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Tax Alert

June 2018

Parliament reports back on BEPS changes

By Emma Marr and Bruce Wallace

Changes to debt pricing, thin capitalisation calculations and permanent establishment rules, among other things, are now almost law, following the report back of the BEPS legislation by the Finance and Expenditure Select Committee on 15 May 2018. The Taxation (Neutralising Base Erosion and Profit Shifting) Bill (the **Bill**) will generally apply to income years starting on or after 1 July 2018.

We have outlined the key proposals below, highlighting the changes made by the Select Committee. You can read our December Tax Alert for more detail on the changes as originally proposed, and you can see further detail on the final Bill in the Officials' report. We recommend, if you are looking after tax for a company owned by non-residents or that might have a permanent establishment or a

In this issue:

hybrid arrangement in New Zealand, that you contact your usual Deloitte tax advisor to discuss the impact these changes will have on your company.

Main changes made at Select Committee:

If you're already familiar with the proposals in the Bill, the below is a quick snapshot of the main changes to the Bill since it went to Select Committee.

- Removing the EBITDA test from the list of "high risk" criteria for identifying BEPS behaviour for the restricted transfer pricing rule.
- Extending the allowable difference between a New Zealand borrowers' credit rating and the worldwide group to two notches instead of one, if the resulting credit rating for the New Zealand borrower will be BBB- or higher.
- Allowing credit ratings to, in certain circumstances, be implied from significant long term third party senior unsecured debt, including for those at high risk of BEPS.
- Changing the reference group credit rating so that the credit rating for the borrower must be compared to the group company with the highest level of unsecured third party debt (rather than the highest credit rating in the group).
- Extending the $10m de minimis rule to insurers and lenders.
- More extensive grandfathering of advanced pricing agreements.
- Some amendments have been made to the thin capitalisation proposals to clarify which deferred tax liabilities are deducted from gross assets to measure net assets, however these changes do not extend the liabilities that may be deducted.
- Amendments have been made to the new thin capitalisation rule for infrastructure projects to ensure it operates as intended.
- The time bar is still being extended from four years to seven, but only in cases where Inland Revenue has begun a transfer pricing investigation within four years of the relevant tax return being filed, and has notified the taxpayer within that period that a seven-year time bar will apply.

Summary of the Bill

Interest Limitation Rules

Related party debt pricing will be subject to greater restrictions than it has been in the past. A "restricted transfer pricing" rule will apply to related-party debt between a non-resident lender and a New Zealand-resident borrower although a de minimis rule applies to exempt taxpayers from these rules if related-party cross-border borrowings are less than $10million.

Generally this means that debt will have to be priced based on the assumption that the borrower's credit rating is one notch below the credit rating of the member of the group with the highest unsecured third party debt (or two notches where the resulting credit rating for the New Zealand-resident borrower will be BBB- or higher), regardless of that borrower's actual credit rating. This will be a significant change for some New Zealand companies.

Whether or not this "deemed" credit rating must be used depends on whether the borrower is considered to be at a high risk of BEPS behaviour, having failed one or more of the following tests:

- The borrower has a greater than 40% thin capitalisation ratio, or they exceed the 110% worldwide debt test; or
- Borrowing comes from a jurisdiction, that is not the ultimate parent jurisdiction, where the lender is subject to a lower than 15% tax rate.

As noted earlier, the Government has abandoned a third test known as the EBITDA test, which calculated the income to interest ratio of the borrower. Previously, this test had meant that where that ratio was less than 3.3 the borrower was considered to be high BEPS risk and

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To access insights into the view of multinational companies on the BEPS initiative, read the results of Deloitte's fifth annual BEPS global survey here >

subject to the restricted transfer pricing rule. Inland Revenue recommended that this test be removed as it would result in the rules targeting taxpayers who were not intended to be targeted.

A credit rating will now also be able to be implied from third party debt even if the borrower fails the above tests, but only if:

- The related party debt is no more than four times the amount of the relevant third party debt;
- The third party debt is unsubordinated; and
- The third party debt is unsecured.

In practice, we do not anticipate that this new carve out will attract many users as it will only really provide a benefit where no explicit guarantee has been provided by the Parent to the third party lender.

Once a credit rating is established, some features of the debt may have to be disregarded when pricing the debt. These features include (among other things) the term of the loan, whether the payment of interest can be deferred for more than 12 months, changes to interest rates that are controlled by the borrower or lender, and whether the debt is subordinated. Minor changes have been made to the features listed in the Bill since it was introduced.

Thin capitalisation rules

The thin capitalisation (**thin cap**) rules stop foreign-owned New Zealand companies overloading on debt, and moving profits offshore by way of interest payments. The new rules impose even greater restrictions on the amount of debt the New Zealand company can have, primarily by changing the way the assets of the company are measured. We will move from a "gross asset" to a "net asset" test, which means that assets will be reduced by the value of any non-debt liabilities on the company's balance sheet, similar to the approach in Australia.

This change is likely to mean that many companies currently complying with the thin cap rules will fall foul of them under the new test, and will have to either restructure their debt or accept that some interest deductions will be denied for tax purposes.

One of the more problematic parts of this rule is that deferred tax liabilities are prima facie included in these non-debt liabilities. The rules in the Bill, as introduced, that sought to exclude certain deferred tax liabilities where an actual tax liability would not arise on the ultimate disposal of the asset (e.g. non-depreciable buildings and intangible assets) were complex and hard to understand. These have been slightly amended in the reported back Bill, but have not been extended to exclude all deferred tax liabilities as many submitters suggested and are still likely to be difficult to apply in practice. Volatile deferred tax liabilities could have a material impact on thin cap calculations.

Positively, Inland Revenue has accepted a number of submissions made in respect of the new thin capitalisation rule for certain infrastructure projects. While these rules do not go as far as some submitters had wanted, the changes should at least ensure that projects within scope are able to use the new rules.

Permanent Establishment Rules

Large multinationals that currently conduct sales activity in New Zealand but don't think they have a permanent establishment (**PE**) in New Zealand for the non-resident entity making the sale to a New Zealand customer might find they do under the new rules. A multinational will be deemed to have a New Zealand PE for the non-resident company if they are carrying out sales activity that is structured in such a way as to avoid tax in New Zealand or overseas.

The rules, which only apply to multinationals with at least €750million consolidated global turnover, could be considered to contravene some of New Zealand's Double Tax Agreements (**DTAs**). It will be interesting to see how the rule and the DTAs interact in practice although most multinationals in this situation will likely amend their arrangements.

Transfer Pricing Rules

Changes to the transfer pricing rules give Inland Revenue more power: the burden of proof is reversed and now sits with the taxpayer, and Inland Revenue can both give priority to the economic substance and conduct of parties over the terms of a legal contract, and disregard or replace transfer pricing arrangements which are not commercially rational. The time bar has also been extended from four years to seven, but this is now only in cases where Inland Revenue has begun a transfer pricing investigation within four years of the relevant tax return being filed, and has notified the taxpayer within this period that a seven time bar will apply.

Other than the change to the application of the time bar, few changes have been made to the proposed transfer pricing rules at the Select Committee stage. A test designed to apply the transfer pricing rules to shareholders who are "acting together" to control a New Zealand resident company has been amended to restrict it to a group of non-residents acting together, rather than potentially applying to a group made up of both New Zealand resident and non-resident shareholders.

The Bill now allows greater grandfathering of advanced pricing agreements (**APAs**), which are entered into with Inland Revenue to agree the transfer pricing of transactions. Previously only APA's relating to establishing arm's length amounts would be grandfathered. Now APAs relating to related party debt which would otherwise be subject to the new restricted transfer pricing rules and APAs relating to the source rules will be grandfathered. APAs relating to permanent establishments will not be grandfathered.

Country-by-Country Reporting

The requirement for New Zealand headquartered multinational groups with annual consolidated group revenue of €750million or more to prepare and file a country-by-country report will be codified in legislation. This will apply from the date the Bill is enacted.

Hybrid and Branch Mismatch Rules

The Bill includes a comprehensive adoption of the OECD hybrid recommendations with modification for the New Zealand context. The proposed rules are complex and are designed to address mismatches in the tax outcomes between New Zealand and other countries as a result of the different treatment of financial instruments or entities that result in double deductions in New Zealand and overseas, or a deduction in one country without a corresponding amount of income being recognised in the other country.

Some examples of common situations that can be impacted by the rules include:

- Financial instruments (e.g. loans) that are treated as debt in one country but equity in the other;
- Financial instruments that have (or may have) a term of more than 3 years where the interest income is not recognised on a reasonable accrual basis or otherwise in an accounting period beginning within 24 months of the period in which a deduction is allowed for the interest expense;
- Branch operations in New Zealand or overseas;
- Limited partnerships, unlimited liability companies, and other entities that are treated differently for tax purposes in different jurisdictions;
- Dual resident entities; and
- Interest paid on an ordinary cross border loan which is funding a hybrid arrangement entered into between two non-resident members of a multinational group where the rules of those countries do not negate the hybrid outcome.

Deloitte Comment

New Zealand companies owned by non-residents could justifiably feel exhausted by the relentless program of change to our international tax rules in recent years. We hope that, with this Bill, the Government and Inland Revenue feel they have inserted every possible belt and brace into the rules so that we can let the rules bed in without any more tinkering in the near future.

It is disappointing that the rules will still, despite vigorous submissions requesting change, override existing OECD arm's length concepts for the pricing of debt as well as existing DTAs. In our view a small, capital importing nation should not deliberately go against existing international norms in pricing related party debt and introduce rules that will inevitably result in double taxation.

The majority of the new rules will become law for income years beginning on or after 1 July 2018. For companies with June balance dates, this means they effectively apply from 1 July 2018. This will mean that such entities will urgently need to consider and address the issues these new rules present.

We expect the Bill will be passed before 30 June 2018.

For more information please contact your usual Deloitte advisor.

A major GST change in the wind for non-profit organisations

By Allan Bullot & Amy Kimber

On 15 May 2018, Inland Revenue and Treasury released an issues paper, announcing what could become one of the most significant tax proposals for non-profit bodies in recent years and which will require all non-profit bodies with significant fixed assets to examine their situation closely now to avoid potential significant GST costs in the future. There will be a limited 1 year period from the introduction of the legislation for non-profit bodies to take action to limit the impact of the new rule.

The issues paper considers the GST treatment of asset disposals by non-profit bodies. Previously there has been some tension on whether GST is payable when selling or disposing of an asset that hasn't been used to make GST-taxable supplies of goods or services. For example, assets that are used in a charity's general operational activities that did not generate any income.

The issues paper looks to bring in legislation that will change the GST Act and mean virtually all sales / disposals of assets by a non-profit body will be liable for GST if it has previously claimed GST credits on the purchase or operation of the asset. Disposal events would include not just traditional asset sales, but also insurance settlement events (e.g. for a natural disaster resulting in the loss of an asset) and the deemed disposal of assets that occurs when deregistering from GST.

The real clincher is that non-profit bodies will need to start thinking about these rules now, as the proposed start date for the new rules is **15 May 2018**, i.e. it will have partial retrospective effect.

What are the proposals?

There are concessionary rules that allow non-profit bodies to claim GST credits on all costs for making GST-taxable supplies and all costs involved in general charitable/not-for-profit activities even if those costs don't relate to making GST taxable supplies. GST credits are denied for costs involved in GST exempt activities such as: the sale of donated goods or services, the provision of residential accommodation or financial services/investments. By contrast, a non-profit body need only return GST on its taxable supplies, which are typically quite minimal. This usually results in most non-profit bodies being in regular GST refund positions. This will remain the same, but the implications of applying these rules would change under Inland Revenue's new proposals.

Take, for example, a charity that runs a food hall to feed the poor. The charity owns a dining hall that it uses for its charitable activities, along with a small office building that it regularly rents out to commercial firms. The charity returns GST on its commercial rental income for the office building. The charity claimed GST credits on the construction of both buildings. In a few years' time, the charity decides to sell the dining hall building as part of a relocation process.

Previously, provided certain conditions were satisfied, the sale of the food hall would not be subject to GST. This is because the food hall was never used to make GST-taxable supplies and was only used in the charity's philanthropic activities. However, under the new proposals (if they are accepted into law)

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the sale of the dining hall would be subject to GST. This is because the charity has previously claimed GST credits on the construction and operation of the hall. The charity may need to account for either 15% GST or 0% GST on the building's sale price, depending on the specific circumstances of the sale.

What happens from here?

The issues paper is at discussion stage. Inland Revenue has invited submissions on the current proposals, with submissions open until 15 June 2018. While a legislative change could be some while away, if a law change is made it is expected to be given retrospective effect from 15 May 2018 onwards. With this in mind, it's be important to start considering the proposals for any new asset purchases.

However, there may be a saving grace for non-profit bodies, albeit a temporary one and one that comes with a cost. Inland Revenue has recognised that some non-profit bodies may have unexpected GST costs where they have already claimed GST credits on their assets without anticipating a GST liability on their future disposal. To combat this, Inland Revenue have suggested a 12-month window during which non-profit bodies can elect to pay back the GST credits previously claimed on an asset. These returned GST credits would take the place of a GST liability on the future sale/disposal of the asset. This may be worthwhile for assets that could be sold or disposed of in future and that are likely to appreciate in value.

We're interested to hear from you if you'd like to make a submission to Inland Revenue on the issues paper, and we're happy to discuss any questions you may have on what these proposals may mean for you.

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Budget 2018: what does it mean for tax?

By Alex Mitchell

On 17 May 2018, the New Zealand Minister of Finance, Hon Grant Robertson, delivered Budget 2018. This budget won't be remembered as a memorable one from a tax perspective as tax initiatives were few and far between. This isn't a surprise, given the Government's decision to effectively outsource deliberations on any structural changes to the tax system to the Tax Working Group (TWG), who won't be reporting back until early 2019. The tax-related announcements made in Budget 2018 are as follows:

- More funding ($31.3m) is being given to Inland Revenue to crack down on tax dodgers over the next four years. Of this $23.5m has been allocated to Inland Revenue to improve their ability to ensure outstanding company tax returns are filed. This is expected to recover more than $183 million over the next four years.
- $3m has been allocated to Inland Revenue projects over the next four years to improve tax compliance in specific industries through the use of third party reporting and withholding taxes.
- The Government will invest over $1 billion over four years in the R&D tax incentive to encourage businesses to innovate, including Inland Revenue receiving $4.3m to implement and administer the recently announced R&D tax credit.
- The Government is banking on recently announced proposals to provide the following additional revenue over the next four years:
  - The proposals to ring-fencing rental losses ($325 million over four years)
  - New Zealanders paying GST on purchases of low-value goods ($218 million in the next four years which is expected to increase each year as online shopping continues to grow).

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- The Government also announced that changes are proposed to the bloodstock tax rules for the New Zealand racing industry, allowing $4.8m over the next four years for tax deductions that can be claimed for the costs of high-quality horses acquired with the intention to breed.

Revenue Strategy

As part of the Budget release, the Government released its new revenue strategy (available here). This includes the Government's objectives for the tax system and mentions the role of the TWG to consider whether improvements can be made to the structure, fairness and balance of the tax system. The fairness and the wellbeing of New Zealand were emphasised in the revenue strategy (and wider Budget 2018 release).

Tax Policy Work Programme

As part of the Budget / revenue strategy release, the Government has also released the updated Tax Policy Work Programme for 2018-19. The Work Programme takes into consideration recent developments and progress on projects from the previous Work Programme. The new and notable issues included are:

- **Penalties**: Developing an optimal regime to maximise compliance including addressing corporate fraud and evasion. [This is part of the agreement with New Zealand First]
- **GST**: A discussion document containing proposals on various GST policy issues is proposed for release mid-year.
- **Feasibility and black hole expenditure**: Reviewing the rules on deductions for the costs related to undertaking feasibility studies and other possible black hole expenditures
- **Treatment of losses**: To consider the tax treatment of carrying forward losses when business ownership changes.
- **Purchase price allocation**: Vendors and purchasers are adopting different valuations for the same assets in a sale. This inconsistency means that the intended tax outcome may not be achieved.
- **Cross-border employment**: This is to reduce the compliance costs generated from the rules/requirements for employees going across borders.
- **Business taxation**: Improving the tax system for business, including the calculation of provisional tax, the collection of information and reviewing the penalties and interest rules. Includes researching additional measures that have potential to deliver further benefits to businesses, reduce compliance costs and make the tax system simpler
- **Digital economy**: Consideration of measures NZ may look at in response to concerns with the expansion of the digital economy.
- **DTA program**: New Zealand is seeking to establish new and updated double tax agreements with a number of countries, including China, Hong Kong, Korea, and Fiji.

The full work programme can be found here.

IRD releases guidance on tax reforms

By Kelsey Pepper

With recent legislation passed that affects a number of different and complex areas, Inland Revenue has released four special reports to provide guidance to taxpayers on how to apply the new rules. The Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act (**the Act**) became law in March 2018, and the following special reports cover the new rules for four specific areas. Full coverage of all the reforms in the Act will be published in the June 2018 edition of Inland Revenue's Tax Information Bulletin.

- Extension of the bright-line test to five years: The bright-line test, which determines whether tax should be paid when some residential property is sold, has been extended from two years to five years. The amendments still maintain the other policy settings that support the original two year bright-line test. The five-year bright-line test applies to residential land if the taxpayer first acquires an interest in the land on or after 29 March 2018, the date that the legislation became law. Our most recent Tax Alert article on the new rule from March 2018 can be found here.

- Provision of IRD numbers to Portfolio Investment Entities: Amendments have been made to encourage taxpayers to provide their IRD numbers to their PIE. The new requirement is that investors opening new investments in multi-rate PIEs will be required to provide their IRD number to the PIE within six weeks of opening their account in order to remain a member of the PIE. This will ensure that the taxpayer is paying the right amount of tax, and receives and pays the correct amount in social policy entitlements and obligations. This requirement came into force on 1 April 2018.

- PAYE reporting changes and changes to the payroll subsidy scheme: The Act introduces significant changes to the administration of PAYE information from 1 April 2019. This report covers: payday provision of employment income information; transitional provisions; consolidation of PAYE administrative requirements; and the payroll subsidy. Examples are provided throughout the report to highlight how the rules are to be applied to real-life situations. Our Tax Alert article on these rules when the draft legislation was first released can be found here, and an update is here.

- Employee share schemes (ESS): The objective of the changes to the core rules for the taxation of ESSs is neutral tax treatment of ESS benefits. There are transitional rules for existing arrangements, and shares granted before 29 September 2018 should generally not be affected by the new rules, if the taxing date is before 1 April 2022. Generally otherwise the rules apply from March 2018. This report covers the following changes: the taxing point for ESS; the new deduction rule for employers providing ESS benefits to employees; simpler rules for certain exempt ESSs and other consequential and technical amendments. Examples are provided throughout the report to highlight how the rules are to be applied to real-life situations. Our most recent Tax Alert article on this topic can be found here.

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Full coverage of all the reforms in the Act will be published in the June 2018 edition of Inland Revenue's Tax Information Bulletin.

Time to claim a tax credit for donations

Have you made any donations? You may be able to claim a tax credit for donations of money made to a donee organisation. To claim this tax credit, a tax credit return form (IR526) needs to be filed for the relevant tax year, and you must:

- Have made a donation of at least $5 to an approved donee organisation (the payment must be voluntary with no identifiable direct benefit to you or your family in return for the payment);
- Earn taxable income in the year that you're claiming for;
- Be resident in NZ at any time during that tax year; and
- Be an individual; and
- Make the claim within a period of four years following the year in which the donation was made.

You can only claim donations up to the amount of your taxable income, but if you have a spouse, civil union partner, or de facto partner who is eligible to make a claim, they are able to claim the balance of your donation up to the relevant amount, provided they earn an amount of taxable income at least equal to the share of the donation they are claiming. Also remember that if you are going to claim this tax credit make sure that you keep a receipt of the donation.

If you have any questions about claiming this credit, contact your usual Deloitte advisor.

You can only claim donations up to the amount of your taxable income, but if you have a spouse, civil union partner, or de facto partner who is eligible to make a claim, they are able to claim the balance of your donation up to the relevant amount, provided they earn an amount of taxable income at least equal to the share of the donation they are claiming.

Deloitte Tax and Private recognised at Asia Tax Awards

The Deloitte New Zealand Tax and Private team is delighted to have been recognised as market leading tax advisors by the International Tax Review Asia Tax Awards, winning the award for New Zealand Tax Firm of the Year and New Zealand Transfer Pricing Firm of the Year.

The award is excellent recognition of the fantastic work done by our people in Tax and Private. Without their continued hard work we would not have received these awards and external recognition. These are especially outstanding results as Deloitte won a total of 14 awards, including Asia Transfer Pricing Firm of the Year, Asia Indirect Tax Firm of the Year and Asia Tax Technology Firm of the Year.

A snapshot of recent developments

Tax Working Group update

The Tax Working Group (**TWG**) has thanked the New Zealand public for its submissions on the future of tax, of which 6,700 were received. The chair, Sir Michael Cullen, noted that respondents are split in terms of their views of the current tax system and on whether taxes can improve house affordability. The submissions will help inform the interim report to Ministers due in September 2018. At the same time, the TWG also released the results of the quick polls here.

The TWG has also released the first tranche of official's papers generated by Inland Revenue and Treasury. These papers outline the preliminary advice of those organisations, and are intended to assist the TWG in its initial consideration of the relevant topics. The advice does not represent the views of the TWG or the Government, and the reports will be updated as officials consider public submissions and hold discussions with the TWG.

Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT)

MBIE has released two case studies on AML/CFT compliance to assist Phase 2 entities in understanding the new requirement which come into effect:

- 1 July 2018 for lawyers, conveyancers, and some trust and company services;
- 1 October 2018 for accountants and bookkeepers; and
- 1 January 2019 for real estate agents.

It is important to be aware of these changes / new reporting requirements and how they might affect you. The Department of Internal Affairs has released a comprehensive guideline for accountants to help them with meeting their obligations.

Deloitte 2018 Country Guide: The Link between Transfer Pricing and Customs Valuation

This year's edition of Deloitte's annual guide on the link between transfer pricing and customs valuation has now been published and has been expanded to include six new countries. This is an authoritative and comprehensive tool that compiles essential information regarding the customs-related requirements and implications of related party pricing and retroactive transfer pricing adjustments in numerous key jurisdictions around the world.

Breach of GST warranty confirmed

The Court of Appeal has dismissed an appeal from the High Court (*Ling v YL NZ Investment Ltd CA [2018] NZCA 133*) and held that the High Court was correct to conclude, on the balance of probabilities, that the vendor of a property was liable to be registered for GST at settlement date. Ms Ling sold a property to the respondent and in the agreement she warranted that she was not registered under the GST Act in respect of the transaction and would not be so registered at settlement. Being registered for this purpose includes being liable to be registered. The Court found she was liable to be registered as at settlement, and so the warranty was incorrect.

Determination released: National Average Market Values of Specified Livestock Determination 2018

Inland Revenue released the "National Average Market Values (NAMV) of Specified Livestock Determination 2018" on 16 May 2018. This determination is made under section EC 15 of the Income Tax Act 2007 and applies to any specified livestock on hand at the end of the 2017/18 income year. The NAMVs are used by livestock owners to value their livestock on hand where owners have elected to use the herd scheme to value livestock in an income year.

Order which gives effect to multilateral agreement comes into force

The Double Tax Agreements (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order (2018/72) gives effect to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Convention). The Order comes into force on 14 June 2018.

The dates on which the Convention comes into force and when it takes effect in relation to each DTA, and the extent of the modification to each DTA, will be publicised by the Inland Revenue Department here.

PUB00300: Income tax and GST – writing off debts as bad

Inland Revenue has released *PUB00300: Income tax and GST – writing off debts as bad* for consultation. This draft public ruling is an update of BR Pub 05/01 *Bad Debts – Writing off debts as bad for GST and income tax purposes*. This has been issued because the existing ruling has become outdated. The Commissioner of Inland Revenue has not changed her position on the tests to apply in deciding whether or not a debt is "bad", and what actions are sufficient to "write-off" a bad debt. This draft ruling only covers questions of when a debt becomes "bad" and when the bad debt will have been "written off". Consultation for this draft ruling closes on 4 July 2018.

Taxation (New Due Date for New and Increased Assessments) Commencement Order 2018 (2018/73)

This Order brings section 142AB of the Tax Administration Act 1994 into force on 18 June 2018 in relation to GST. This section was enacted by the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018, and sets a new due date for certain assessments. This section doesn't apply to assessments made in the absence of a return and to which s 106(1) applies. It also doesn't set a new due date for an increased assessment for a default assessment. The Order means that for GST purposes, on or after 18 June 2018, section 142AB applies to a new assessment or an increased assessment and section 142A doesn't apply.

Finalised Item: QB 18/09 Income tax – can sharemilkers and contract milkers deduct farmhouse expenditure using the approach in IS 17/02?

Sharemilkers and contract milkers who live on the farm are likely to incur farmhouse expenditure that has some nexus with their business. The Commissioner has been asked to clarify whether sharemilkers and contract milkers can claim a 20% deduction of farmhouse expenditure following the type 1 approach used in IS 17/02 which concerns deductions for farmhouse expenditure where that expenditure has both private and business elements. This finalised QWBA confirms that a 20% deduction is available following the approach in IS 17/02 without calculating actual business expenditure in certain circumstances.

Finalised Item: SPS 15/02 Remission of penalties and use-of-money interest

This statement applies for taxpayers requesting remission of penalties and use-of-money interest under sections 183A, 183ABA and 183D of the Tax Administration Act 1994. Inland Revenue recognises that penalising a taxpayer for a small non-compliance action may be counterproductive and might even reduce voluntary compliance. Further, Inland Revenue considers treating taxpayers in a similar tax position fairly and consistently to be important. The full statement can be found here.

Change for Inland Revenue claiming legal costs

A landmark High Court judgment means that Inland Revenue (and potentially now corporates and other government departments) cannot get costs for the time its in-house lawyers spend on bankruptcies and liquidations. (*Commissioner of Inland Revenue v New Orleans Hotel (2011) Limited [2018] NZHC 971 (7 May 2018)*). The court has traditionally followed a 1984 decision (*Henderson Borough Council v Auckland Regional Authority*) that allows costs to be awarded even if the successful party used in-house counsel. However, the judge preferred to follow a 2017 Court of Appeal judgment that concluded costs under the rules has to be confined to "legal costs billed by a lawyer retained by a party litigant for legal services provided by that lawyer to that litigant." The CIR is considering whether to appeal the decision.

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