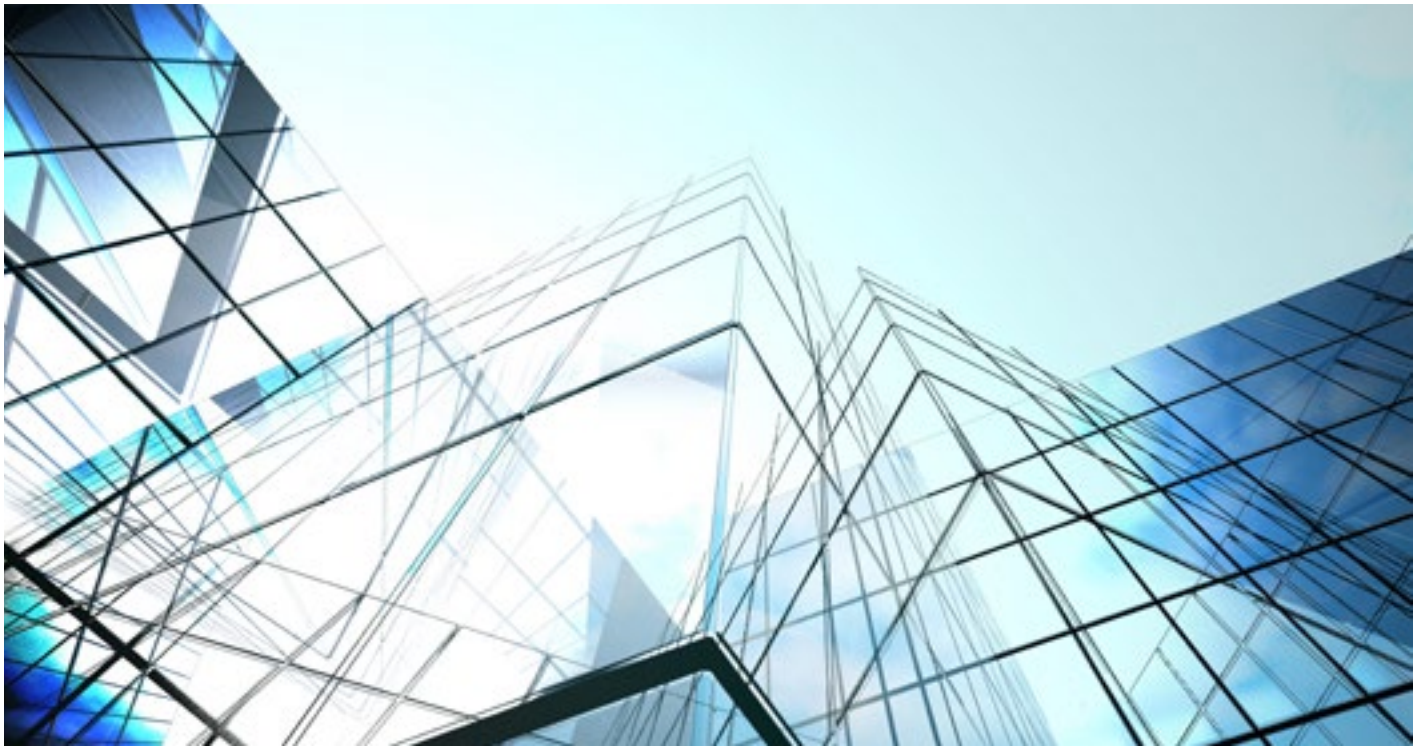

Tax Alert

A focus on topical tax issues

March 2017

A trifecta of BEPS reforms

By Emma Marr

On Friday 3 March 2017 the Government released three discussion documents proposing wide-ranging changes to our tax rules to address concerns that multinationals operating in New Zealand are not paying their fair share of New Zealand tax. The proposals should have such multinationals sitting up straight and paying close attention, as the suggested reforms are significant and likely to have a meaningful impact.

Broadly, the three discussion documents cover the following:

- **Interest deductions**: interest deductions on cross-border loans will be further limited by capping interest rates, changing the asset measurement rules, and implementing a range of other smaller reforms to the thin capitalisation rules.

In this issue:

- **Transfer pricing and permanent establishment avoidance**: Substantial changes to source, permanent establishment (PE) and transfer pricing rules, including a suite of rule changes to enhance Inland Revenue's ability to enforce the rules.

- **International convention:** New Zealand's intention to sign the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (the multilateral instrument or MLI).

The application date for most of the proposals would be the first day of the first income year after the rules are enacted. Some of the administrative transfer pricing and PE rules would apply from enactment.

At this stage officials are seeking submissions on the proposals, which are due in April (7 April in relation to proposals on implementing the MLI, 18 April in relation to limiting interest deductions, and transfer pricing and permanent establishment avoidance).

Further detail on each of the discussion documents is covered below. Please get in touch with your Deloitte advisor to discuss how these proposals could apply to you. Given the typical rush of a 31 March tax return filing season, the 6 week period for consultation will be tight. Given the significance of some of the proposed changes it is important that people make time to understand the impacts the proposals will have on their current arrangements.

Limitations to Interest deductions

The first discussion document, *BEPS – Strengthening our interest limitation rules*, proposes tightening our thin capitalisation rules in two significant ways: interest rates will be limited, and the measurement calculation for assets will be amended to reduce assets by the value of any non-debt liabilities. There are a number of other amendments proposed including: a de-minimis exemption, concessions for specific circumstances, and eliminating all interest deductions for groups of non-residents acting together when the 60% safe harbour is breached.

It is interesting to note that the EBITDA approach, limiting interest deductions by reference to the profits of the company, while not the preferred course of action, has not been definitively rejected at this stage. Rather, the document's focus is considering whether the current thin capitalisation regime, based on debt to asset ratios, can be adapted to address some of the disadvantages of this type of thin capitalisation regime, as identified by the OECD in the BEPS Action 4 Final Report. If the changes proposed in the discussion document are not effective, the EBITDA approach could well be re-considered.

Capping interest rates

Although the current transfer pricing regime does limit permissible interest rates, Inland Revenue's concern is that this is not "wholly effective", as no matter how the related party debt is structured, some comparable arms-length debt can always be found to justify the structure and terms

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adopted. Assessing compliance is also complex and resource intensive.

The proposed solution is to cap interest rates on related party debt, with the cap set at the company's ultimate parent's interest cost on senior unsecured debt, plus a margin. Inland Revenue consider this to be a reasonable approximation of the multinational's cost of debt. If the New Zealand company has a credit rating itself, the rate would be capped at the higher of the parent's credit rating for senior unsecured debt plus a margin, and the New Zealand group's credit rating for senior unsecured bonds.

If there is no ultimate parent, the cap will be the interest rate that would apply for the New Zealand group when raising senior unsecured debt.

In addition, to prevent the parent loading the subsidiary with debt to depress their credit rating and justify higher interest rates, the discussion document proposes two further options (inviting submissions without stating a preference):

- Determining credit-worthiness based on an arms-length amount of debt; or
- Deeming all related party debt to be equity for the purposes of determining the borrower's credit rating.

The document offers examples of how both a fixed and floating rate would be calculated, and suggests that guarantee fees would be limited to the margin allowable under the interest rate cap.

Other suggestions include:

- A de minimis rule for groups with debt principal of less than $10m, to which ordinary transfer pricing rules would apply.
- The proposals would apply to banks.
- The rules would apply to all inbound debt, whether it is from a foreign parent to a New Zealand subsidiary, or a foreign subsidiary to a New Zealand parent, and would not apply to outbound debt.
- If the rules are applied the normal transfer pricing rules wouldn't apply.
- Even if the interest cap rules are applied, the anti-avoidance rules in the tax legislation would still apply. As an example, the discussion document states that, in a market with rising interest rates, a company that chooses to break a loan early and re-sets at a higher interest rate would defeat the intention of the rules and could be subject to the anti-avoidance rule.
- Any loan with a period of longer than five years would be treated as having a term of five years, on the basis that a longer term is an "unusual" commercial arrangement.

Rather than adopt the diverted profits tax (DPT) that is being considered by Australia and France, and adopted by the UK, the Government proposes a package of measures that, combined with steps already taken in recent years, plus the OECD recommendations, would in many ways replicate the effect of a DPT

- There would be no transitional rules. The rules would apply to existing arrangements as soon as they are enacted.

Changing asset measurement

Currently, when measuring the debt to asset ratio, a taxpayer will include their gross assets (i.e., all assets on their balance sheet) and their interest bearing debt. Officials are concerned that taking into account gross assets rather than net assets is a non-commercial approach and a lender would be more concerned with a company's net assets, as non-debt liabilities also reduce the assets a company will have available to pay its debt. The discussion document notes that New Zealand is unique in the world in using gross assets when calculating debt to asset ratios.

The proposal is that assets should be measured on a net basis – i.e., net of non-debt liabilities, such as trade debts andprovisions.

Non-debt liabilities would include:

- All liabilities that are not included in the thin capitalisation calculation (i.e., that are not interest bearing debt); *less*
- Any interest free shareholder loans, or loans from a person associated with a shareholder, as such loans are equivalent to equity.

Similar definitions are provided when calculating the debt/asset ratio of the worldwide group.

There is no proposal to grandparent existing arrangements, and the new rules would apply from the first income year beginning after their enactment. Officials consider this delay would be sufficient to enable companies to re-arrange their affairs.

Other proposals

The discussion document has some other suggestions for modifying the interest deductibility rules:

- Assets will have to be valued for the thin capitalisation rules using the values reported in a taxpayer's financial accounts – alternative valuations will no longer be available.
- Assets and debts will have to be measured for thin capitalisation purposes using average values during the year (either quarterly or daily), removing the ability to measure values on the final day of a taxpayer's income year.
- A de-minimis level for the inbound thin capitalisation rules, so long as that debt is not owner-linked debt (i.e., is third party debt).
- Concessions for infrastructure projects that are controlled by a single non-resident, if the project has been established at the request of the Government or another public body. The concession would exempt the New Zealand company from applying the thin capitalisation rules to third party debt. Any interest on related party debt would not be deductible.

- The "acting together" rule, that has only just been introduced, would be significantly strengthened. Where a New Zealand entity controlled by a group of non-residents acting together exceeds the 60% safe harbour debt/asset ratio, any interest on owner-linked debt will be non-deductible. This is much stricter than the current rules which in effect deny interest deductions to the extent that the 60% ratio is exceeded. This rule would apply on a prospective basis – i.e., not to arrangements in force before the enactment date of these proposals.

Comment

These proposals are likely to have a material impact on some New Zealand entities. Companies that are already complying with transfer pricing rules in relation to setting interest levels may find that the first proposal, capping interest rates, does not have a significant impact. However there are arm's length scenarios where a subsidiary's costs are materially above the parent's such that these proposals may not result in an arm's length outcome. The second proposal, to change the way assets are calculated for the thin cap calculation, could tip companies that are close to the 60% debt/asset ratio over the edge and result in interest deductions being denied to those companies. Issues such as the derivative valuation, non-equity funding, deferred tax liabilities, creditors, accruals and provisions will under the proposals all impact a company's debt to asset ratio. Companies who are still sitting on large deferred tax liabilities due to the removal of depreciation on buildings may once again be rueing those changes!

The proposal to require daily or quarterly valuations will add a compliance cost to taxpayers. We've been moving towards a system where many companies do not need to comply with IFRS or even prepare financial statements, so this approach is out of step and an excessive reaction to a minor issue with the existing valuation rule.

Transfer pricing and PE avoidance

The second of the three discussion documents, *BEPS –Transfer pricing and permanent establishment avoidance* focuses on strengthening existing rules on transfer pricing and PE avoidance. The Government is concerned that our transfer pricing and PE rules are too easily worked around, and although New Zealand proposes to adopt a number of changes recommended by the OECD to address this issue, the Government is concerned these changes won't go far enough.

Rather than adopt the diverted profits tax (DPT) that is being considered by Australia and France, and adopted by the UK, the Government proposes a package of measures that, combined with steps already taken in recent years, plus the OECD recommendations, would in many ways replicate the effect of a DPT.

Source and PE avoidance

1. A new PE anti-avoidance rule will be introduced to prevent large multinationals (more than EUR750m global turnover) structuring to avoid having a PE in New Zealand. A non-resident entity will be deemed to have a PE in New Zealand if a related entity carries out sales-related activities for it here, some or all of the sales income is not attributed to a New Zealand PE of the non-resident, and the arrangement defeats the purpose of the relevant double tax agreement's (DTA) PE rule. A related entity would be either associated or commercially dependent. The rule would also apply where an unrelated third party entity is interposed between the non-resident and the New Zealand customer, if all the other attributes outlined above are present.

   The PE will be deemed to exist for the purpose of any applicable DTA and the non-resident's supplies in New Zealand will be deemed to be made through that PE. New Zealand will tax sales income that is attributable to the PE.

2. Income will be deemed to have a source in New Zealand if it is attributable to a New Zealand PE, either under a DTA, or, if no DTA applies, under New Zealand's model treaty PE article, which will be incorporated into domestic law to apply as an additional source rule. This would include circumstances where a non-resident is deemed to have a PE under the previously discussed proposal that a non-resident may in some circumstances be deemed to have a New Zealand PE.

3. A non-resident's income will have a source in New Zealand if the income would have a source if one treated the non-resident's wholly owned group as a single entity. This would prevent groups dividing up activities between group members to prevent New Zealand source income arising.

4. The life insurance source rules will be amended to remove a preference currently available to insurers based in Canada, Russia and Singapore. No deductions will be available for the reinsurance of life policies if the premium income on that policy is not taxable in New Zealand. Further, any life insurance policies that are not subject to New Zealand tax under the life insurance rules will be subject to the FIF rules.

Transfer pricing rules

The transfer pricing rules will be aligned with OECD's guidelines and Australia's new transfer pricing rules, including amendments to:

- Focus on the economic substance of a transaction and disregard the legal form if the two do not align;

- Allow transactions to be reconstructed or disregarded where they are considered by the IR to be non arm's-length, to align with a "commercially rational arrangement that would be agreed by independent businesses operating at arm's length";

- Specifically refer in transfer pricing legislation to arm's length conditions and the latest OECD Transfer Pricing guidelines (which incorporate the BEPS actions 8–10 revisions);

- Reverse the burden of proof for demonstrating that the conditions of an arrangement are arm's length conditions so that it sits with the taxpayer, rather than the Commissioner of Inland Revenue. Master and local file transfer pricing documentation would be required on request by Inland Revenue;

- Increase the "time bar" for transfer pricing issues from four to seven years;

- Extend the ambit of the transfer pricing rules so that, in addition to applying to transactions between associated parties, they will apply to investors that "act together", in the same way that the newly amended thin capitalisation rules now apply to such groups of investors.

Administrative rules

To beef up their ability to enforce the transfer pricing and PE avoidance rules on uncooperative multinationals, the Government propose additional "administrative" rules that would generally apply from enactment of the relevant legislation. These rules would generally only apply to large multinationals (over EUR750m worldwide revenue):

- If a large multinational does not cooperate with Inland Revenue (for example, by not providing information within statutory timeframes, failing to respond to Inland Revenue correspondence, or providing misleading information), then it would be categorised as non-cooperative. Inland Revenue would at that point be able to commence the disputes process by issuing a notice of proposed adjustment (NOPA) based on the information available at the time.

- Tax in dispute would have to be paid earlier in the disputes process than it is currently, where the tax in dispute relates to transfer pricing, the amount of New Zealand sourced income, and the application of a DTA.

- Inland Revenue will be able to collect tax payable by a large multinational from any wholly owned group member in New Zealand, or the related New Zealand entity in the case of the new PE avoidance rule.

- Inland Revenue will have enhanced information-collecting powers, enabling it to request information from large multinationals relating to non-resident group members. Failure to comply with such requests could lead to conviction for an offence, fines of up to $100,000, and/or denial of deductions.

Inland Revenue will be able to collect tax payable by a large multinational from any wholly owned group member in New Zealand, or the related New Zealand entity in the case of the new PE avoidance rule

Comment

The proposed changes to the transfer pricing rules are extensive and wide ranging. Inland Revenue is seeking far more power and discretion in applying the transfer pricing regime and many of the changes will impose significant additional compliance costs on taxpayers.

Changes to deemed PEs, reconstruction powers and the increased focus on economic substance will impact many commercial arrangements and impose compliance costs on multi-nationals operating in New Zealand.

The changes in administrative rules would give Inland Revenue significantly greater powers. In particular the new penalty provisions, greater information gathering powers and the requirement for earlier payment of disputed taxes may embolden Inland Revenue to more aggressively audit transfer pricing positions. The extended time bar will result in taxpayers having the increased uncertainty of transfer pricing positions open for a period of seven years.

Implementing the Multilateral Instrument

The third document, an Officials' issues paper rather than a discussion document, has the rather self-explanatory title *New Zealand's implementation of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS*. The multilateral convention (referred to as either the

multilateral instrument or MLI) will modify some of New Zealand's existing DTAs to align them with OECD recommendations.

The OECD BEPS Action Plan included recommendations to amend DTAs. As there are many thousands of DTAs currently in force around the world, the only rational way to align all the DTAs within a reasonable period of time was for the OECD to present a multilateral instrument that all countries could adopt, thereby aligning the DTAs of all participating countries at the same time. The resulting MLI was published in November 2016, and the discussion document states that New Zealand expects to sign the MLI in mid-2017, after which a domestic ratification process would be followed.

Adopting the MLI in relation to any particular DTA will require the cooperation of both signatories to the DTA. That DTA will then be a Covered Tax Agreement (CTA). The process by which a particular CTA will enter into force takes some time, and the discussion document notes it is likely that the earliest modifications to current DTAs could apply is from 2019.

Four key areas will be addressed by the adoption of the MLI:

- **Anti-abuse rule**: A principal purpose test (PPT) will be inserted into CTAs. A PPT is equivalent to an anti-avoidance rule.
- **PE anti-avoidance rule**: The definition of a PE will be strengthened to prevent multinationals structuring their affairs deliberately to fall outside the definition.
- **Hybrid mismatches**: Hybrids allow entities operating in more than one jurisdiction to exploit differences in the tax laws between those jurisdictions, and avoiding paying tax in either. Changes to the CTA will neutralise any advantage obtained by use of hybrids.
- **Effective dispute resolution**: A taxpayer will be able to seek binding arbitration when the revenue authorities of two jurisdictions disagree on the correct interpretation and application of a particular DTA.

Comment

Unlike some other countries, New Zealand's commitment to signing up to the MLI has already been signalled and is reiterated in the issues paper. If New Zealand continues down this path, it will be key for New Zealand taxpayers that the Inland Revenue provides adequate resources to help taxpayers when other jurisdictions try to stake a claim over income New Zealand has already taxed.

New use of money interest rules for provisional taxpayers

By Veronica Harley

On 21 February 2017, the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 received royal assent. This Act contains important business tax changes that will have widespread application to many taxpayers from the 2018 income year.

The most significant change is that there will be a reduction, or in some cases elimination of use of money interest (UOMI) charges for many taxpayers that have committed to and paid provisional tax based on the standard uplift method.

Taxpayers using the standard uplift method

Currently UOMI on provisional tax applies with effect from the first instalment date. When a return is filed, the actual residual income tax (RIT) is treated as if it were due and payable in even amounts on each provisional tax instalment due date and compared to the provisional tax instalments made. From the 2018 income year, UOMI will only apply from the date of the third instalment for taxpayers who either:

- use the standard uplift method (i.e. the 105% or 110% uplift rule) of calculating provisional tax for all instalments; or
- use the standard uplift method for all instalments due before the final one and choose to use the estimation method for the final instalment.

As the final instalment generally falls almost one month after balance date, the theory is that taxpayers should be able to more accurately determine at this point what their actual RIT will be, and square up any tax liability on the third instalment, thus incurring little or no UOMI at all. To the extent a taxpayer cannot accurately determine their tax liability by the final instalment due date, UOMI will only be charged from the final instalment date until it is paid in full, which should still shave quite a bit off the current UOMI bill.

Officials were concerned that the removal of UOMI could create opportunities for related parties to switch between the uplift and estimation methods to avoid UOMI and potentially also provisional tax by manipulating income between them. Therefore, the rules require all "provisional tax associates" of the provisional taxpayer, where they are also liable to pay provisional tax, to either use the standard uplift method for all instalments; or use the standard uplift method correctly for the first two instalments before switching to the estimation method for the final instalment, or use the GST ratio method. The definition of a provisional tax associate will capture other companies within the same wholly owned group or relationships between a company and a person (other than a company) where that person has a voting or market value interest of 50% or more in the related company.

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The most significant change is that there will be a reduction, or in some cases elimination of use of money interest (UOMI) charges for many taxpayers that have committed to and paid provisional tax based on the standard uplift method

[1] Typically this would be the first and second instalments for taxpayers that pay in three instalments

Example 1:

- ACME Ltd is a provisional taxpayer with a March balance date that pays provisional tax in three instalments. ACME is owned by Rudy (75%) and Chuck (25%).
- ACME's RIT for the year ended 2017 was $250,000.
- ACME chooses to pay 2018 provisional tax instalments using the standard uplift method based on 105% of 2017 RIT and makes three instalments of $87,500 on each due date totalling $262,500. Provisional tax instalments are due on 28 August 2017, 15 January 2018, 7 May 2018).
- The 2018 tax return shows actual RIT of $270,000.

As Rudy owns 50% or more of ACME, he will be treated as a provisional tax associate of ACME. Therefore if he is a provisional taxpayer, he will also be required to pay provisional tax on a standard uplift basis (as least for all instalments up until the final one) or he could use the GST ratio method.

As ACME has used the standard uplift method and made the correctly calculated instalments on time, ACME's 2018 RIT of $270,000 is treated as being due and payable on the third instalment (rather than divided by three instalments as it is currently). In this case UOMI would only apply from 7 May 2018 on the difference between actual 2018 RIT of $270,000 and the total instalment amounts paid of $262,500, i.e. of $7,500.

However, if ACME could accurately calculate what the 2018 RIT would be by the time the third instalment is due on 7 May 2018, it could instead make a final instalment of $95,000 so that there is no unpaid tax and therefore no UOMI.

Taxpayers can still choose to estimate their RIT if the actual RIT will be lower than what is payable under the standard uplift method. UOMI will apply from the first instalment per current rules if they choose to use the estimation method for an instalment which is not the final instalment (i.e. the first or second instalment, assuming three instalments are payable).

However, taxpayers that switch to the estimation method for the last instalment will only incur (or receive) UOMI from their final instalment date provided payments have been correctly paid in accordance with the standard uplift method up until the final instalment. The following example illustrates this:

Example 2:

Same facts as above except:

- ACME initially chooses to pay 2018 provisional tax instalments using the standard uplift method based on 105% of 2017 RIT and makes the first two instalments of $87,500 on each due date totalling $175,000.
- The 2018 draft tax return shows actual RIT will only be $150,000.
- ACME decides to switch to the estimation method for the final instalment and estimates RIT at $150,000

ACME has used the standard uplift method for the first and second instalments and paid the correct instalments on time before switching to the estimation method for the final instalment. In this case unpaid tax is deemed to be the actual RIT of $150,000 less the total amount of the relevant instalments for the year (i.e. 2 x $87,500 = $175,000). However, in this case a negative amount is treated as overpaid tax with no payment due and payable on that date.

UOMI would only be receivable on the overpaid tax from the final instalment date of 7 May 2018 until a refund is received.

Note however, that if ACME had estimated its RIT on the second instalment date, UOMI rules would apply from the first provisional tax instalment (as they do currently).

It should be noted that if a taxpayer doesn't pay or makes an incorrectly calculated instalment (not being the final one) on or before its due date, then UOMI will apply. The unpaid tax on which UOMI is calculated is deemed to be the lowest of:

- the amount a taxpayer was liable to pay for that standard uplift instalment less the amount paid in relation to that instalment; or
- 1 divided by the number of instalment dates for the tax year multiplied by their actual RIT for the year less the amount paid in relation to that instalment.

UOMI will then apply on that unpaid amount from the relevant instalment date until the date the tax is paid.

Example 3:

- Same facts as example 1 above except, ACME missed paying the second instalment on time and paid this late on 28 March 2018.

Although ACME has used the standard uplift method, it has not correctly paid an instalment on time. The amount of unpaid tax that ACME has in relation to the second instalment is the lowest of:

- the amount a taxpayer was liable to pay for that standard uplift instalment (i.e. $87,500) less the amount paid in relation to that instalment (i.e. nil); or

- 1 divided by the number of instalment dates for the tax year multiplied by their actual RIT for the year (i.e. 1/3 x $270,000 = $90,000) less the amount paid in relation to that instalment (i.e. nil).

The lesser of these two amounts is the standard uplift liability that was due of $87,500 so UOMI will be calculated on this from the second instalment date of 15 January 2018 until it was paid on 28 March 2018. It should also be noted that a late payment penalty would likely apply for missing the second payment and that no grace period operates when the late payment is a provisional tax payment.

There are a few other points to note about these rules:

- To qualify to use these rules, there must be no "provisional tax interest avoidance arrangement"; in other words the provisional taxpayer must not be part of any arrangement to manipulate their RIT so as to benefit from this rule. Officials have now released guidance and provided a few examples that would be covered by this rule. For example, where shareholder-employees of a company and the company switch back and forth from one year to the next between leaving profits in the company to paying out all profits via shareholder salaries and estimating to nil as necessary where there is no commercial purpose for doing so other than to fall within the concessionary UOMI rules so that no UOMI is payable.

The rule has been pretty broadly drafted however and the onus will be on taxpayers to be able to demonstrate there is a commercial reason for taking a certain tax position where there is a change in long standing approach, structure or use of provisional tax methods to prove it was not to work around these rules.

- Tax pooling can continue to still be used by taxpayers who would rather estimate earlier, may not have paid enough to clear their liability in full at the last instalment or for taxpayers who end up being subject to UOMI because they fail to pay or miscalculate an instalment.

- It has been common to make voluntary instalments of tax over and above the standard uplift payment to minimise UOMI that would apply from the first and second instalments. Under these new rules taxpayers who correctly comply will not need to consider making voluntary instalments until the third instalment date. No UOMI will be receivable by taxpayers who make voluntary instalments above the standard uplift amount prior to the last instalment.

Safe-harbour rule amendment

The safe harbour criteria which prevents the application of the UOMI rules applying at all for provisional taxpayers, has been amended with effect from the 2018 income year. As well at the threshold increasing, the rule has also been extended to cover non-individuals. A taxpayer (whether a company or otherwise) will not be subject to UOMI on provisional tax if the following criteria are met:

- RIT for the tax year is less than $60,000; and

- The taxpayer has paid all three instalments using the standard uplift method (i.e. either the 105% or 110% uplift rule) correctly on or before the instalment date, or they have no obligation to pay provisional tax because RIT in the preceding year was less than $2,500; and

- There is no provisional tax interest avoidance arrangement (in other words the taxpayer has not manipulated its RIT to fall within this rule).

This change will also mean UOMI will not be receivable for any overpayments, but the benefits of not being subject to the UOMI rules at all will be good news for smaller companies that find management of provisional tax difficult to get right. It is of note that if a taxpayer does not pay the required instalment amounts correctly (e.g. payment is late or calculates a payment incorrectly) then the safe harbour rule will not apply.

This change is great news as there are a number of smaller companies currently with RIT around this threshold. It means RIT will be deemed due and payable on their terminal tax date and so UOMI will only apply post terminal tax date to the extent any tax was not paid on the due date.

Final comments

These new measures apply from the beginning of the 2018 income year which for most taxpayers commences on 1 April 2017. All provisional taxpayers should now be turning their mind to how these rules will apply to them. Taxpayers with a standard balance date of 31 March will need to think about these rules in time for their first provisional tax payment due on 28 August 2017. However early balance date taxpayers will have to think about this a little sooner. For specific advice on how these rules apply to your situation, please contact your Deloitte tax advisor.

Are you ready for all the tax changes coming?

By Veronica Harley

1 April 2017 marks the beginning of the 2018 standard tax year. This year, it is significant as there are a lot of tax changes that either come into effect on this date or will start to apply from the beginning of the 2018 income year which for most taxpayers commences 1 April 2017. In this article we have compiled a list of the key enacted changes that you should be aware of. We have reported on all these measures in previous Tax Alerts. Please contact your Deloitte advisor for more information.

From 1 April 2017

- Employers will be required to report share benefits under an employee share scheme via the PAYE system. Employers also now have the ability to withhold PAYE on such benefits (at their discretion). See our other article on this issue of Tax Alert for more details.
- The self-correction threshold under which taxpayers can correct minor errors in their next tax return (and not reopen a past return) is increasing from $500 to $1000 of tax.
- Contractors who are subject to the schedular withholding payment rules will, in most cases, be allowed to elect their own withholding rate without having to apply to Inland Revenue for a special rate. The schedular payment rules will also be extended to contractors who work for labour-hire firms.
- New rules will allow the Commissioner to start disclosing certain taxpayer information and their significant tax debt to approved credit reporting agencies. Inland Revenue will also be able to share certain information with the Registrar of Companies to assist with enforcement of certain offences under the Companies Act 1993.
- From this date it will no longer be necessary to renew RWT exemption certificates annually (instead, RWT exemption certificates are issued for an unlimited period) to reduce compliance costs.

For the 2018 income year

- More companies will qualify to pay FBT on an annual (rather than quarterly) basis as the threshold for PAYE and ESCT increases from $500,000 to $1 million.
- New concessional methods become available for calculating UOMI on provisional tax (refer our article in this issue on these new rules). These rules apply to 2018 provisional tax.
- The threshold for when UOMI applies on under and over payments of provisional tax will change (see our other article in this issue)
- New optional compliance saving methods are available for calculating deductions for the business use of a home office and a motor vehicle.
- The motor vehicle expenditure rules are being extended to certain close companies as an alternative to paying FBT on motor vehicle benefits provided to shareholder-employees.
- With effect from the 2018 income year, taxpayers will have an option to save on compliance by choosing not to determine the amount of deferred employment income accruals that were paid out by the end of the 63rd day following balance date. That is, the whole accrual will simply be added back.

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- The 1% incremental monthly late payment penalty will be removed for provisional and income tax for the 2018 and later income years, GST return periods ending within 8 days before 31 March 2017 and GST return periods ending after 31 March 2017, under or over payments of Working For Families tax credits for the 2018 and later income years and any related civil penalties imposed for these taxes and periods.

The Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Bill was still going through the latter Parliamentary stages as we were compiling this list. There are lots of measures in this bill which take effect on the date of enactment, from 1 April 2017 or the 2018 income year. While the bill is expected to be enacted prior to 31 March 2017, there will be a short window of time for taxpayers to get organised on some of these issues. We will report on these changes once the bill is enacted and the application dates are finalised. In the meantime contact your Deloitte advisor to discuss further.

Employee share schemes – new reporting and withholding obligations

Are you ready?

By Mike Williams and Bo Hsiao

As previously reported in our August 2016 Tax Alert, employer reporting obligations in respect of employee share schemes (ESS) are changing. Under New Zealand law, a benefit derived from receiving shares for less than market value is considered taxable income. Previously there has been no requirement for an employer to report any ESS benefits to Inland Revenue and it has always been the responsibility of the employee to report and pay tax on any income they receive from an ESS through their personal tax return.

However, from 1 April 2017, employers will have a statutory obligation to report this income, with an option to voluntarily withhold tax. As an employer, are you ready to take on this responsibility?

Requirement to report share income

With the enactment of the Taxation (Transformation: First Phase Simplification and Other Measures) Act 2016, employers will be required to report ESS income to Inland Revenue by disclosing the amount of income from shares in the Employer Monthly Schedule (EMS) Pay As You Earn withholding report from 1 April 2017 onwards.

Whilst reporting is mandatory, withholding tax is voluntary.

ESS benefits are classified as an "extra pay" and therefore the benefit is income for the purposes of student loan deductions, child support payments and working for family tax credits. ESS benefits are not liable for KiwiSaver or ACC earner's levy.

Where to Report?

Employers will use the current employer monthly schedule (IR348) to report ESS benefits. The benefits will be reported as gross earnings not subject to ACC. The EMS form will not change and there will be no separate field where ESS benefits are to be recorded. Rather bizarrely, we understand from discussions with the Inland Revenue that this mechanism of reporting is likely to automatically create an error report in the Inland Revenue system as the gross pay and tax ratios will not match the PAYE tables where no tax is withheld from the ESS income. Where this is the case, Inland Revenue representatives are recommending that employers contact Inland Revenue before filing an EMS containing ESS income, to notify Inland Revenue of the name and IRD number of those employees affected.

We understand that this is a temporary issue until Inland Revenue migrates to the new "START" computer system, at which point the ESS forms can be redesigned.

When to Report?

For employers who pay monthly, this means that reporting will be included in the relevant EMS for which the share benefit accrues to the employee (i.e. if an ESS event occurs on 7 March 2018, it would be included in the employer's EMS for the period ending 31 March 2018, due by 20 April 2018.

For employers that are considered to be a "large employer" due to having an annual gross Pay As You Earn (PAYE) including Employer Superannuation Contribution Tax (ESCT) exceeding $500,000 , the event is deemed to arise in the pay period following that in which the taxable event occurs.

This therefore means that if an event occurs say before 15 March 2018, reporting must be made in the EMS due to be submitted by 5 April 2018 but if an event occurs after 15 March 2018 reporting is made in the EMS to be submitted by 20 April 2018. This is intended to give employers more time to collate relevant information if they are intending to withhold tax.

Whilst this is a concessionary measure, timing is still extremely tight. This is going to be particularly troublesome where employees may be a member of a parent company's overseas ESS scheme or where employees have flexibility around the timing of ESS exercise events. In such cases, New Zealand employers need to ensure they are aware of when such events occur and have access to necessary information from either the overseas parent or the employees themselves. Employers who have regular monthly "share match" schemes are also going to need to be able to report on a regular monthly basis.

Electing to withhold

As mentioned above, electing to withhold PAYE on the share income is voluntary. Employers are able to make the election by calculating and withholding PAYE and disclosing this amount through the EMS when declaring the income.

Voluntary withholding can be applied on an employee by employee basis and would generally be with the agreement of each relevant employee. If the employer decides to withhold on all equity events this should be notified to relevant employees and agreement sought as to how withholding would be funded (such as automatic share sales etc.). It is important to relay to the employee that the tax will be deducted from their salary and they may not actually receive income in the form of cash from the investment.

In most scenarios, withholding PAYE would reduce the likelihood that employees would have exposure to prepayments of provisional tax and the requirement to file an income tax return, provided they have no other income sources that do not have tax withheld at source.

When no election to withhold made

Should the employer choose not to withhold on ESS income, employees will be required to file a New Zealand income tax return and will have an obligation to pay any tax due on the income reported in the return.

Our experience so far

Deloitte has worked with a number of New Zealand employers following the announcement of these legislative changes and it is not uncommon for employees to have overlooked their reporting and tax payment requirements in the past.

As a result of these changes, employees need to be aware that Inland Revenue will have far greater oversight over income earned from ESS schemes and will be able to identify discrepancies if employees do not report the appropriate income in their annual income tax returns.

Employers may wish to undertake a communication exercise to advise employees that from 1 April 2017 benefits will now be reported to the Inland Revenue and that employees who may be used to declaring this income separately in their income tax returns, no longer need to separately disclose this amount as it will be included in their gross earnings.

Where ESS income has not been reported in the past employees may need to make a voluntary disclosure of any unpaid taxes.

Please contact your usual Deloitte tax advisor for further information on these changes.

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Whilst reporting is mandatory, withholding tax is voluntary

Feasibility expenditure – how the law applies (at the moment)

By Robyn Walker

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Feasibility has been a regular feature of our Tax Alert articles for a few years now. From the time Inland Revenue first started consulting on the deductibility of feasibility expenditure way back in 2004, to when the original interpretation statement (IS 08/02) was released in 2008, through to the *Trustpower* judgments of the High Court (2013[1]), Court of Appeal (2015[2]) and Supreme Court (2016[3]) there has been a lot of thought given to how this expenditure should be treated.

Following the Supreme Court decision in July 2016, we commended Inland Revenue for quickly rethinking IS 08/02 in light of that verdict and producing a draft revised interpretation statement in September 2016. Submissions were taken and we now have a finalised position from Inland Revenue on the topic: "IS 17/01: Income tax - deductibility of feasibility expenditure".

Helpfully for taxpayers, having this statement released in February does give those taxpayers still working on their 2016 tax returns a little bit of time to ensure they are taking tax positions consistent with Inland Revenue's interpretation of the law.

The finalised statement is not materially different from the draft version released last September (refer our previous Alert article). The key test in paragraph 129 of IS 17/01 is (emphasis added):

"Therefore, in the Commissioner's view, expenditure is likely to be deductible in accordance with the Supreme Court decision if it is of a type incurred on a recurrent basis as a normal incident of the taxpayer's business and it satisfies one of the following:

- the expenditure is not directed towards a specific capital project; or
- if the expenditure is directed towards a specific capital project, the expenditure is so preliminary as not to be directed towards materially advancing a specific capital project – or, put another way, the expenditure is not directed towards making tangible progress on a specific capital project."

There have been some tweaks to the draft. For example, Inland Revenue have sought to clarify that an amount will be capital as long as the expenditure was intended to achieve either material advancement or tangible progress, it is not necessary for the expenditure to meet both these tests (although they often would).

The final statement also brings in a new concept of the expenditure being incurred on a recurrent basis. IS 17/01 states:

"The Supreme Court also found that, in some circumstances, expenditure associated with early stage feasibility assessments could be seen as a normal incident of business (at [72]). The Court was considering this in the context of Trustpower's fact situation. The nature

[1] *Trustpower Ltd v CIR* [2013] NZHC 2,970

[2] *CIR v Trustpower Ltd* [2015] NZCA 253

[3] *Trustpower Ltd v CIR* [2016] NZSC 91

of Trustpower's business was such that it was regularly exploring new generation possibilities. In this regard, incurring feasibility expenditure was a normal incident of its business. It is not clear that the Supreme Court would have been as willing to find that preliminary expenditure could be deductible if the expenditure in question related to a one-off capital expansion for example. Consequently, the focus of this statement is feasibility expenditure that is (or will be) incurred on a recurrent basis by a taxpayer as an ordinary incident of its business. It is possible that feasibility expenditure that is not incurred on a recurrent basis could be deductible in some circumstances. However, this statement does not consider these situations."

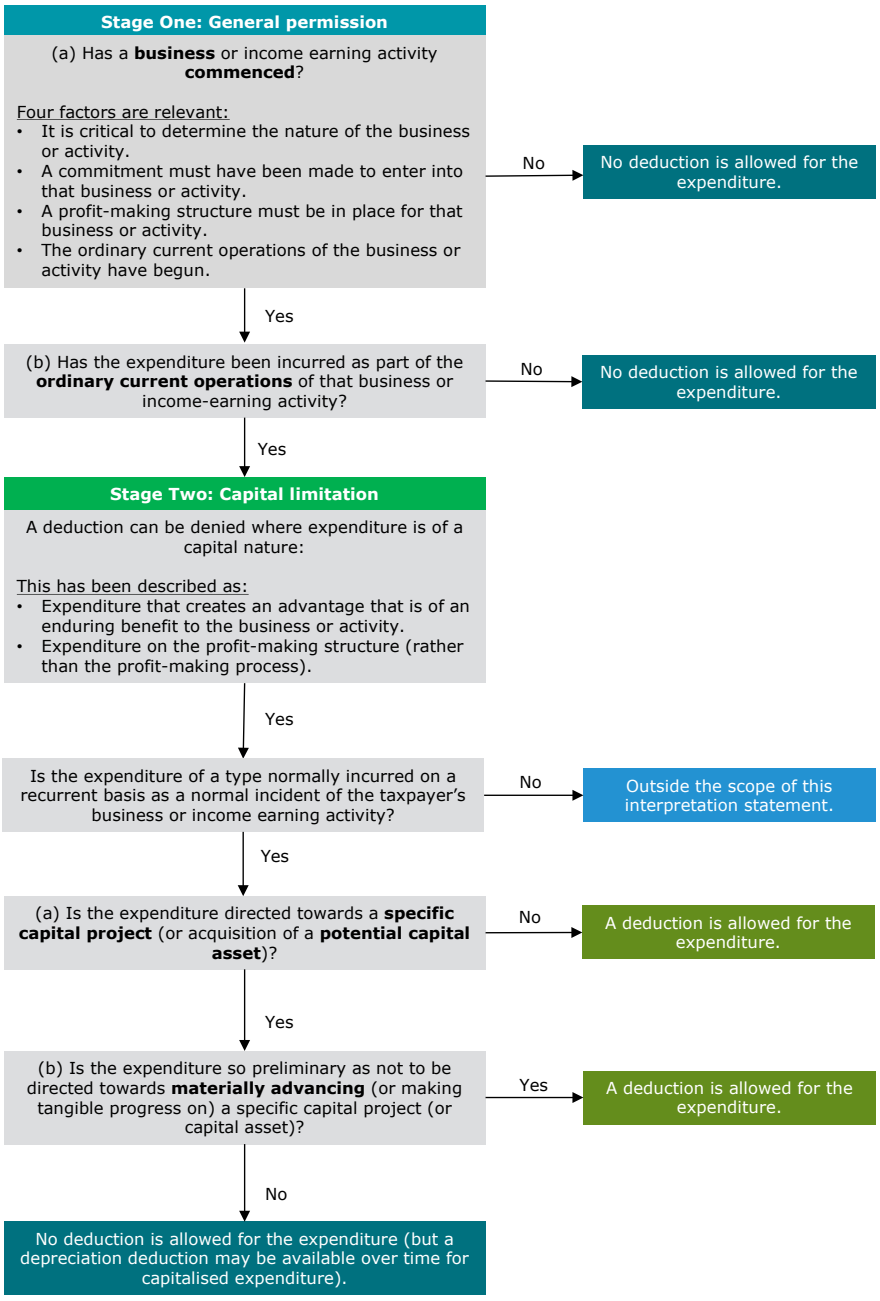
The decision to restrict the interpretation statement to types of expenditure which are recurrent in nature may frustrate some, but it does provide a link back into classic capital/revenue tests which have been being applied for many years .

IS 17/01 retains the length of its predecessor, however it has a new added feature of a flow chart to help easily step taxpayers through the tests.

So is this the last word on feasibility? Not likely. While IS 17/01 provides a useful summary of the law following the Supreme Court decision in Trustpower, the law just isn't that great for taxpayers looking to innovate and grow. Fortunately the Tax Policy Work Programme has policy work underway to reform the law in this area. In our view, it can't come soon enough.

For more advice on how IS 17/01 applies to your feasibility expenditure please contact your usual Deloitte Advisor.

Feasibility chart



[4] See *BP Australia Ltd v FCT* [1965] 3 All ER 209

Time to get organised for tax year-end

By Emma Marr and Veronica Harley

As we gallop towards 31 March we should all be thinking about tax matters that need to be tidied up at year-end and to make sure we're aware of all the changes that have been made in a very busy year for tax reform. Even if you don't have a 31 March year-end, it's a good time to pause and review what has changed in the last year, to ensure that you've made any necessary changes to your tax calculations.

Tax reforms

A number of important reforms have recently come in to force, or are about to. For example, new rules relating to feasibility expenditure, use of money interest rules on provisional tax, withholding tax on contractor payments, and the R&D cash-out tax credit rules. The Government has also recently released new proposals to reform the transfer pricing, permanent establishment, and thin capitalisation rules, and these are briefly highlighted in this article. We recommend engaging early to determine if the proposals will affect your business, so that you are prepared when they are enacted.

Is an amount taxable income or not?

A major part of performing a tax calculation is identifying whether your profit and loss account includes anything that isn't taxable income, and whether it omits anything that is. Although often the same adjustments will be made every year, it is useful to consider whether there have been any new sources of income, unusual or one-off receipts during the year, and to consider how they are treated for tax purposes. Any new rules introduced during the year will impact on this exercise so taxpayers need to be aware of new developments when preparing their calculations. The timing of income is also important, as income might be taxable in a different year than it is recognised for accounting purposes. Generally, income is returned in the period it is "derived." Often credit notes, disputed sales and rebates which give rise to timing issues can be easily overlooked.

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

Am I claiming all the deductions I'm entitled to?

Similar issues arise with claiming deductions, as the tax treatment of some types of expenditure differs from its accounting treatment and generally capital expenditure is not deductible for tax purposes. Again, many adjustments to tax deductions will be the same from year to year, but you should always review any large or unusual expenditure items that have arisen during the year. Accounts such as repairs and maintenance, legal and consulting fees should be reviewed to remove any capital expenditure that can't be deducted immediately, or at all. There is a de minimus exception for legal fees if the total amount spent in a year is equal to or less than $10,000, but if expenditure exceeds that amount the entire amount will need to be analysed to ensure it is deductible.

The tax treatment of feasibility expenditure has changed following a Supreme Court decision in 2016 so Inland Revenue has now published new guidance on how to apply this decision. Generally feasibility expenditure will be deductible when the taxpayer often engages in feasibility activities. Expenditure will also only be deductible where it is not directed towards a specific capital project, or if it is, the expenditure is so preliminary it doesn't materially advance that project. See the full article on this elsewhere in this issue of Tax Alert.

Remember to check common non-deductible items such as penalties and fines and 50% of entertainment expenditure (with some exemptions – for example, entertainment incurred overseas

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is 100% deductible).

Timing rules apply to deductions, and generally expenditure is deductible when it is "incurred," therefore much like with income, expenses may need to be recognised in different tax periods. Prepayments of expenditure (e.g. rent, insurance, consumables, service contracts, etc.) should be considered.

Bad debts are deductible as an expense only in the year that they have been written off, so bad debts should be reviewed to ensure genuine bad debts, or partial bad debts, are properly written-off for tax purposes before year-end.

Tax Depreciation

It is good practice to review tax depreciation rates for new assets, and remember you can depreciate assets for the full month of purchase, not just the day of purchase. Remember that any assets costing less than $500 (low value assets) can be deducted immediately, but not if several low value assets are purchased together at the same time from the same supplier and have the same depreciation rate – such assets must be depreciated.

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

Trading stock

The value of trading stock should be reviewed at year-end. Generally trading stock will be valued at cost price. Market selling value which takes into account factors such as obsolescence, slow moving stock, etc. may be used only if it is lower than cost. Where market selling value is used, it must be substantiated with sufficient evidence such as sales records from before and after balance date. Your Deloitte advisor can help you determine whether you have sufficient support to use market selling value.

Smaller taxpayers may qualify to use low-turnover valuation methods which involve less compliance.

Using and keeping your losses

Prior year tax losses might be able to be carried forward and offset against income this year, depending on the type of entity that has incurred the losses. Companies must comply with continuity of shareholding rules, and group companies may be able to use losses from other group companies, subject to grouping and continuity rules. Therefore a key point to check for companies is whether there has been any change in the ultimate shareholding which could cause a forfeiture of losses. It is important to notify your tax advisor of any changes in shareholding prior to any shareholding change so that action can be taken to preserve or manage the use of losses if possible.

Imputation credit accounts for companies

All New Zealand companies (and certain Australian ones) must maintain an imputation credit account (ICA) to record the level of imputation credits a company has. An annual return is filed to 31 March regardless of balance date. If your imputation credit account is in debit at 31 March, you'll be liable for a penalty equal to 10% of the amount of the debit. A debit balance will generally arise because a company has paid out more imputation credits to shareholders than it had available or there has been a breach in shareholding continuity which results in forfeiture of imputation credits.

We recommend checking the imputation credit account prior to 31 March so any debit balance can be addressed in time.

Transfer pricing for related party transactions

Transfer pricing is a hotter topic than ever, and taxpayers who have related party cross border transactions can expect no mercy if they are not complying with transfer pricing rules. All intercompany or related party transactions and loans should be reviewed, and taxpayers without documentation to support transfer prices should be seriously considering the level of risk that this exposes them to. If current proposals are enacted, the burden of proof in transfer pricing matters is going to shift from Inland Revenue to the taxpayer, so

there is no better time than now to tidy these matters up.

Thin capitalisation and interest deductions

Likewise, the thin capitalisation rules, which protect the New Zealand tax base from over allocation of interest expenditure to New Zealand, are in for a major overhaul and will get a lot tougher if recently announced proposals are enacted. If a company's debt levels are too high compared to equity, it may have to include an amount of income in its tax calculation to offset the additional interest deductions arising from the high debt levels. The rules can apply to both New Zealand residents with outbound investments as well as inbound investments by non-residents.

If you are close to the thin capitalisation limit now, the new rules may well tip you over the limit. This is a good time to review debt levels and get in touch with your Deloitte advisor to help you determine what effect the proposed changes will have on your thin capitalisation ratio.

Provisional tax

As the tax year is almost over for 31 March balance dates, this is a good time to review your provisional tax payments and check whether you are currently under- or over-paying before the third provisional tax instalment is due on 7 May 2017 . For those taxpayers on the standard uplift, making voluntary instalments can be a good way of managing any use of money interest that may be payable. If you have underpaid and have a use of money interest exposure, consider using tax pooling to manage this cost. Remember that new, more taxpayer-friendly provisional tax payment options are available from the 2018 income year. See the article outlining these new rules in this issue of Tax Alert.

New rules for withholding on contractor payments

From 1 April 2017 contractors receiving 'schedular payments' will be able to elect their own withholding rate without having to apply to Inland Revenue for a special tax code. 'Schedular payments' are a wide range of specified payments, including those made to non-resident contractors, company directors, farm workers, commercial cleaners, labourers, entertainers, models, insurance agents, and sphagnum moss collectors (a personal favourite).

Minimum rates apply – non-residents and contractors with a temporary work visa cannot elect a rate below 15%, for all other contractors the minimum is 10%. Standard rates of between 10.5% and 33% apply if the contractor does not elect a rate, based on the particular activity the contractor is performing. If the contractor doesn't supply their name or IRD number to the payer, penalty rates of 20% (non-resident companies) and 45% (all other contractors) apply. Contractors who do wish to elect their own rate must provide notification to the payer, and more than one change within 12 months requires the consent of the payer. These rules will also apply to contractors working for labour-hire firms.

Tax return filing

Tax returns are generally due by 7 July each year, unless the taxpayer is registered with a tax agent and has an extension of time for filing to 31 March in the following year. Taxpayers with a late balance date (from 1 April to 30 September) must file their returns on the 7th day of the 4th month after the end of the taxpayer's year, unless registered with a tax agent.

If the taxpayer persistently fails to file by the 31 March due date they will lose the extension of time and a period of good compliance is necessary before the Inland Revenue will allow a taxpayer to extend their filing date again.

Remember that the four year time bar rule applies from the end of the tax year in which the taxpayer files the tax return, so filing a return just one day later on 1 April 2017 will extend the time bar period by another whole year.

Conclusion

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

A number of important reforms have recently come into force or are about to. For example, feasibility expenditure, use of money interest rules on provisional tax and the R+D cash-out tax credit rules

A snapshot of recent developments

Business tax bill receives royal assent

On 21 February 2017, the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 (BT Act) received royal assent. Significantly, the BT Act aims to simplify business tax processes (especially for small to medium businesses) and includes changes to the provisional tax and use of money interest (UOMI) regime.

The BT Act also tightens the disclosure rules for foreign trusts and implements the G20/OECD standard for the Automatic Exchange of Financial Account Information to effectively counteract offshore tax evasion. Inland Revenue has released a special report setting out more detail on some of the above measures. Look out for the other articles in this issue which cover the UOMI and business tax measures which will apply from 1 April 2017.

Closely Held Companies Bill

Further amendments in the form of two supplementary order papers have been added since the Taxation (Annual Rates for 2016 – 2017, Closely Held Companies, and Remedial Matters) Bill was reported back late last year. Supplementary Order Paper No 260 (SOP) was introduced on 9 February 2017 to provide for deductibility of seismic costs where an earthquake prone notice has been issued for the building under section 133AK of the Building Act 2004. SOP No 261 includes technical changes to the debt remission proposals so that they operate as intended. This SOP further provides measures to enable businesses affected by the Kaikoura earthquake to defer depreciation recovery income in certain situations.

As we were compiling Tax Alert, this Bill has completed its second reading in Parliament. It is however expected to be enacted before 31 March 2017.

Draft interpretation statement on New Zealand patents

On 28 February 2017, Inland Revenue released a draft interpretation statement, entitled PUB00262: *Income Tax – Treatment of New Zealand Patents* ("draft IS"). The draft IS will only apply to patents registered and applicable for use in New Zealand under the Patents Act 2013. Some of the Commissioner's views have changed because of legislative changes, including views on the treatment of:

- renewal fees, which are now considered to be revenue expenditure and deductible in the year incurred (the previous statement treated renewal fees as part of the depreciable cost of the patent); and
- expenditure for underlying intangible items after asset recognition, which are now considered to be depreciable.

Submissions on the draft IS are due 11 April 2017.

Court of Appeal dismisses Queenstown Airport Corp's appeal

In a decision released on 27 February 2017, the Court of Appeal has dismissed an appeal by Queenstown Airport Corp Ltd, confirming the High Court position that the Commissioner was correct in declining the depreciation deduction for a runway end safety area and supporting embankment.

Goods and Services Tax – single supply or multiple supplies

On 22 February 2017, Inland Revenue released a draft interpretation statement, PUB00228: Goods and Services Tax – single supply or multiple supplies (Statement) for re-consultation. This Statement sets out the general principles for determining whether a supply of multiple elements (supplied together in a single transaction) is a single composite supply (with one GST treatment) or multiple separate supplies (that may have different GST treatment).

The deadline to comment on this Statement is 22 March 2017.

Australian tax update: GST on low value imported goods

Australia has introduced its low value goods legislation which imposes GST on offshore sales of low value goods to Australian consumers and will cover any goods valued at AUD 1,000 or less at the time of supply made on or after 1 July 2017.

GST and unit trust QWBAs

Inland Revenue released two draft Questions We've Been Asked: PUB00277aa *GST treatment of fees payable to manager of a unit trust* (AA QWBA) and PUB00277bb *GST treatment of outsourced services in relation to a unit trust* (BB QWBA).

The AA QWBA concludes that fees payable to the manager of a unit trust are not subject to GST as they are consideration for an exempt supply as a financial service under section 14(1)(a) of the Goods and Services Act 1985 (GST Act). Instead, a contract with investors should qualify as a financial service, which is exempt under this section.

The BB QWBA concludes that, in the event where services for a unit trust are provided by a third party to a manager of a unit trust, the supply of administrative services is a GST taxable supply. In the event where investment management services are supplied by a third party (and the third party has full control over investment decisions), this supply is exempt as a financial service under section 14(1)(a) of the GST Act.

GST Ruling on traffic enforcement activities by local authorities

Inland Revenue has finalised Public Ruling – *Goods and Services Tax – Traffic enforcement activities by local authorities – GST output tax on infringement fees retained – Treatment of fines – GST input tax on acquisition of goods and services* (Public Ruling). It is the Commissioner's view that a traffic infringement is not subject to GST and input tax deductions are available to the extent that goods and services are used in traffic law enforcement services or in making taxable supplies.

PUB00291: Disposition of Real Property for Inadequate Consideration – BR Pub 05/02 to 05/10 – Notice of Withdrawal

Inland Revenue has issued a draft notice of withdrawal of binding public rulings 05/02 – 05/10. These binding public rulings, which consider gift duty and income tax implications of dispositions of real property for inadequate consideration (in the event where part of an estate was either retained by or returned to the vendor by way of a grant of a life estate, lease, or licence), may no longer be applicable in light of the repeal of gift duty and the Court of Appeal's ruling in CIR v Vector Limited (2016) 27 NZTC 22-065.

The deadline to comment on this draft notice of withdrawal is 21 March 2017.

Basic compliance package process – update

In the latest edition of Inland Revenue's Large Enterprises newsletter, Inland Revenue has reported back on the 2015 basic compliance package (BCP) process. For 58% of taxpayers, no further action resulted. However, 38% of taxpayers were required to provide further information to Inland Revenue and 4% of taxpayers received an audit letter. Inland Revenue has provided a list of some of the common issues arising. As large taxpayers will need to submit the BCP for the 2016 year by the 31 March 2017, these issues could be worth double-checking now.

For example:

- Issues with fixed assets and the tax depreciation calculation;
- GST (credit or zero-rating issues, underpayments, issues in GST apportionment methodology and incorrect treatment of capital raising costs);
- Transfer pricing (related party purchases not being at arm's length);
- Breaches in continuity of shareholding not reflected in losses to carry forward or imputation credit accounts;
- Loss (errors in forward/carry forward balances, loss offsets and/or subvention payments);
- Imputation credit accounts (debit and credit entry errors and in the carried forward balance); and
- Unpaid non-resident withholding tax on royalties and interest and errors in calculations.

Due to a decrease in the timeliness of the response rate for BCPs for 2015, Inland Revenue are considering further action in relation to the 2016 tax year if the BCP is late or requires follow-up. For assistance with this process please contact your Deloitte tax advisor.

Deloitte Tax Calendar – Last call

This is a final call for orders of our Deloitte tri-fold tax calendar for 2017-18. Our handy calendar contains key tax payment dates, rates and quick tax facts. If you would like a free copy for your desk or for members of your accounting team, please order now as we will close off orders on 20 March 2017. Please click on this link to order. The calendar will be sent out in late March or early April.

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