have been encouraged by the court's approach that it is not only the price of the actual transaction as documented that needs to be arm's length but also the terms and conditions of the lending arrangement. Indeed, the government is proposing to amend the New Zealand transfer pricing rules to refer to arm's length "conditions" rather than an arm's length amount of "consideration" to address this point.

The message from Chevron with regard to parental support is more mixed for Inland Revenue. The Chevron case reaffirms the arm's length principle in relation to related party debt. This contrasts with the New Zealand government's proposals to restrict interest deductions based on the parent company's external cost of debt as detailed in the BEPS discussion document – *Strengthening our interest limitation rules*.

The approach to pricing related party debt taken by the court in Chevron did not ignore the fact that the borrower was part of a wider multinational group but also did

not price the debt by direct reference to the debt of the ultimate parent. Rather, it considered what transaction the borrowing entity would have entered into with an unrelated lender on the assumption that it was part of a wider multinational group.

Whilst all of the proposals in the BEPS discussion documents may not make it onto the statute book, change to the transfer pricing rules in New Zealand is coming and the Chevron case gives an indication of the likely direction of travel in relation to financing arrangements (and potentially other related party transactions).

New Zealand entities with cross-border, related party debt should consider whether their arrangements could withstand such scrutiny.

ATO approach

Senior ATO leadership have described intra-group financing as the number one risk it is focused on with regard to multinational taxation.

Following the Chevron case, the ATO are proposing that Australian companies be required to risk assess all their related party cross-border finance arrangements, both inbound and outbound, and report the risk status to the tax authorities.

Given the level of trans-Tasman financing that exists, this fall out from the Chevron case could have potentially significant implications for New Zealand entities with financing arrangements into or out of Australia.

Good news: resident withholding tax compliance issues relating to dividends are now resolved for companies

By Emma Marr and April Wong

Effective from 1 April 2017, companies can save on compliance and administration when distributing dividends to corporate shareholders. The Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Act 2017 (Act) has simplified the resident withholding tax (RWT) rules relating to dividends by allowing companies to opt out of paying RWT on a fully imputed dividend paid to a corporate shareholder regardless of whether they are a group company or not.

Generally, a person who makes a payment of resident passive income comprising a dividend must withhold RWT from the dividend at a RWT rate of 33%, less any imputation credits.

Companies that distribute a fully imputed dividend are obliged to pay 5% of RWT (the difference between 33% and the current corporate tax rate of 28%) to Inland Revenue by the 20th of the month following the dividend distribution, which has historically resulted in an initial over-taxation of the dividends and additional compliance for corporates. The paying company had to account for the additional RWT to Inland Revenue, and the recipient company sought a refund from Inland Revenue when RWT could not be utilised to lower their income tax liability. Further, if a company wished to pay dividends to its corporate shareholders at year-end to clear its current accounts, it may not have had sufficient financial information to determine the level of the dividend.

To address the compliance burden faced by corporates in complying with the RWT regime, the Act allows a company to opt out of withholding RWT on a fully imputed dividend paid to another company. We commend Inland Revenue for making this rule optional, as some companies (particularly those that are widely held) would in fact incur greater compliance costs from an outright requirement not to withhold RWT on fully imputed dividends. In this particular scenario, the company would have had to establish which shareholders are corporates and those that are not, and differentiate between these two groups within their systems. We suggest contacting your Deloitte adviser to find out whether opting into these new rules could save you compliance time and costs.

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Business Transformation – where are we now?

By Emma Marr and April Wong

Over two years ago, the Government started consulting on a new tax system. Stage 1 went live in February 2017, so with Stage 2 currently underway, we check in on the road to Inland Revenue's Business Transformation.

Planned as a four-stage, multi-year program, Business Transformation intends to make it quicker and easier to comply with tax obligations - to pay the right amount tax on time, every time. So far, Inland Revenue has made visible progress, with taxpayers starting to see greater adoption of digital technology in completing tax returns and interacting with Inland Revenue.

The four-stage program stretches to 2021, meaning we have a long wait to see whether New Zealand will truly have a modernised and less burdensome tax system at the end of it. Although one of the goals is to reduce compliance costs, we have seen signs that some parts of the taxpaying community will have increased compliance costs. It remains to be seen whether this will be balanced by other efficiencies.

We recap below the progress to date and look ahead to the next steps.

Stage I: Online tax administration

1. GST Returns

The first and very welcome step was to fully digitise GST returns. Effective from 7 February 2017, GST-registered persons have been able to choose to submit their GST returns to Inland Revenue directly from their accounting software, rather than filing a GST return as a separate process. This also includes the ability to voluntarily attach accompanying documents or correspondence to a GST return, and enhanced payment solutions to make it easier for registered persons to pay GST. GST refunds can also be made by direct credit to a customer's bank account.

Since GST services have gone live on Inland Revenue's website, more than 37,000 people have taken up the new direct debit option, and around 1,500 people have set up payment plans online. People have also attached over 450 documents online to save on postage costs. Modernising GST administration is a welcome change, given that there are currently approximately 630,000 GST-registered persons and businesses in New Zealand.

2. IRD number registration

It is now possible for migrants on resident, work, student or Australian visas coming into New Zealand to register for IRD numbers online. The service is also available for entities, such as companies, clubs, trusts, and societies, and facilitates information sharing between Inland Revenue and Immigration New Zealand (INZ) which allows INZ to verify an applicant's identity online and in real time. Previously it took up to 24 days just to receive an IRD number with a paper application. With this new online registration service, online applicants are receiving their IRD numbers by SMS message or email within 1 – 2 days. As at 12 April 2017, Inland Revenue recorded a total of 5,131 new migrants who utilised the new online registration system.

The Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill (Bill) released mid-April also proposes to slightly relax the

2016–2017
Stage 1
Enable secure digital services

→

2017–2019
Stage 2
Streamline tax

→

2018–2020
Stage 3
Streamline social policy

→

2019–2021
Stage 4
Complete the future revenue system

current requirement for an offshore person to have a New Zealand bank account before they can have an IRD number. If enacted, the Commissioner will have discretion to issue IRD numbers if she is satisfied as to the identity of the offshore person. Deloitte welcomes this amendment.

3. Other enactments to date

Businesses will also be delighted to know that Inland Revenue now accepts mobile phone calls to all of its 0800 numbers. Customers will also be able to use Inland Revenue's call-back system to get a call on their mobile phone at times when the contact centre is busy, which is good news for those that have an urgent matter or dislike being put on hold.

New use of money interest rules for provisional taxpayers have also taken effect from 1 April 2017 for taxpayers paying provisional tax for the 2018 income year (refer to our March Alert article for more information on the new rules). The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 (BT Act) increased and expanded the safe harbour threshold for UOMI for provisional taxpayers. The BT Act also introduced a new method of calculating provisional tax, "Accounting Income Method" (AIM), which is based on accounting income as calculated by accounting software.

Under the BT Act, employers are also required to report share benefits under an employee share scheme in the PAYE system. Employers now have the ability to withhold PAYE on such benefits at the employer's option (refer to our April Alert article for more information).

Effective 21 February, new international rules for data collection and reporting, known as the "Common Reporting Standard" (CRS) were also enacted into New Zealand law. CRS obligations will commence from 1 July 2017. Inland Revenue will be publishing its initial list of reportable jurisdictions – those with which New Zealand has agreed to exchange information with – by the end of this month. This is designed to counter offshore tax evasion by requiring financial institutions to undertake due diligence to identify offshore accounts and to report information on those accounts to Inland Revenue.

Stage 2 – the future of BT

The Bill proposes to streamline PAYE processes and reduce compliance costs. However, the new proposals also change the way investment income information is gathered which could potentially have the opposite effect.

1. PAYE administration

The Bill proposes to change PAYE to streamline some processes and eliminate others, consistent with Stage 2 of the Business Transformation program. Broadly, PAYE will shift to a semi-automated process similar to the GST processes implemented at Stage 1. The following changes include:

- Employers and payroll intermediaries will no longer be required to file an employer monthly schedule. Instead, they will file PAYE information on a payday basis from 1 April 2019.

- Employers using payroll software will be able to file their information directly from their payroll system.

- Employers will not be required to use payroll software but will have to file their PAYE information on a payday basis.

- The threshold for electronic filing of PAYE information will reduce from $100,000 a year of PAYE and Employer Superannuation Contribution Tax (ESCT) deductions to $50,000 a year so smaller employers will still be able to file their PAYE information on paper if they choose to do so.

- The Government is no longer proposing to change the dates by which PAYE and related deductions have to be paid to Inland Revenue. However, employers will be able to make these payments on payday if they so choose.

- To improve the workability of the rules, minor changes will be made from 1 April 2018 to the PAYE rules for holiday pay paid in advance and to align when rate changes come into effect.

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- The payroll subsidy, which subsidises employers to outsource their PAYE obligations to listed payroll intermediaries, will cease from 1 April 2018.

We are pleased to see that these changes are consistent with the goals of the BT program. The measures will also ensure that Inland Revenue has the latest and most accurate information relating to employees, which is key in Inland Revenue's goal for transforming the administration of individual taxation. While small businesses save on compliance costs, it is unclear whether or not the mandatory aligning of PAYE payments with payday could place pressure on the cash flows of smaller businesses.

2. Investment Income information

As reported in our April and May Tax Alerts, the new rules proposed in the Bill impose a requirement for more comprehensive and more frequent reporting of taxpayers' investment income, which will allow Inland Revenue to pre-populate individual's tax returns with dividend and interest information, and to monitor and adjust social policy entitlements or tax rates during the year. This will create a greater administrative and compliance burden for payers of investment income. It is important that payers of investment income consider what changes may be needed to their systems and processes so that they are ready to act once the rules are finalised. Most of the proposed changes will come into force on 1 April 2020, although some rules apply earlier.

The four-stage program stretches to 2021, meaning we have a long wait to see whether New Zealand will truly have a modernised and less burdensome tax system at the end of it. Although one of the goals is to reduce compliance costs, we have seen signs that some parts of the taxpaying community will have increased compliance costs

GST best practice: a timely reminder

By Robyn Walker and Eddy Carter

GST continues to be a key target on Inland Revenue's radar. This is unsurprising given the heavy reliance on GST for the Government's total tax take and the frequency of GST errors that arise. Given the frequency of GST return filing, there can be minimal time to identify GST errors or resolve any contentious GST issues prior to taking a tax position. Contrast this to a tax return, where taxpayers have up to 18 months after year end to fully consider any contentious issues and identify errors.

A recent trend that we have identified is that as part of Inland Revenue's routine risk reviews, Inland Revenue is reviewing GST reconciliations and GST policy and procedure manuals.

These requests from Inland Revenue serve as a timely reminder that indirect taxes should be proactively managed, as by adopting best practice principles organisations can be well placed to avoid any unexpected GST costs and time consuming audit activity.

What is GST best practice?

In the context of tax governance, best practice is to have in place tax policies and procedures that mitigate the risk of an incorrect tax position being taken. Each organisation is unique, and the policies and procedures that govern the GST return filing process should reflect that. At a minimum, GST best practice would include the following:

Documented GST policies and procedures

A robust GST policy/procedure manual should clearly set out the GST treatment of specific transactions, the return preparation and filing procedures, when issues should be escalated and the process for when errors are identified. This document should be made widely available within the organisation with appropriate training. Crucially, this should be a 'living' document that is regularly reviewed and updated as laws and business processes change.

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If a business has many people responsible for preparing invoices there should be clear guidance available on when GST should or shouldn't be charged on a sale. Likewise, if many staff members are able to process expenses (such as by putting through expense claims) it is important they understand what constitutes a valid tax invoice for claiming input tax.

The GST filing procedures should ensure the GST return has a sufficient level of reviews prior to filing with Inland Revenue. The review should also include a 'sense check' of the return to avoid making basic errors. This should be done by someone who is close to the return preparation process, but independent from the return preparer.

GST reconciliations
Broadly, a GST reconciliation reconciles the financial accounts to the GST returns filed. These should be periodically completed each GST return or, at a minimum, annually. The benefits of completing these reconciliations at each GST return is that any variances provide an opportunity to find any errors prior to filing the GST return.

As a general guide, to complete a GST reconciliation you should compare your GST output tax to the level of income earned in the period, plus asset sales. You should compare your input tax amount to expenses incurred, excluding expenses with no GST (e.g. interest, depreciation, salary and wages) and add asset purchases.

Fully reconciling the two amounts may be near impossible for larger and more complex organisations. However, an acceptable level of variance between the two sets of data should be considered in the wider context of the organisations materiality thresholds.

Periodic GST reviews
GST reviews should be incorporated as part of an organisation's tax governance framework. A review can be an effective way of picking up errors that may have crept into the system. Inland Revenue have stated that if a taxpayer provides them with the outcomes of an independently completed GST review they may cancel or significantly 'scale-back' a proposed audit or risk review.

Data analytics should be considered as part of a review as these tests can be an effective way to robustly test GST compliance over large numbers of transactions. Data analytics can also test the health of a business's GST processes, such as determining whether input tax credits are being claimed later than they should be. Outside of GST they can also be useful for fraud and other internal audit purposes.

With the arrival of Business Transformation within Inland Revenue, it is inevitable that GST audits will change. Expect Inland Revenue to embrace technology more effectively as part of their risk review and audit processes to collect and analyse more data – unfortunately they won't be looking for areas where GST has been overpaid.

Inland Revenue regularly assesses organisation's risk of non-compliance. The absence of any of the above checks and reconciliations can be a red flag and these checks and reconciliations should be adopted by any organisation that takes their tax obligations seriously.

Other important GST considerations
Organisations should protect themselves from other GST risks, such as:

- **The GST implications of contractual agreements** should always be carefully considered. A 'belts and braces' approach should be taken to include additional clauses, which can ensure the risk of an incorrect GST treatment is not borne by your organisation. Poorly drafted agreements may result in scenarios where a supply is subject to GST with no contractual entitlement to recover this from the purchaser, or a denied input tax credit with no ability to recover this cost from the supplier.

- **Foreign GST/VAT registration obligations** where supplies of goods or services are being consumed outside of New Zealand. The global indirect tax landscape is continually evolving at a rapid rate, with Governments around the world becoming increasingly more reliant on indirect taxes as a source of tax revenue. Often where goods or services are being consumed in a foreign jurisdiction, a GST/VAT obligation in that country may exist – even when the supplier has no physical presence. Non-compliance can result in a significant financial cost and reputational damage.

- **The cost of foreign indirect taxes** which are often not fully considered on international projects. In an increasingly global and mobile workforce, employees will often incur costs with foreign GST/VAT charged on international business travel. Assuming this has been charged correctly, there are often mechanisms for businesses to recover this GST/VAT.

Please contact your usual Deloitte advisor should you wish to discuss the above in more detail.

Mileage rate released by Commissioner of Inland Revenue

By Veronica Harley and April Wong

On 15 May 2017, the Commissioner of Inland Revenue released the results of her review of the mileage rates for expenditure incurred for the business use of a motor vehicle. The review resulted in an upward adjustment of the mileage rate from 72 cents in 2016 to 73 cents for the year ended 31 March 2017 for petrol and diesel vehicles. The new rate applies for persons whose business travel is 5,000 km or less in an income year.

This year, separate rates have been introduced for hybrid and electric vehicles of 73 cents per km and 81 cents per km respectively. However, the mileage rate still does not apply in respect of motorcycles.

The Commissioner is required to set a mileage rate for persons whose business travel is 5,000 km or less in an income year. The mileage rate is set retrospectively for persons required to file a return for business income, so that the rate reflects the average motor vehicle operating costs for an income year. Those persons who meet the criteria have a choice of using the mileage rate method or they may use actual costs if they consider that the Commissioner's mileage rate does not reflect their true costs. Taxpayers that choose to use actual costs are required to keep records to support any expenditure claimed.

Employers may also use the new mileage rate as a reasonable estimate of costs when they reimburse employees for the use of their private vehicle for business related travel for the 2018 year, i.e., post 1 April 2017. Employers are still permitted to use an alternative estimate to reimburse their employees if they so wish, so long as the estimate is based off reputable sources, such as the New Zealand Automobile Association Incorporated. The Commissioner advises that she does not propose to amend the returns for taxpayers who have already filed their 2017 returns using the previous mileage rate of 72 cents.

Effective from the 2018 income year, a draft replacement Operational Statement will be released for consultation at some future stage due to recent changes to the legislation made by the recently enacted Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017. With effect from the 2018 income year, the 5,000 kilometre limit is removed and replaced with the "kilometre rate method", which will allow a taxpayer to deduct a fixed amount per kilometre travelled for business purposes based on a set of tiered rates published by the Commissioner.

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A snapshot of recent developments

BEPS Multilateral Instrument signed

On 8 June 2017, the Minister of Revenue Judith Collins signed OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) alongside Ministers and high-level officials from 68 other countries and jurisdictions. The MLI gives signatories the ability to update a worldwide network of several thousand existing double tax treaties to adopt recommendations from the OECD's BEPS Action plan, which would include articles on permanent establishment avoidance, treaty abuse, dispute resolution and hybrid mismatches.

The extent to which the MLI is incorporated in New Zealand will turn on the final positions of both New Zealand and our contracting treaty partners. The Minister has indicated that it is likely that New Zealand's treaties will begin to be modified from 2019. New Zealand's position on which tax treaties are covered and which provisions from the MLI are adopted is detailed in the officials' issues paper released in March earlier this year, as reported in our March Tax Alert.

Budget 2017

On 25 May 2017, the New Zealand Budget was delivered by Minister of Finance Steven Joyce. Shortly after, Deloitte published its annual comprehensive Budget summary and analysis. In this report, Deloitte's team of experts analysed this year's major announcements and their likely impact on business, health, transport, household resilience and the wider economy. Key tax takeaways of the Budget include increasing the lower two income tax rate thresholds for individuals, tax relief for families, and proposals to claw back the negative consequences for businesses from the Supreme Court decision in Trustpower (refer to the article in this issue on feasibility expenditure). There were no business tax changes announced in Budget 2017.

Following Budget announcements, the Taxation (Budget Measures: Family Incomes Package) Bill was also introduced on 25 May 2017, and received royal assent on 29 May 2017. The Budget Bill makes consequential changes to the individual provisional tax rates for the 2018-19, and 2019-20 tax years, by lowering the standard uplift method of 105% to 100% (5% uplift to 0% uplift), and 110% to 105% (10% uplift to 5% uplift).

Taxation of employee share schemes: start-up companies

On 30 May 2017, the Government released an officials' issues paper proposing a new deferral scheme for start-up companies offering employee share schemes. Broadly, the deferral rules ensure that employee share scheme benefits are taxed in a similar way to equivalent cash remuneration, and prevent benefits equivalent to share options being provided tax free.

Elect to file your FBT returns annually by 30 June

Small employers have the option of filing FBT returns annually. From 1 April 2017, the annual filing threshold increased for employers whose gross PAYE and ESCT contributions do not exceed $1 million. Businesses that wish to file their FBT returns annually must elect to do so by the end of the first quarter, i.e., 30 June.

Minimum financial reporting requirements for foreign trusts – officials' issues paper released for public consultation

Officials have released an issues paper on the minimum financial reporting requirements for foreign trusts. The paper sets out the proposed requirements for the preparation of financial statements for foreign trusts following the recently enacted amendments to the foreign trust disclosure rules. To obtain a copy of the issues paper please email policy.webmaster@ird.govt.nz.

Inland Revenue releases draft Interpretation Statement: Income tax – Taxation of trusts

On 3 May 2017, Inland Revenue released draft interpretation statement, PUB00261: Income Tax – Taxation of trusts (draft IS) for consultation. This draft IS is an updated

summary of the law as it applies to the trust regime. The item does not consider the foreign tax credit regime as it applies to trusts, the application of double tax agreements, or the application of tax avoidance. The deadline for comment is 27 June 2017.

Inland Revenue releases draft QWBA: Goods and services tax – whether a racing syndicate can be a registered person

On 26 May 2017, Inland Revenue released a draft Question We've Been Asked PUB00280: Goods and services tax – whether a racing syndicate can be a registered person (QB 17/04). The item considers whether a racing syndicate, whose activities are limited to the ownership (or leasing) of one or more horses for racing, can be registered for GST. In particular, QB 17/04 considers when the activities of a horse racing syndicate will be excluded from the "taxable activity" definition because they are being carried on as a "private recreational pursuit or hobby". The Commissioner has released an operational statement to note that taxpayers not carrying on a taxable activity must cancel their registration with a deregistration date on or before 30 June 2017.

Special Determination S53 released

On 4 May 2017, Inland Revenue released Special Determination S53: Application of the financial arrangement rules to a public-private partnership agreement. This determination relates to an arrangement involving the finance, design, construction and on-going provision of operational services in respect of the facilities by a limited partnership under a public–private partnership agreement with the Crown.

Managing GST online

Taxpayers can now file GST returns, pay GST, and review their GST accounts online via myIR. Taxpayers can also receive GST letters and messages and customise how they receive notifications relating to their GST obligations. Tax agents may also access myIR on behalf of their client.

GST non-resident business claimants: change to the registration criteria

A non-resident business can register for GST and have their registration backdated to 1 April 2014 if they do not make nor intend to make taxable supplies in New Zealand and are not, and do not intend on becoming, a member of a group of companies making taxable supplies in New Zealand. A non-resident business may also register where the only GST they incur is an amount paid to the New Zealand Customs Service.

Australian Federal Budget 2017-18

Deloitte Australia has published a report on the Australian Federal Budget for 2017-18. The report includes summaries of the key tax measures announced in the Budget, including a major bank levy and measures targeted at housing affordability. The Budget also reaffirms the Government's commitment to reduce the corporate tax rate to 25% by 2026-27 for businesses with a turnover of less than AUD 50 million. There were no major developments in the area of multinational tax, apart from a retrospective amendment to the multinational anti-avoidance law with effect from 1 January 2016 and the tightening of the foreign resident capital gains tax rules.

Labour Party policy announcement

The Labour Party has announced its policy to fix the housing crisis, and intends to "create a level playing field for families" by removing ring-fence losses on rental properties so that they can no longer be used to offset against other income, increase the bright-line test to five years in order to target speculators who buy houses with the aim of making a quick capital gain, and ban foreign speculators from buying existing New Zealand homes.

Act Party policy announcement

The Act Party has proposed to reduce tax thresholds and cut the corporate tax rate to 25%. Individual income tax thresholds will be adjusted for inflation as follows: anyone who earns up to $14,000 a year would pay 10% tax instead of 10.5%, and a person earning between $14,001 and $48,000 would be taxed at 15% instead of 17.5%. Anything above the $48,001 threshold would be paying 25%. These tax brackets would reduce government revenue by $4.4 billion a year and will be paid for using government surpluses.

Inland Revenue releases draft Interpretation Statement PUB00255: Goods and services tax – compulsory zero-rating of land rules

On 12 May 2017, Inland Revenue released a draft Interpretation Statement PUB00255: Goods and services tax – compulsory zero-rating of land rules for public consultation.

This interpretation statement is meant to be yet another reminder to taxpayers of the need to apply the GST compulsory zero-rating for land where relevant, and an instruction of how to use these rules correctly. Inland Revenue has provided numerous examples and an illustrative flowchart, nevertheless the draft document does not address some issues that can arise in practice, and submissions are expected (the last day for submissions is 23 June 2017). If you wish to submit on this or you have any specific issue that you wish us to include in our submission, please let your usual Deloitte contact know.

The Forgotten Impact: Kaikoura earthquake – Wellington still paying the price

Deloitte has published a report on the effects of the November 2016 Kaikoura earthquakes in Wellington. Broadly, the report concludes that Wellington faces major challenges in building up its resilience to another potential earthquake. Currently, Wellington is losing about $1.25 million a week in productivity alone (setting aside the value reduction in building stock), totaling about $30 million to date.

State of the State New Zealand 2017: Fit for the future

Deloitte has published the State of the State 2017 report in partnership with Victoria University of Wellington's School of Government. The report examines and identifies shocks that may affect Kiwi households over time, and smaller scale shocks that threaten individual wellbeing. State of the State 2017 proposes four recommendations for our Government to consider implementing in order to boost resilience and ensure New Zealand is fit for the future.

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