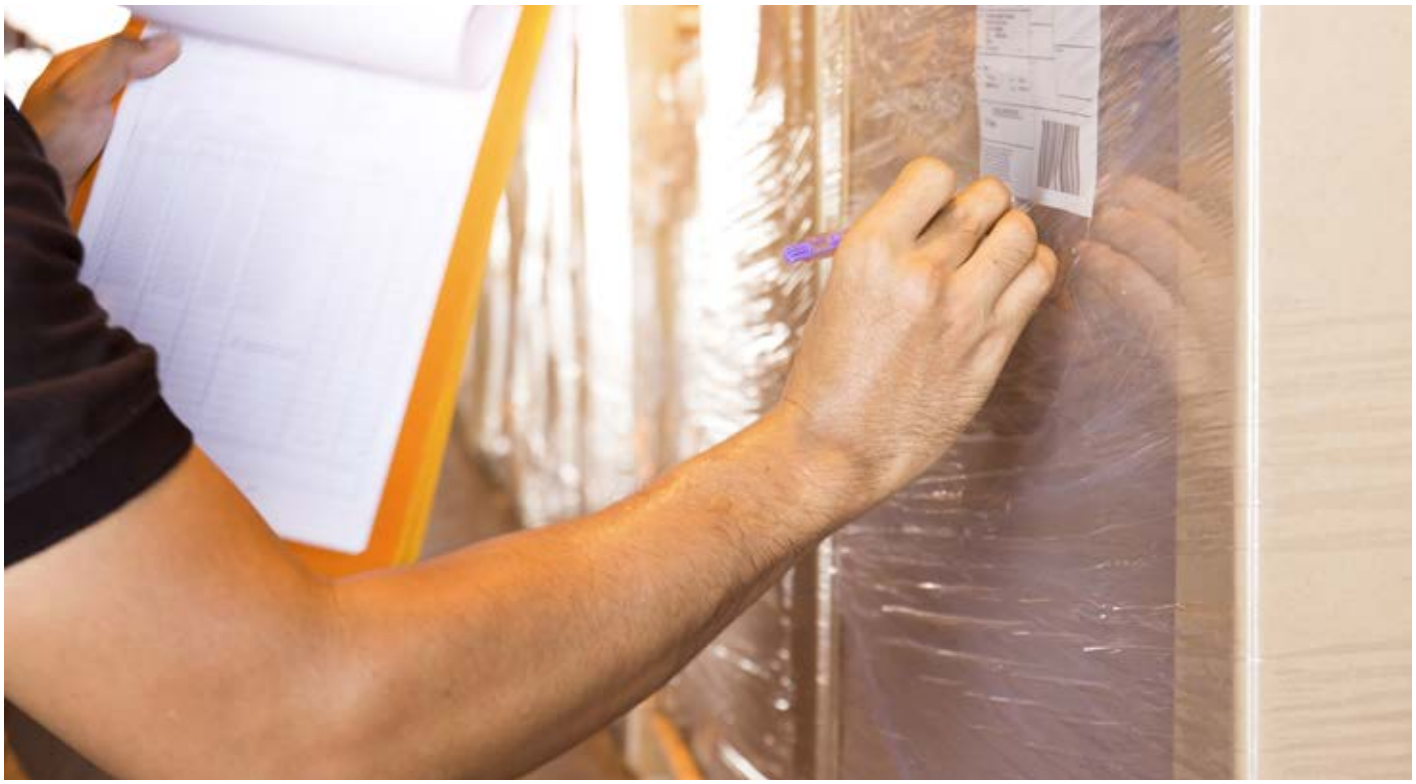

Connecting you to the topical tax issues

Tax Alert

November 2018

GST on low-value imported goods: Details of proposed regime released

By Allan Bullot and Robyn Walker

Following consultation earlier in 2018, details were released on 18 October 2018 on the proposed GST regime for non-residents supplying "low-value goods" to New Zealand consumers. While many aspects of the proposals remain the same as originally proposed, a major change is the proposal to apply the rules to all consignments of goods costing NZD 1,000 or less (as compared to the originally proposed threshold of NZD 400).

While legislation will not be introduced into Parliament until November 2018, there

In this issue:

is still a commitment to have the regime apply from 1 October 2019. The new rules will apply to offshore suppliers that make supplies (or expect to make supplies) of goods to New Zealand consumers of NZD 60,000 or more in a 12-month period. Electronic marketplaces and "re-deliverers" also will have a requirement to register and comply with the new rules.

Low-value goods will be defined as imports with a consignment value of NZD 1,000 or less. New Zealand tariffs and cost recovery charges will no longer apply to supplies covered by the new rules (alcohol, tobacco and fine metals are excluded from these rules).

Under the current GST rules, all sales by non-residents of goods on which the total amount of GST and duty is less than NZD 60 per shipment are not subject to GST at the border and no GST is due on the sale. Due to varying rates of duty on goods, there is no single value on which GST does not apply, in some cases it is under NZD 400, and in other cases only goods under around NZD 230 are not subject to GST currently. The new rules will do away with this distinction and simply focus on whether the consignment value is NZD 1,000 or less.

NZD 60,000 is equivalent to: AUD 53,700; USD 38,300; GBP 29,200; EUR 33,200; CNY 300,500

NZD 1,000 is equivalent to: AUD 900; USD 640; GBP 490; EUR 550; CNY 5,000

How will a supplier know if a customer is a New Zealand consumer?

Suppliers will need to charge GST if the destination of the goods is a delivery address in New Zealand.

Offshore suppliers will not be required to return GST on supplies to New Zealand GST-registered businesses. There will be an optional rule allowing offshore suppliers to zero-rate supplies to New Zealand GST-registered businesses. This approach would allow any GST incurred by the offshore supplier to be claimed back (for example costs of attending trade fairs in New Zealand). If supplies to businesses are zero-rated, these are included when calculating whether the NZD 60,000 registration threshold is exceeded.

Offshore suppliers will be able to presume that a New Zealand resident customer is not a GST-registered business unless the customer has provided its GST registration number, New Zealand Business Number or otherwise notified the supplier of its GST-registered status.

If offshore suppliers are making supplies of types of goods that typically are consumed only by businesses, we expect it will be possible to seek agreement from Inland Revenue that it can be presumed all customers are GST-registered businesses. This rule already exists for the existing remote services rules.

Marketplaces

When certain conditions are satisfied, an operator of an online marketplace (whether based in New Zealand or offshore) may be required to register and return GST on supplies made through the marketplace by non-resident suppliers, instead of the underlying supplier.

It is proposed that a marketplace would be liable to account for GST unless it does not authorise payment, authorise the delivery or directly or indirectly set any of the terms or conditions of the supply. These rules are consistent with the approach adopted in Australia.

If a marketplace does not process the payment for a supply of goods, in some instances the marketplace will be able to claim a bad debt deduction if it is unable to collect the GST and any other fees from the supplier.

A marketplace will be subject to the NZD 60,000 registration threshold; however, this will include the total value of both low-value goods and remote services.

Re-deliverers

Catering to the needs of New Zealand consumers that want to purchase from retailers that will not ship to New Zealand, there are now a range of businesses that create local delivery addresses and then ship the goods to New Zealand. There are also personal shopping services available.

These businesses will be liable to register for GST and will need to collect the 15% GST on the value of the goods (the information released does not specify whether GST also must be charged on the redelivery services that take place outside New Zealand).

A re-deliverer will need to register when the value of the goods it "re-delivers" exceeds NZD 60,000 in a 12-month period.

Supplies above NZD 1,000

Where the value of a consignment of goods exceeds NZD 1,000, the current rules will continue to apply, and rather than the supplier charging GST, GST (and any applicable duty) will be collected at the New Zealand border, with the purchaser unable to collect its goods until the tax is paid.

Suppliers will, in some instances, be able to charge GST on goods costing more than NZD 1,000 (these rules also will apply to marketplaces and re-deliverers).

Compliance requirements

While not covered in the proposals released on 18 October, we expect that suppliers that are required to register under these rules will be able to apply for a simplified "pay-only" registration basis, or alternatively may undertake a full registration allowing them to claim back any New Zealand GST incurred in making New Zealand sales.

Offshore suppliers that are already GST registered under the remote services rules do not need to separately re-register for these new proposed rules.

GST returns ordinarily will be due in quarterly instalments (March, June, September, and December). There will be an optional one-off six-month filing period from 1 October 2019-31 March 2020 to allow suppliers to adapt to the new filing requirements.

The New Zealand government will be monitoring compliance with the rules, including through sharing of information between New Zealand Customs and Inland Revenue and using powers under double tax agreements to obtain information about foreign taxpayers.

Key issues for suppliers

Suppliers that sell low-value goods to consumers in New Zealand should start thinking about how the new rules could affect their business.

A range of issues will need to be considered and addressed before the rules take effect including:

- Can total sales easily be tracked by jurisdiction?
- Will the level of supplies to New Zealand consumers exceed the registration threshold?
- What type of supplier is the business and what specific rules will apply – actual supplier, online marketplace operator, or re-delivery service?
- What modifications would the business need to make to its website or business processes in order to determine whether New Zealand GST should apply?
  - Determining the delivery address of the customer
  - Determining whether the customer is an end consumer or a GST-registered business
  - Determining the NZD value of the transaction
  - Being able to remove any local sales tax and replacing it with 15% GST
  - Excluding freight and insurance charges when determining if GST applies, but including those costs when calculating GST
- How will returned or replaced goods need to be treated for GST purposes?
- Do invoicing processes need to change?
- Does the business wish to continue shipping to New Zealand or effectively outsource the compliance to a marketplace or re-delivery businesses?

Legislation is expected to be introduced into Parliament in November 2018. There will be an opportunity for taxpayers to make submissions on the legislation before it is finalised. We would expect that legislation will not be enacted until close to the 1 October 2019 application date, which may be problematic for systems design.

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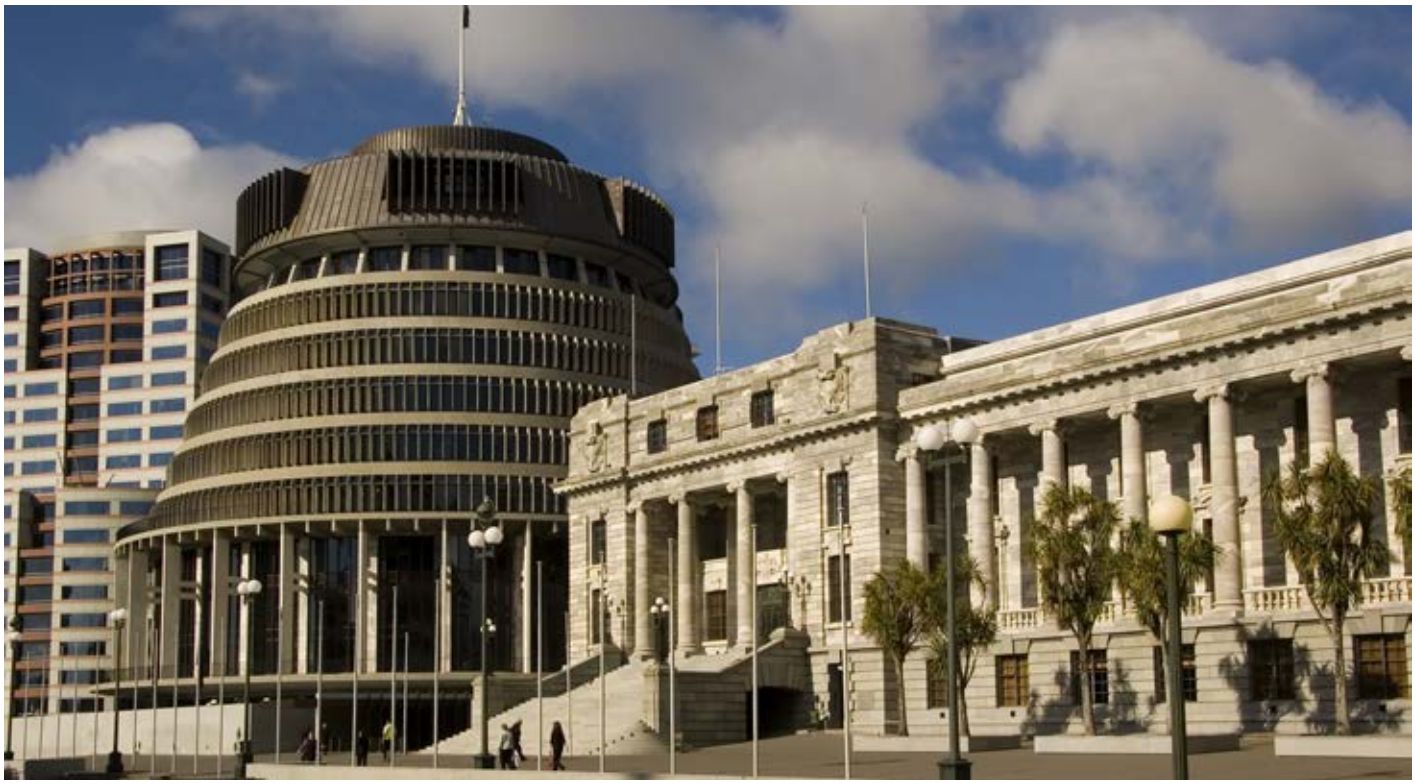
R&D Tax Incentive Bill introduced to Parliament

By Aaron Thorn



Following on from the Government's announcement at the beginning of October 2018, the Taxation (Research and Development Tax Credits) Bill (the "R&D Bill") has been introduced to Parliament, and contains the Government's proposals for the research and development ("R&D") tax incentive scheme that will be available from the 2019/20 income year.

The R&D Bill and its accompanying Commentary mirror the Government's previous announcement and provide detail on the proposed regime. This includes some more detail on filing requirements, documentation required, provisional tax and what activities and expenditure are eligible / ineligible. There are also a number of helpful flowcharts at the back of the Commentary to help users understand how the rules work.

We covered the key details of the R&D tax credit regime in our earlier Tax Alert article following the announcement in early October 2018. We set out below some of the extra information in the R&D Bill and the Commentary.

Further details from the R&D Tax Bill: What expenditure will give you an R&D tax credit?

Excluded activities: Excluded activities will be listed in new Schedule 21 Part A and B of the Income Tax Act 2007 (**ITA**). The Commentary provide examples of excluded activities (and when some of these activities may be supporting activities). Excluded activities include such things as maintaining or making minor improvements to software, market research, commercial, legal or administrative aspects of patenting, licensing and similar activities, quality control and testing, and preproduction activities such as tooling up.

- **Eligible / ineligible expenditure:**
  - New Schedule 21B Part A lists the categories of expenditure and loss that are eligible for R&D tax credits, while Part B lists the categories that are not eligible. Section LY 5(1) defines eligible expenditure as being available for the credit "to the extent" the expenditure or loss is incurred on a R&D activity. However R&D activities performed in

the course of commercial production are only claimable to the extent the costs (including energy costs) exceed the market value of the production outputs.

- Ineligible expenditure includes the cost of acquiring technology that is used as a basis for further R&D activities and expenditure to commercialise the results of an R&D activity.
- "Business-as-usual" commercial production costs (except labour costs) are excluded from the credit, being expenditure on R&D activities performed in the course of commercial production that would have been incurred in the absence of the R&D activities. The policy here is clear however we foresee that this restriction may be quite problematic in practice in terms of being able to identify the line of demarcation.

- **Contracted R&D:** Where R&D expenditure is contracted out, an R&D tax credit may be claimed, however the total R&D expenditure for calculating this portion of the tax credit is reduced by 20%. The theory behind this is that the person contracting out their R&D activity shouldn't get a credit for the profit margin of the person carrying out the R&D, and a 20% margin has been assumed for simplicity.
- **Approved research providers:** Although there is a minimum spend of $50,000 before an R&D tax credit is available, this doesn't apply if the business uses an approved research provider to carry out the R&D. This is to ensure that the R&D tax credit is available to even the smallest of businesses.
- **Software development:**
  - Expenditure on internal software development is subject to a $3million cap, but is excluded altogether where this relates to the ordinary internal administrative functions of a business (i.e. for the purpose of using the resultant software to perform common internal business functions such as payroll, HR, accounting, invoicing, inventory, human resources, executive or management information and enterprise resource planning). The cap groups a person's expenditure with internal software development already claimed by associated parties.
  - Internal software development expenditure is defined as expenditure for the purpose of the internal administration of a person / associate's business; or providing services to customers, unless the main reason the customers use the services is to use the software or technology developed by the person. If the software is developed for sale or license, however, it will not be categorised as "internal software development".
  - General software development expenditure is not subject to the $3million cap.
- **Nexus:** A person's R&D does not need to relate to their New Zealand business – it is sufficient that the person carries on business in New Zealand through a fixed establishment.
- **Support activities:** Support activities are those that are only or mainly (75% of the supporting activity) for the purpose of, required for, and integral to a core activity.

What will happen to my refund?

- **Refunds / carry-forward:** When a person has more R&D tax credits than their income tax liability, their R&D tax credits are refunded up to a maximum of $255,000 provided the person meets certain criteria (i.e. the R&D tax loss cash-out regime in subpart MX of the ITA, and in particular the 20% R&D labour intensity test). R&D tax credits that are not refunded are carried forward, subject to the same continuity rules as apply to losses in the ITA.
- **Provisional tax:** The R&D tax credit is proposed to allow a person to reduce their future provisional tax liability by taking expected R&D tax credits into account in calculating their RIT. Taxpayers who wish to benefit from R&D tax credits via reduced tax payments in the current year may use the estimation method for paying their provisional tax.

How do I apply for my tax credit?

- **Filing:**
  - To claim an R&D tax credit the business has to file an R&D supplementary return within 30 days of filing their tax return for the relevant income year. In addition, from the second year of the scheme businesses will have to obtain general approval for their R&D core activities shortly after the end of the income year (the seventh day of the second month after balance date). Without this general approval an R&D tax credit cannot be claimed.
  - An R&D tax credit claim, once filed, can only be amended once. A request to amend the claim must be made within two years of the date on which a person's income tax return is due for the relevant income year.
  - To prevent people retrospectively reclassifying expenditure as R&D a person cannot apply for R&D tax credits if they have not filed the income tax return for the relevant income year (containing their R&D tax credit claim) within one year of the due date for the income tax return.
- **Record keeping:**
  - Taxpayers must keep sufficient records to support their R&D claim (and hold these for seven years after the end of the income year to which the records relate). The claim must be based on records which were prepared contemporaneously with the R&D activities and which identify the creator and date of creation, not records which are backdated or created at year end.
  - The type of evidence required will include project documentation (such as log sheets, project plans and test results), as well as minutes of meetings, internal reports, receipts and contracts. The Commentary provides further detail on the records that will need to be kept in relation to R&D activity and

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R&D expenditure, and it is expected that there will be further detail on this in the guidance to be released.

- **Significant performers regime (Year 2):** Persons with more than $2million of eligible expenditure in an income year have the ability to opt out of the general approval process and into the significant performer regime. Expenditure can be grouped together to meet this threshold for partners in partnership and companies in the same group of companies.
- **Publication of claim details:** It is proposed that the Commissioner will publish the name of each person and their eligible R&D expenditure amount in dollar bands, two years after the end of the tax year to which an R&D tax credit claim relates.

What should you do now?

The new R&D tax incentive regime is coming soon, so now is the time to get prepared. Documentation and processes should be in place to enable your business to identify eligible projects and expenditure as soon as the rules are in place.

Contemporaneous documentation that addresses the R&D credit eligibility criteria will become very important, as will the ability to separate eligible and non-eligible expenditure.

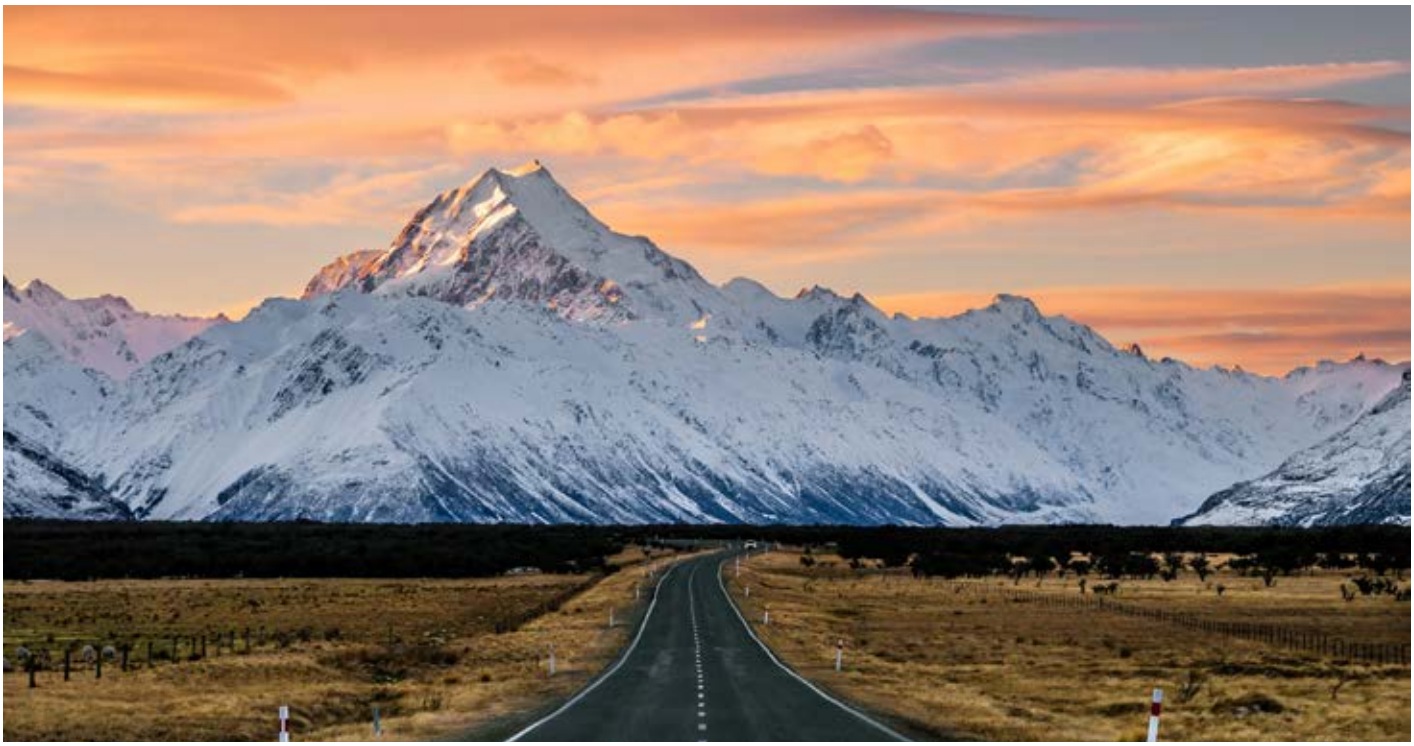
If you think there any issues with the rules, please get in touch with us about making a submission on the R&D Tax Bill. At this stage it is unclear when submissions will be due, however we understand that submissions are likely to be due around the end of January 2019.

If you would like to make a submission or need any help in understanding the new rules, please contact our National R&D Leader Aaron Thorn, or your usual Deloitte advisor.

The new R&D tax incentive regime is coming soon, so now is the time to get prepared. Documentation and processes should be in place to enable your business to identify eligible projects and expenditure as soon as the rules are in place

Multilateral Convention enters into force in respect of New Zealand

By Veronica Harley & Nandita Rao



On 1 October 2018, the Double Tax Agreements (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order 2018 (the MLI) entered into force in respect of New Zealand.

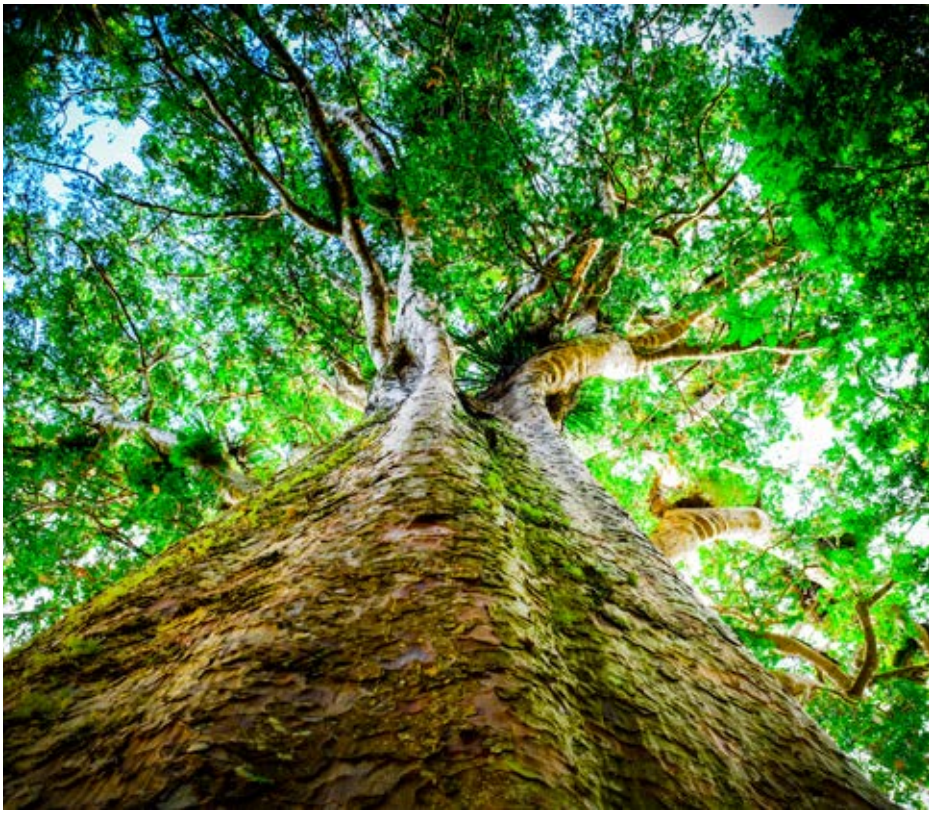
By way of background, New Zealand signed the convention on 7 June 2017 and deposited its final MLI position on 27 June 2018, which set out the 37 tax treaties it wished to be covered by the MLI. Under article 34, the convention enters into force on the first day of the month following the expiry of a period of three calendar months beginning on the date of deposit. For New Zealand, the entry into force date is 1 October 2018.

However, for a particular double tax treaty to be covered by the MLI, the MLI for the other treaty party also must have entered into force. In the case of New Zealand, other signatories with which New Zealand has a double tax agreement (DTA) and whose respective MLI also entered into force on 1 October 2018 include Poland, Sweden and the United Kingdom.

Furthermore, the MLI will enter into effect to modify each bilateral DTA on a phased-in basis, once both parties to the DTA have signed and ratified the MLI.

There are specific dates for when the MLI will enter into effect in accordance with Article 35 as follows:

The MLI will enter into effect to modify each bilateral DTA on a phased-in basis, once both parties to the DTA have signed and ratified the MLI



1. For **withholding tax**, it will apply where the event giving rise to the tax occurs **on or after 1 January** of the next calendar year beginning on or after the latest date on which the MLI enters into force for each of the parties to the DTA (i.e. 1 January 2019 for the above DTAs).
2. For **income tax**, it will apply to taxable periods beginning on or after a six-month period from the latest date on which the MLI enters into force for each of the parties to the DTA (i.e. taxable periods beginning on or after 1 April 2019 for the above DTAs).

Following entry into effect, interpreting the impact of the MLI on a DTA will be a matter of determining and reconciling the respective MLI reservations, notifications and choices made by each country to determine whether an operative provision of the MLI is activated and then how that provision will apply to a particular DTA provision.

It is also of note that Australia, France and Japan deposited their respective MLI instruments on 26 September 2018, so these MLIs will enter into force on 1 January 2019. In the case of these jurisdictions, the entry into effect dates are 1 January 2019 for withholding taxes and for income tax, taxable periods commencing on or after 1 July 2019.

The entry into effect date for a particular covered tax agreement will vary as it depends on the dates of entry into force for each of the countries.

For the latest list of which countries have deposited their final MLI instrument see Status as of 27 September 2018.

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Snapshot of Recent Developments: November Tax Alert

Policy Developments:

Tax changes relating to bloodstock introduced to Parliament

On 16 October 2018, the Government introduced draft legislation that will allow more deductions for acquiring bloodstock. This is being introduced as a further supplementary order paper (No 135) to the Taxation (Annual Rates for 2018-19, Modernisation Tax Administration, and Remedial Matters) Bill that is presently at Select Committee stage.

Under current law, a person who acquires bloodstock for breeding must have an existing bloodstock business to qualify for tax deductions in relation to the bloodstock. The proposed amendments will enable new investors in certain bloodstock yearlings to claim tax deductions in relation to that bloodstock, as if they had an existing bloodstock breeding business, where they notify the Commissioner of Inland Revenue of their intention to use the bloodstock for breeding bloodstock for profit in the future and provide the information required by the Commissioner.

Updated bill disclosures statements and a regulatory impact assessment have also been released.

ED0208: Tax payments – when received in time

Inland Revenue has released a draft Standard Practice Statement. This draft statement sets out Inland Revenue's practice for accepting tax payments as having been in time. There are two changes to practice – post-dated cheques will not be accepted by Inland Revenue from 1 February 2019 as a method for payment, and Inland Revenue dropboxes for the physical delivery of tax payments are only available in in-house office reception areas. Taxpayers are being encouraged to use digital methods for making tax payments.

Tax Cases Update:

Second charity deregistration appeal denied

Family First New Zealand [2018] NZHC 2273

The High Court has upheld the second deregistration decision made by the Charities Registration Board (Charities Board) in relation to the charitable status of Family First New Zealand (Family First). Family First's appeal from this deregistration decision was dismissed as Family First failed to satisfy the Court that the Charities Board had erred in its conclusion that Family First did not exist solely for charitable purposes

Bad debt deduction denied

Hong v CIR [2018] NZHC 2539: This appeal case concerned Mr Hong, a lawyer, who was denied a deduction by the Commissioner for bad debts written off in relation to two loans which he had made to his clients. Mr Hong had not shown, according to his own accounting procedures, that the loans were written off. The evidence presented which related to when the spreadsheet was created and when the debts were "written off" was not sufficient. The High Court decided the Taxation Review Authority ("TRA") was correct in finding that the debtors had not been released at law from making further payments; and that Mr Hong was not carrying on, even in part, a lending business for the purpose of deriving assessable income. The Court also accepted that Mr Hong fell well short of the standard of care expected of taxpayers and agreed with the TRA's findings that Mr Hong had failed to take reasonable care.

GST input tax deductions allowed

Canterbury Jockey Club Inc. v Commissioner of Inland Revenue [2018] NZHC 2569

This was a GST test case which considered whether a jockey club was entitled to GST input tax deductions for stakes payments paid to GST registered trainers and jockeys in horse races conducted by the club. This depended on two key issues which were whether there is a "supply" of services from the riders/trainers to the club and secondly if the stakes payments were "consideration" for any services supplied. The Court decided in favour of the club, meaning it is entitled to GST input deductions, for stakes payments made to trainers and riders who win.

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