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Tax Alert

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R&D tax credits – new developments

By Aaron Thorn, Simon Taylor and Brendan Ng

The Government has announced changes to the Research & Development ("R&D") tax credit regime, which has applied to standard balance date taxpayers from 1 April 2019. The main change has been to allow for refundability of the tax credit from the 2020-21 income year (the second year of the regime).

This change comes as the Government recognises that the tax credit is of little use to most businesses in a tax loss position (such as many in the start-up phase), as these businesses cannot receive an immediate benefit from the regime through the reduction of their tax bill (by offsetting the tax credit against their tax liability). The change will allow taxpayers to essentially cash out the tax credit earned in a year, subject to a payroll based cap.

General rules

As a quick recap, the R&D tax credit regime provides a 15% tax credit for eligible expenditure incurred on eligible R&D activities undertaken in the 2019/20 and later tax years. The key thing taxpayers need to understand is what R&D which may qualify for the regime. R&D activities are either core or supporting R&D activities. A "core R&D activity" is one that:

- Is conducted using a systematic approach; and
- Has a material purpose of creating new knowledge, or new or improved processes, services, or goods; and
- Has a material purpose of resolving scientific or technological uncertainty; but

- Does not include an activity if knowledge required to resolve the uncertainty is publicly available and/or deducible by a competent professional in the relevant scientific or technological field.
- Note also that activities undertaken outside New Zealand will not be eligible as a core R&D activity (although there is a limited ability to include them as a supporting activity).

A "supporting R&D activity" means an activity that has the only or main purpose of, is required for, and integral to, conducting a person's core R&D activity.

Both core and supporting activities have certain legislative exclusions. Exclusions are listed in Schedule 21 of the Income Tax Act 2007.

Inland Revenue has now released final guidance on the application of the R&D tax credit regime (available here). The guidance (which is 122 pages long), does a good job of explaining how the regime works and includes some examples of what is in and out of the regime.

Proposed changes to the regime

The main change that the Government has announced, in a new tax bill that (the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill (**the Bill**)), is to extend the refundability of the R&D tax credit from the 2020-21 income year. This recognises that the tax credit is not immediately useful to many businesses that are in a tax loss position (although it can be carried forward). This is an issue because for many businesses undertaking R&D activity, particularly those in the start-up phase, the availability of cash flows can make or break the business.

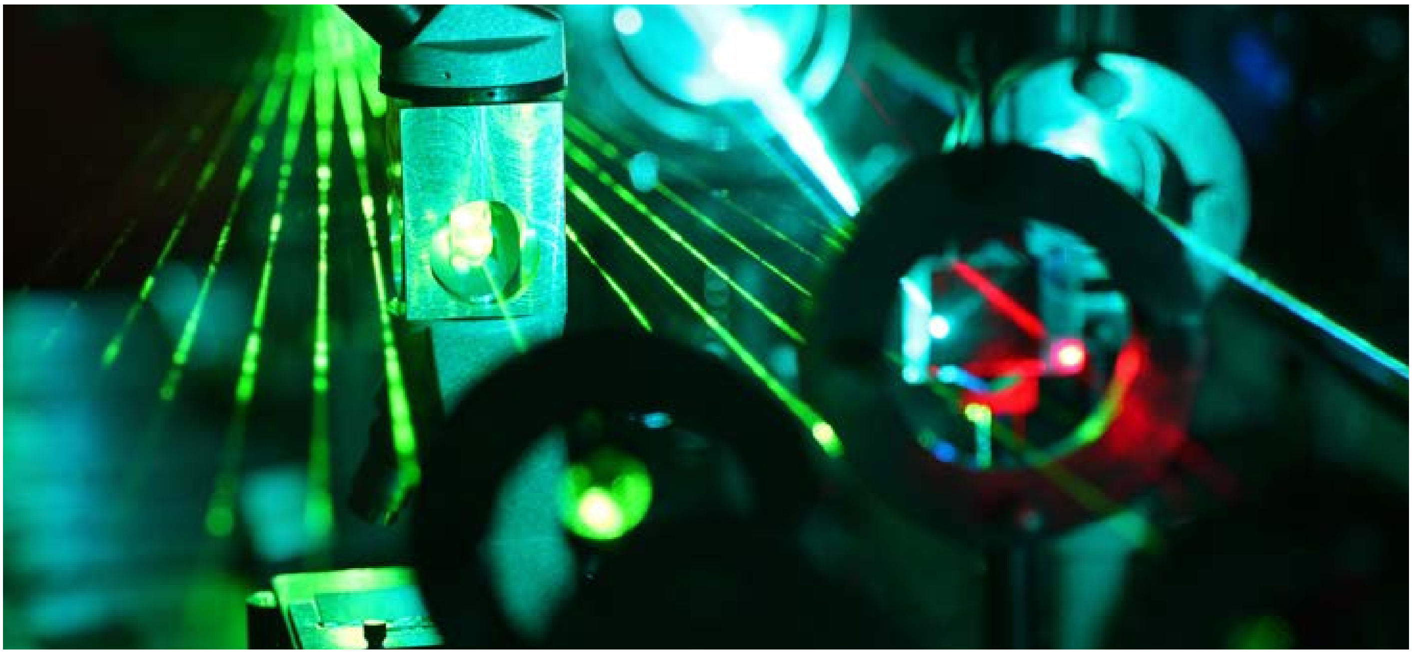
There is currently limited refundability available under the regime, with entities able to get an R&D tax credit refund of up to $255,000 (which equals $1.7m of eligible expenditure) if certain requirements are met, including the R&D tax loss cash-out corporate eligibility and wage intensity criteria. However, these requirements can be difficult to meet for most organisations and so the extension of refundability will allow more taxpayers to access refunds of the tax credit.

While the extension of refundability is a good step forward for the regime, the refundability of the tax credit will be limited to the extent of payroll taxes paid in that year. This includes PAYE, Employer Superannuation Contribution Tax ("ESCT") and Fringe Benefit Tax ("FBT") of the entity or of other members in the wholly owned group, as well as of companies that directly or indirectly control the entity. This will include any taxes withheld from contractors. For example, if an entity has paid $1,000,000 of PAYE and contractor withholding taxes and $100,000 of FBT in a year, the maximum tax credit that can be refunded in the year will be limited to $1,100,000 (assuming that the entity has earned and/or carried forward sufficient tax credits in the year).

While for many businesses this cap should not pose too much of a problem, many smaller businesses will have limited PAYE payments (as they may only have a handful of employees). They may instead be using contractors who they may not be withholding any tax from, instead allowing the contractor to deal with their own tax obligations, limiting the amount of tax credit able to be refunded.

Exempt income recipients

Another change that has been introduced in the Bill is to exclude any entities that earn exempt income from the R&D tax credit regime, unless that exempt income relates to dividends derived from foreign companies or from within a New Zealand wholly-owned group. The policy reasoning behind this is essentially to exclude charities and other similar tax exempt organisations from being eligible for the tax credit, as these entities already receive the benefit of a tax exemption.



Rather alarmingly, any taxpayer earning any exempt income (other than the dividend exemptions mentioned above) may find themselves unwittingly excluded from the regime. We have a concern that the approach adopted here may have unintended consequences.

Some other minor changes have also been made to ensure that the R&D tax credit legislation aligns with the policy intent, particularly in relation to joint ventures, the timeframe for businesses to dispute R&D tax credit claims, the R&D certifier regime, the definition of internal software development and taxpayers' ability to challenge decisions of the Commissioner.

What else can we expect from the R&D tax credit regime?

Although the R&D tax credit regime has only been in place for a short period of time, Inland Revenue and the Government are looking ahead and planning the implementation of other enhancements to the regime. One such enhancement is the introduction of an in-year approval process in Year 2 of the regime, requiring taxpayers to get pre-approval from Inland Revenue that an activity is an eligible R&D activity. This process is intended to provide taxpayers with greater certainty over the eligibility of their activities, as well as provide Inland Revenue with comfort that the R&D tax credit regime is being used appropriately.

Although the R&D tax credit regime has only been in place for a short period of time, Inland Revenue and the Government are looking ahead and planning the implementation of other enhancements to the regime

For larger taxpayers, a 'significant performer' regime will be implemented so that taxpayers can get approval of their criteria and methodologies used to determine the eligibility of their R&D activities and expenditure. These 'significant performers' will also be required to either obtain the general pre-approval, or have an R&D certifier review their R&D return.

Improvements to the existing R&D tax loss cash out scheme are also being considered, as well as the use of Project Grants (administered by Callaghan Innovation). These two initiatives, along with the R&D tax credit, are intended to work together as a broad package to drive innovation in New Zealand. These last two proposals will be consulted on in due course.

Tips and tricks – what to watch out for

As with most aspects of the tax system, there are some complexities within the regime which taxpayers will need to navigate. As we have been working through the application of the R&D tax credit regime, there have been a few things that we have come across that may trip up R&D claimants.

Capitalised R&D

To the extent that expenditure "contributes to the cost of depreciable tangible property" it will be ineligible for the R&D tax credit regime, unless the property is used solely in performing an R&D activity. This means that if the R&D expenditure is directed towards creating a new physical asset (for example, creating a brand new machine to manufacture a new product), if that expenditure is treated as capital expenditure for tax purposes then it will not be eligible for the tax credit.

This is emerging as an issue for many taxpayers, as taxpayers are capitalising costs at a much earlier point than used to be the case, making many genuine R&D costs ineligible for the regime. This issue has arisen partly because of an interpretation statement on the deductibility of feasibility expenditure released by Inland Revenue, following a Supreme Court case on the issue (for more information on this see here). Inland Revenue have been considering this matter, however no decision has yet been reached on a solution.

What the rule does mean though is that expenditure will be eligible where it does not form part of the cost of a tangible asset for tax purposes, or expenditure that is intended to form part of the cost of an asset but the asset subsequently never actually comes into existence. The main issue to be aware of here is when costs have been capitalised in one year, but in a subsequent year the development fails, because the R&D tax credit regime requires the credit to be claimed in the year the expenditure was incurred. Depending on when a taxpayer's income tax return is due, a taxpayer may need to file a section 113 request or a notice of proposed adjustment to get to the correct position.

Software

From the time the R&D tax credit regime was first mooted by the Government there has been concern that the regime would not allow software to qualify for the tax credit. At a high level this is because it is perceived as being difficult for software to satisfy the "scientific or technological uncertainty" test, based on the inherent nature of software development.

However, that's not to say that software cannot qualify for the R&D tax credit and there are many examples of genuine R&D in the software space. Inland Revenue's guidance devotes a number of pages to explaining how the rules apply to software development, including examples of software activities which may be eligible.

Documentation requirements

Inland Revenue's guidance also outlines its documentation requirements for being able to claim the R&D tax credit, the most noteworthy of which is the requirement for documentation to be maintained contemporaneously. While this does not necessarily mean that documentation must be kept up to date on a day to day basis, there are some relatively stringent requirements for taxpayers to consider, with an expectation that it cannot be prepared after the event.

Your documentation will need to record both your entity's eligibility into the regime, as well as the eligibility of your core and supporting R&D activities, and capture eligible costs. Inland Revenue's guidance provides some detailed comments on what is required.

I'm a tax or a finance person, how do I find out if my business qualifies for the regime?

We recommend first talking to your business and those responsible for R&D-like activities, to gauge whether there is eligible R&D activity occurring within your organisation (i.e. whether there is scientific or technological uncertainty being resolved). As your business may not be used to thinking in this way, it often requires a slightly deeper drilling down into the activities being undertaken to draw out this scientific or technological risk. Deloitte is happy to assist with this stage and our R&D experts have experience with a wide range of new developments.

If you do have an eligible R&D activity, then you will also need to check your documentation processes to see whether adequate information is currently in place to enable your business to identify eligible projects and expenditure.

If the above sounds like it might apply to you, please contact one of us, or your usual Deloitte advisor.

Aaron Thorn
Partner
Tel: +64 3 363 3813
Email: athorn@deloitte.co.nz

Simon Taylor
Director
Tel: +64 9 953 6094
Email: sitaylor@deloitte.co.nz

Brendan Ng
Senior Consultant
Tel: +64 4 495 3915
Email: brng@deloitte.co.nz

New Zealand outlines its proposal for a digital services tax

By Robyn Walker

After being announced in February, in June the New Zealand Government released a Discussion Document putting forward a proposal for a Digital Services Tax (DST) in New Zealand.

The key proposition put forward is the introduction of a DST in New Zealand if there is insufficient progress made by the Organisation for Economic Co-operation and Development (OECD) in 2019 to come to a global solution to the problem of taxing the digital economy.

The Discussion Document also seeks comment on broader work being undertaken by the OECD. We don't discuss that OECD work in this article, but you can find more information about what the OECD is considering here.

What is a DST?

DSTs are commonly portrayed as applying to multinational digital businesses who have taken advantage of tax structuring options to minimise taxes in the countries in which they operate, however a DST can apply more widely and will apply to New Zealand based businesses. The proposed DST could add an extra layer of tax, based on turnover, to any large New Zealand business who are operating digitally in some way, even if they are already paying taxes on all profits in New Zealand.

There are three criteria which would need to be satisfied before a New Zealand business would be subject to the rules.

1. The business operations include any of the activities defined to be in-scope (refer below); and
2. In the previous year, the business has over €750million* (approximately NZ$1.25billion) of consolidated annual group turnover (this is all revenue, not just revenue related to digital services); and
3. In the previous year, the business has revenue which is attributable to in-scope activities of New Zealand users of NZ$3.5million*.

*Thresholds are subject to change and may need to be lowered if it is considered the thresholds could breach international obligations under World Trade Organisation agreements and Free Trade Agreements by effectively discriminating against foreign businesses by virtue of the size of the de minimis.

DSTs are not common-place. A number of countries have talked about introducing one, but to date there has been limited traction in implementing the tax. The countries currently considering a DST are the United Kingdom, Austria, the Czech Republic, France, India, Italy and Spain. The European Union and Australia have both considered introducing a DST but have actively decided not to pursue it.

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What is an in-scope activity?

New Zealand's DST would apply to *"the services provided by business activities whose value is dependent on the size and active contribution of their user base"*, this would include supplies made through intermediation platforms, social media platforms, content sharing sites, search engines and the sale of user data.

These concepts are not expanded on in great detail in the discussion document, and it is perhaps "intermediation platforms" which has the greatest scope to catch New Zealand businesses who are looking to operate in a modern fashion. An intermediation platform facilitates the buying and selling of goods and services between unrelated persons (for example, travel, accommodation, peer-to-peer lending, labour supply, asset sharing platforms). Many businesses are looking at working together and bundling complementary services together that could potentially result in an intermediation platform. A user of an intermediation platform could be either the person buying or the person selling through the platform. What constitutes an "active contribution" of a user base is also not clear but, but specific examples mentioned in the discussion document as being in-scope include Uber, eBay, Facebook, YouTube, Instagram and Apple music.

Excluded from the rules would be:

- The sale of ordinary goods and services (other than advertising or data)
- The provision of online content (such as music, games, TV shows and newspapers)
- Services delivered directly through the internet
- Information and communications technology (ICT) providers
- Standard financial services, such as credit cards and EFTPOS providers
- Television and radio broadcasting

While the combination of the de minimis thresholds and the specific exclusions from the rules means that many businesses needn't be concerned about being caught by the new tax, any large New Zealand businesses looking to do business in a digital way will have to seriously think about whether its services could get caught within the broad ambit of "digital services".

How would the tax be calculated?

A business subject to the DST would need to determine the annual gross global revenue attributable to its in-scope business activities and then determine the proportion of revenues attributable to New Zealand. The 3% DST would then be payable to Inland Revenue on the New Zealand share of global revenue.

The DST will not be an income tax, rather it is likely to be considered a separate tax such as excise tax. Because the DST is not income tax, there will be no tax credit available to any business who is already paying New Zealand income tax on its income (but it may be available as a tax deduction as a business expense).

The DST is forecast to raise between $30 and $80million annually.

Who would pay the DST?

The liability to pay the tax would sit with the business who is undertaking the digital activity. However, the real question is whether it will be New Zealand consumers who actually end up paying the tax through increased charges. This is an area where the Government is seeking views, noting that the Discussion Document predicts up to 50 percent of the cost of a DST may be passed back to consumers.

Is a DST a good idea?

It's difficult to see too many redeeming features to a DST. While it would collect revenue from some large multinational digital companies which might otherwise not pay much tax in New Zealand, it could also see New Zealand consumers bearing the cost of the tax, as well as seeing New Zealand businesses subject to tax on turnover and profits.

The Discussion Document itself provides some insightful comments. On the plus side, if more countries like New Zealand look to introduce unilateral taxes, this may help incentivise countries to agree to an "international solution". On the negative side:

- Any "international solution" may put New Zealand in a worse position if it results in New Zealand businesses paying more tax outside New Zealand;
- A tax on turnover isn't an ideal solution for a business with losses or low profit margins;
- A DST may increase the cost of capital and may impact on New Zealand's important (and growing) digital sector;
- New Zealand's reputation as a good place to do business may take a battering and other countries may take retaliatory action;

In the scheme of things, the level of potential tax is quite low and may be quite compliance cost intensive to introduce and enforce. A DST could not be another part of the existing income tax legislation, it would need its own separate legislation and processes.

Next steps

Key to whether a New Zealand DST will progress will be feedback the Government receives on the proposal. Submissions on the Discussion Document close on **18 July**.

Please speak to your usual Deloitte advisor for more information.

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Key elements of the proposed DST

Application to:
Digital platforms whose value is dependent on the size and active contribution of their user base, such as:

- intermediation platforms, which facilitate the sale of goods or services between people
- social media platforms
- content sharing sites
- search engines and the sale of user data

The DST would not apply to sales of goods and services (other than advertising or data) over the internet.

Rate:
3% of gross turnover attributable to New Zealand users.

Turnover de minimis:
€750million global turnover and NZ$3.5million digital revenue attributable to New Zealand.

Type of tax:
Not income tax, not creditable. It could be an excise tax.

Application date:
To be determined. The New Zealand Government should make a decision whether to proceed with the DST in late 2019.

Robyn Walker
National Technical Director
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Changes to the collection and use of investment income information

By Emma Marr and Natasha Wilson

Overview

Inland Revenue is changing the way that investment information is collected and utilised. This is aimed at reducing customers' compliance costs and allowing tax to flow into business processes. With these changes Inland Revenue is also making their processes and systems (theoretically) simpler and more convenient in order for businesses to interact with them. Inland Revenue will collect more detailed information regarding investment income and they will collect this information more frequently than before. This is to ensure that over time, most salary and wage earners will pay what they need to, and receive what they are entitled to during the year. It will also mean Working for Families Tax Credits entitlements will be more accurately monitored and adjusted throughout the year.

Who? Payers

Financial institutions, Maori Authorities and companies will be required to provide investment information to Inland Revenue if they:

- pay interest from which tax is withheld
- pay interest subject to an approved issuer levy (AIL)
- pay taxable dividends
- make taxable Maori Authority distributions to members
- pay royalties to someone who is not a New Zealand resident
- attribute income to investors in a multi-rate portfolio investment entity (PIE)
- pay interest, which can be claimed as a tax deduction, but from which tax may not be required to be withheld
- stop being a New Zealand resident for tax purposes but continue to exist.

What? More information, more frequently.

Inland Revenue will require payers to provide more detailed investment income information more frequently, and in an electronic format. For many types of investment income, that will mean reporting monthly. The new revised reporting requirements will be consistent for all types of investment income; there is a new non-declaration resident withholding tax rate of 45% for interest income; new PIE investors are required to provide their IRD number to the PIE; and there are some administrative changes.

Payers of investment income can only provide Inland Revenue with the information that the payee provides to them, so they will need to educate and communicate well with their investors so that they provide the relevant (correct) information to the payers.

The information will be required to be filed electronically on a monthly basis for payers of interest, dividends paid by companies, Maori Authority distributions. Other types of income, including royalties paid to non-residents, portfolio investment entities that attribute income, and unit trusts paying dividends, must provide this information annually.

This does not change what investment income is taxed and when tax withheld is paid to Inland Revenue. The only tax rate changing is the non-declaration rate for interest income.

When? 1 April 2020

Payers **can** provide this information from now on (the first date on which payers could provide it was 1 April 2019) but **MUST** provide it from 1 April 2020. Inland Revenue is keen to see payers starting to provide information before 1 April 2002 so that payers are confident they understand the new process by April 2020.

Joint Income

As this is a new requirement, the details regarding how information about joint investments will be collected is yet to be confirmed. Income from joint investments will be allocated evenly between the joint owners. The following are not deemed to be jointly owned:

- Partnerships
- Trusts
- Companies and their shareholders
- Look-through companies and their owners

Electronic filing

As mentioned, investment income information will be **required** to be provided electronically from 1 April 2020. There will be a monthly $250 penalty for those who do not provide investment income information electronically each month and who do not have an exemption. Inland Revenue have indicated that initially they will not automatically apply this penalty as this is a new process, although no detail has been provided for how long this "initial" period will last.

Smaller payers of investment income will be able to file information through myIR using an online form, and other payers will be able to upload information in a specific file format (excel, csv or XML). This is similar to the process followed for payday filing. For payers with large volumes of information to submit, Inland Revenue will provide a business-to-business gateway. Payers will need to make sure they have technology capable of accessing this gateway and creating the relevant documents required for filing. The detailed specifications of the file formats are still under development, so we would recommend waiting for the detailed specifications before voluntarily adopting the new requirements, so as to avoid double handling.

Payers can apply to the Commissioner of Inland Revenue for an exemption if they are unable to provide their investment income electronically or it would be impractical to do so. The Commissioner will take the situation of the payer into account and Inland Revenue will publish guidelines on how the exemption would apply.

Smaller payers of investment income will be able to file information through myIR using an online form, and other payers will be able to upload information in a specific file format (excel, csv or XML). This is similar to the process followed for payday filing.

RWT exemptions

Inland Revenue will no longer issue resident withholding tax (RWT) exemption certificates and instead people will need to apply to Inland Revenue for RWT-exempt status. People who have applied for the status and been accepted will be placed on an electronic register created by Inland Revenue. RWT-exempt people will have to refer entities paying them investment income to this register instead of providing an exemption certificate. Payers will have a legislative obligation to check the RWT status of people to whom they pay investment income.

The register will be searchable using an IRD number and those who already possess RWT exemption certificates will generally be automatically placed on this register with no end date (charities will also be automatically registered).

Once a person has been added to the register Inland Revenue will notify them of their start date and end date (if applicable). If a person is no longer RWT-exempt, they must notify Inland Revenue within 5 days of changing their RWT status in order for Inland Revenue to update the register. A list of people who are no longer RWT-exempt will be available on the register.

Correcting errors

Payers are able to correct errors occurring within a tax year, regardless of size and with no requirement to report these errors to Inland Revenue.

Errors relating to prior years can be corrected if the adjustment does not exceed the larger of:

- $2,000, or
- 5% of the payer's withholding liability for the tax type that the error relates to (i.e. RWT or NRWT) for the year in which the first payment is made.

Under- and over-payments from prior years can also be rectified.

PIE income errors can be corrected on attributed income in earlier years within one month from the date of discovery, where the PIEs do not have to pay penalties or interest on these adjustments.

Where to start?

Payers will need to communicate with their customers so that they understand the impact of these changes, in particular:

- the non-declaration rate
- the need to provide an IRD number to remain invested in a PIE
- collection of more detailed information about joint account owners
- removal of the obligation to provide an end-of-year RWT on interest certificate

If you have any questions or need any assistance with implementing these new rules, please contact your usual Deloitte advisor.

Emma Marr
Associate Director
Tel: +64 4 470 3786
Email: emarr@deloitte.co.nz

Natasha Wilson
Consultant
Tel: +64 4 832 2822
Email: nawilson@deloitte.co.nz

Ring-fencing residential rental property losses

By Robyn Walker and Blake Hawes

With the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 receiving Royal Assent at the end of June, the legislative changes to limit the offsetting of rental property losses are now in effect.

As we mentioned in our previous article on this issue (which covers the topic in more detail), the new rules have an intended application date of the start of the 2019-20 income year. For people with a standard 31 March balance date (the majority of taxpayers), the rules will apply retrospectively from 1 April 2019.

As we are currently in the first income tax year that will be affected by these rules, there are a few issues that you should be thinking about now before they potentially catch you off-guard come year end.

Property by Property or Portfolio Income?

The legislation requires taxpayers to determine whether they hold their property on a portfolio basis or a property-by-property basis. If a taxpayer doesn't make an election the default position is that the portfolio basis would apply.

For existing residential rental property owners the election must be made in their income tax return for the 2019/20 income tax year (i.e. the first income tax return that is affected by the new rules).

The key difference between the two methods is that:

- Where a taxpayer elects a property-by-property basis, the expenses of one property cannot be offset against income from other properties. However, if the sale of land becomes taxable due to the land being sold within a certain time-frame (i.e. under the bright line test) the ring-fenced losses for that property can be released and offset against other taxable income of the owner.
- Where a taxpayer elects the portfolio basis, the expenses of one property can be offset against income from other properties, however there are restrictions on the ability to release ring-fenced losses on the taxable sale of a property.

Taxable on sale?

The ring-fencing rules have several exclusions and caveats that may benefit you. The most likely to be utilised is the exclusion for land that would be taxable on sale.

As we are currently in the first income tax year that will be affected by these rules, there are a few issues that you should be thinking about now before they potentially catch you off-guard come year end.

If land will be taxable on sale (meaning it can't be taxed contingent on selling within the five year bright-line period for example) the ring-fencing rules will not apply to that particular property. However, if the reason that property will be taxable on sale is for any reason other than the fact you are dealing in land, a notification to the Commissioner must be made.

Taxpayers must notify the Commissioner that the property is held on revenue account (i.e. always taxable on sale) within specified time periods, depending on when the property was purchased and/or when the property became revenue account property.

For land that was held at 1 April 2019 (i.e. most taxpayers with existing rental properties) this election must be made by the date for filing the 2019/20 income tax return, which is 7 July 2020 for those without tax agents or 31 March 2021 for those with a tax agent.

Have you thought of...?

- While the new rules refer to the 'ring-fencing' of rental property losses, the rules actually operate to stop a loss being created. The legislation limits a taxpayer's deductions in an income tax year to the extent of the taxable income that arises from a residential rental property owned by the taxpayer. Any additional expenses that exceed the taxable income (the amount that would normally be the loss component) are carried forward as 'quarantined expenses' to the next income tax year where they can be applied as deductions to that year's residential rental property income. If you think you've heard of the term 'quarantined expenses', before you'd be correct, the same ideology is applied in the 'mixed use assets rules' which is why mixed use assets are exempt from these rules.
- While the rules do technically operate to prevent losses occurring, a specific provision within the new rules applies to treat carried-forward quarantined expenses as losses for the purposes of the tax continuity provisions. As such, if your residential rental property is in a company and some expenditure has been quarantined we suggest considering these rules before any shares in the company are sold.
- When multiple properties are held by multiple companies within a wholly-owned group and the properties are held on a 'portfolio basis', the residential rental property expenses of one company can be offset and treated as a deduction for another company within the same group, to the extent the second company has also derived residential rental property income. The rules can become tricky if you own properties in more than one way – eg, your own name, via companies, or other entity types. If you are in this position and are thinking about restructuring to take advantage of this concession, you should consider the impact of any time based land sales provisions (such as the bright-line test) before an interest in a section of residential land is transferred to a new owner, such as a company. The bright-line test can apply to tax a transfer of land under a restructure even if there is no true change in ownership.
- Where an entity is interposed between a taxpayer and a residential rental property (for example using a company to hold the property) and the taxpayer has borrowed money to acquire the interest in that entity, that taxpayer's deduction for interest costs will be limited to the residential rental property income of that entity. We note that this rule only applies to 'residential land-rich entities'.
- The provisional tax rules may now apply to certain taxpayers who previously used rental property losses to reduce their income tax liability. If your residual income tax liability without rental property losses could be higher than $2,500, you should consider your provisional tax obligations, and how to manage these tax payments, going forward.

As the rules are now in place we recommend consulting your Deloitte tax advisor to ensure you understand all the tax implications to owning a rental property before it's possibly too late.

Robyn Walker
National Technical Director
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

Blake Hawes
Senior Consultant
Tel: +64 4 831 2483
Email: bhawes@deloitte.co.nz

Snapshot of Recent Developments: July Tax Alert

Policy Developments:

June Tax Bill Introduced

The Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill ("the Bill") was tabled in Parliament on 27 June 2019. The Bill is available here, the Bill Commentary is here), and the Regulatory Impact Assessments are here. The Bill contains proposals in relation to:

- Modernising and improving the settings for the administration of social policy by Inland Revenue (particularly in relation to KiwiSaver and Student Loans).
- Proposals aimed at improving current tax settings within a broad-based, low-rate framework.
- Other remedial matters, including in relation to the R&D tax credit regime, thin capitalisation, employee share schemes and provisional tax.

Along with the some KiwiSaver changes which may have wide-ranging impacts, the most notable proposals are in relation to the R&D tax credit regime, in particular to extend the refundability of R&D tax credits (from the 2020-21 income year), so that the R&D tax credits will be refundable to the extent that payroll taxes are paid by a firm in each year. Refundability will not be available to entities who receive exempt income (other than income under sections CW 9 and CW 10 of the Income Tax Act 2007). Other remedial changes are being made in relation to the R&D tax credit regime to ensure that it aligns with the policy intent.

The Bill is likely to have its first reading in late July, after which it will be referred to the Finance & Expenditure Select Committee. Submissions are likely to be due in September. We will cover the bill in more detail in the next edition of Tax alert. In the interim, if you have any questions please contact your usual Deloitte advisor.

R&D tax incentive guidance published

On 5 June 2019, Inland Revenue released updated guidance material on the Taxation (Research and Development Tax Credits) Act 2019. The guide incorporates changes made during the legislative process and covers:

- Eligible activities, entities and expenditure;
- Using, and becoming, an approved research provider;
- Claiming and receiving the tax credit; and
- Managing disputes.

Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill passes third reading with supplementary order paper introduced and receives Royal Assent

On 26 June 2019, the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 received Royal Assent. Inland Revenue's commentary on the legislative changes will be included in the *August 2019 Tax Information Bulletin*.

For a summary of the new rules on GST on imports, you can read our updated article here.

A Supplementary Order Paper, SOP No. 248, was introduced before the third reading. SOP No. 248 includes a proposal to amend the Land Transfer Act 2017 so that all buyers and sellers of land will be required to provide their IRD number as part of the transaction process. Refer to our Tax Alert article on SOP No. 248 on page 15 of this Alert.

Finalised Inland Revenue Items:

Late filing penalties – SPS 19/04

On 31 May 2019, Inland Revenue released the finalised standard practice statement, *SPS 19/04: Late filing penalties*, applying from 30 May 2019. This statement, replacing SPS 12/02, sets out how the Commissioner will exercise her discretion with regard to late filing penalties. It was updated for:

- The types of returns covered (e.g. the addition of RLWT and multi-rate PIE returns); and
- The payday filing rules.

Question We've Been Asked - Donations: What is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007? – QB 19/10

On 14 June 2019, Inland Revenue released a finalised Question We've Been Asked, *QB 19/10: Donations: What is required to establish and maintain a fund under s LD 3(2)(c) of the Income Tax Act 2007?* QB 19/10 concludes that a donee organisation can include a fund established and maintained by a non-profit entity exclusively for the purpose of providing money for charitable, benevolent, philanthropic, or cultural purposes within New Zealand under s LD 3(2)(c) of the Income Tax Act 2007. QB 19/10 examines what is required to establish and maintain such a fund, and sets out the Commissioner's view of the matters that need to be taken into account by entities considering setting up these funds. This item complements the Commissioner's interpretation statement, *IS 18/05, Income tax: donee organisations – meaning of wholly or mainly applying funds to specified purposes within New Zealand*.

Question We've Been Asked - GST - administrative or management services provided by an unincorporated body to its members – QB 19/11

On 19 June 2019, Inland Revenue released finalised *QB 19/11: GST - administrative or management services provided by an unincorporated body to its members*. QB 19/11 applies to situations where a group forms an unincorporated body to manage and administer common property (e.g. property owners, tenants or professionals). QB 19/11 concludes that an unincorporated body that provides administrative or management services to its members must register for GST if the unincorporated group is carrying on a taxable activity, and the value of its supplies of goods and services made in New Zealand exceeds the $60,000 registration threshold. An unincorporated body carrying on a taxable activity with supplies below the registration threshold may voluntarily register for GST. If registered, the body must account for GST on all its supplies of goods and services.

Income tax – Exempt income of non-resident entertainers – IS 19/03

On 17 June 2019, Inland Revenue finalised and released Interpretation Statement, *IS 19/03: Income tax – exempt income of non-resident entertainers*. IS 19/03 concerns section CW 20 of the Income Tax Act 2007, which provides non-resident entertainers and sportspersons with an exemption for the income that they earn from carrying out an activity or performance in New Zealand. IS 19/03 mainly assists those that are paying non-resident entertainers in deciding whether the exemption in s CW 20 applies (i.e. so that payers do not need to withhold tax from payments made). The interpretation statement may also be useful to non-resident entertainers who are unsure about whether their income is exempt in New Zealand.

Kilometre rates for business use of vehicles - 2018/2019 income year

Inland Revenue has released the new kilometre rates for 2018/2019 income year on the Inland Revenue's website and can be used from now. The new tier 1 rate increased from 76 cents to 79 cents.

Vehicle Type	Tier One Rate	Tier Two Rate
Petrol or Diesel	79 cents	30 cents
Petrol Hybrid	79 cents	19 cents
Electric	79 cents	9 cents

IRD numbers required for all property transactions

The government has introduced a last minute change to a tax bill, just before it was passed into law in late June, to require all buyers and sellers of land to provide their IRD number. In announcing the change, which was introduced by a supplementary order paper (SOP) to the existing tax bill, Revenue Minister Stuart Nash stated that the change was in response to a recommendation by the Tax Working Group. Since then IRD has stated that it is aware of substantial unpaid tax due to Inland Revenue by property speculators who do not comply with the five year bright-line rules around land sales, and who often claim they have sold their main home, and therefore do not need to provide an IRD number as part of the sales process.

The new rules require all buyers and sellers to provide an IRD number, regardless of whether the sale is of a main home or not.

New Zealand Directory
Auckland Private Bag 115033, Shortland Street, Ph +64 (0) 9 303 0700, Fax +64 (0) 9 303 0701
Hamilton PO Box 17, Ph +64 (0) 7 838 4800, Fax +64 (0) 7 838 4810
Rotorua PO Box 12003, Rotorua, 3045, Ph +64 (0) 7 343 1050, Fax +64 (0) 7 343 1051
Wellington PO Box 1990, Ph +64 (0) 4 472 1677, Fax +64 (0) 4 472 8023
Christchurch PO Box 248, Ph +64 (0) 3 379 7010, Fax +64 (0) 3 366 6539
Dunedin PO Box 1245, Ph +64 (0) 3 474 8630, Fax +64 (0) 3 474 8650
Queenstown PO Box 794 Ph +64 (0) 3 901 0570, Fax +64 (0) 3 901 0571
Internet address http://www.deloitte.co.nz

Follow us on Twitter
@DeloitteNZTax

Queries or comments regarding Alert can be directed to the editor, Emma Marr, ph +64 (4) 470 3786, email address: emarr@deloitte.co.nz.