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Tax Alert

October 2019

Business tax changes announced

By Robyn Walker and Brendan Ng

The Government has announced changes to two major tax issues that have been consistently causing businesses problems, as part of a business package to help New Zealand companies innovate and grow. These are:

- Allowing a deduction for feasibility expenditure for businesses; and
- Relaxing the loss continuity rules.

While the Government is yet to release much detail on these two issues, as an initial comment this announcement is very pleasing to hear, as both these issues have caused businesses to stumble in the past. These changes should remove barriers to expansion in the tax system and allow businesses to grow and evolve, without being unnecessarily hindered by the tax system.

The announcements were made as part of the release of the Government's Economic Plan, and in the press release Minister of Finance Grant Robertson stated *"This is about creating an environment where businesses are encouraged to innovate and become more productive – even if some of those ideas don't work out."*

In this issue:

The two proposals are summarised below.

Deduction for feasibility expenditure

The Government has proposed that businesses will be able to deduct 'feasibility expenditure' in their tax returns, with the deduction to be spread over a period of 5 years. An immediate deduction will be available if the total qualifying expenditure is less than $10,000 (expected to be calculated on an annual basis).

Under the current tax system, businesses are denied an immediate deduction for most expenditure associated with

exploring whether to invest in a new asset or business model. This expenditure is often referred to as "feasibility expenditure", being the expenditure to determine the practicability of a proposal, prior to commitment to developing the proposal. Feasibility has been a hot topic the last few years, with the Supreme Court's *Trustpower judgment* and subsequent release of interpretation statement *IS 17/01 Income Tax – Deductibility of feasibility expenditure*.

The Commissioner's current position is that only **early stage** feasibility expenditure is immediately deductible. This position is set out in paragraph 129 of IS 17/01 (emphasis added):

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

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

The result of this position is that much of what ordinary business practice would consider to be feasibility expenditure, is not immediately deductible for tax purposes because it materially advances or makes tangible progress on a specific capital project. Whether there is a tax deduction available at all hinges on whether the project successfully results in a depreciable asset – if a project fails or is abandoned there is no tax deduction available in many instances. This position limits a business' ability to grow and innovate, by placing a tax barrier on innovation and diversification, as well as attempts to increase productivity by spending money to look at better ways of doing things.

At this stage it is unclear what further consultation will be held on this proposal (noting that consultation had taken place in 2017), prior to legislation being put before Parliament in early 2020. However the first question is how qualifying expenditure / feasibility expenditure will be defined. Currently there is no existing tax definition for feasibility expenditure, other than by proxy through the test in IS 17/01 described above.

Determining what is feasibility expenditure is in part a line drawing exercise. Before the release of IS 17/01, the test was whether the expenditure was incurred before the point at which a definitive commitment had been made to proceed with a project (i.e. expenditure before the point of commitment was feasibility expenditure and therefore deductible, anything beyond this was capital in nature and had to be capitalised to an asset).

Changes to tax loss continuity

The Government's second proposal is to review and change New Zealand's tax loss continuity rules, to make it easier for businesses to attract investment and get off the ground. At this stage there is very little detail about what this will involve, other than the fact that there will be further public consultation.

Currently, if a company is in a tax loss position, that loss can be used to reduce its taxable income in future income years, but only subject to a shareholder continuity threshold of 49% being maintained. This means that a company's tax losses are forfeited if there is a more than 51% change in the ownership of the company. As a result, when companies are raising capital to fund further growth and development, the shareholder continuity requirements are often breached and tax losses are forfeited.

The impact of this is that it can be difficult to attract new investment, as the forfeiture of tax losses reduces the attractiveness of an investment and must be weighed up against the benefits of the new capital. The rule also affects decision-making regarding the amount and timing of capital-raising and disincentivises growth, innovation and risk-taking.

There was a notable focus on the application of the changes to loss continuity... to make it easier for start-ups to attract investment and get off the ground.

New Zealand's current tax loss continuity rules are out of step with other countries around the world, particularly Australia who use a "same or similar business test", in addition to a shareholder continuity test. In Australia, tax losses may be carried forward if either test is met, allowing for greater flexibility in investment and innovation. Under a "same or similar business test" a company can carry forward losses despite changes of ownership, provided the company carries on the same type of business.

The Government hasn't specified whether it would consider a test like the "same or similar business test" or whether the shareholder continuity threshold will be lowered. It is worth noting that in its Final Report the Tax Working Group specifically noted "the Group does not recommend an extension of loss-continuity rules from one based on shareholding to one based upon a 'same or similar' business test, as is the case in Australia."

In the joint press release by Minister of Finance Grant Robertson and Minister of Revenue and Small Business Stuart Nash, there was a notable focus on the application of the changes to loss continuity to "start-ups", to make it easier for start-ups to attract investment and get off the ground. At this stage it is unclear whether the changes to loss continuity would have wider application to all businesses, however we would consider that the same benefits apply regardless of the maturity and size of a business.

If it is proposed to limit the changes to start-ups, there will be some significant definitional issues in relation to what can be regarded as a 'start-up', and at what point a business moves from being a 'start-up' to something more. In our view, any such distinction will only add complexity and uncertainty into the tax rules, and it would be preferable that the change in rules will apply to all businesses. The review of the tax loss continuity rules will include public consultation, and we expect that this issue will be drawn out then.

What's next for each of these proposals?

The feasibility expenditure changes are to be included in a taxation bill to be introduced into Parliament in early 2020, so that the changes can apply from the 2020/21 income year onwards. This will mean that it is important that businesses are in a position to distinguish any qualifying expenditure so that a deduction can be taken. This will obviously depend on the form of the legislation and how qualifying expenditure is defined. Taxpayers will have the chance to comment on the proposal through the normal parliamentary processes.

The tax loss continuity changes will be consulted on later in 2019, under the normal consultation process for tax policy changes. The existing R&D tax loss cash out rules are also expected to be reviewed as part of this process. At this stage, this is a 'watch this space' proposal, however it will be important for affected businesses to get involved in the consultation process to ensure that the rules are developed practically and appropriately.

If you have any questions in relation to either of the proposals, please contact your usual Deloitte tax advisor.

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Habitual buying and selling of land – what is a regular pattern?

By Jamie Abela and Amy O'Brien

The Government's tax policy work programme has identified a need to review the current land sales rules, in particular in relation to investment property and speculators, land banking, and vacant land. As part of this review, officials have identified an issue with the current rules as they apply to people who regularly buy and sell land that they use as their home or as business premises.

The land sales rules contain exclusions for taxpayers who use their land as their main home, residence or business premises. However, these exclusions are not supposed to apply where the taxpayer has a "regular pattern" of buying and selling land used for these purposes. This is because it is assumed that a person who has a regular pattern of buying and selling land primarily acquires that land for sale and should be taxed on any gain, whether or not they used the land as their residence or business premises while they owned it. There are concerns that the current regular pattern restrictions are not working as intended.

Inland Revenue have issued a consultation document proposing some (fairly sensible) changes to ensure the "regular pattern" rules actually work. These are summarised below.

Group of persons or entities

As currently drafted, all of the regular pattern restrictions apply quite narrowly to the activities of a single person. This has enabled taxpayers to circumvent the restrictions by using different associated persons or entities to buy and sell land each time. For example, Person A would purchase a property, use it as their family home and then sell it. Person A's partner, Person B, would then purchase a second property, which is again used as the family home. When that property is sold, Person A and Person B's family trust would purchase a third property which is used as the next family home. This situation would not, in theory, be caught by the current regular pattern restrictions because a person has not engaged in a regular pattern of buying and selling land which was used as a residence or main home of that person.

Officials have therefore proposed an amendment to ensure that the regular pattern restrictions apply where a person, or group of people or entities, has a regular pattern of buying and selling land that has been:

- occupied by the person or group of people as their main home, residence or business premises (as applicable); or
- occupied as a main home, residence or business premises (as applicable) by the person or group of people that controls the entity or entities that own the land.

Officials note that a group of persons or entities will not have a regular pattern of buying and selling land merely because they are associated and buy and sell a number of properties. It will be necessary that the same person or group of people or entities all occupy each of the properties.

Similar activities

Because of the language used in the residential and business premises exclusions, the regular pattern restrictions in those provisions have been narrowly interpreted to apply only where there is a similarity or likeness between the transactions.

This means that the regular pattern restrictions will not apply where a person has a pattern of buying and selling land that they occupy as a residence or business premises, where they carry out different activities on the land while they hold it. For example, the first property is bought, lived in then sold, the second is renovated while it is lived in and sold, or the third is a bare section where a house is built, occupied and then sold.

Official have therefore proposed that the restrictions should apply more broadly to any pattern of buying and selling the land used as a residence or business premises. The main consideration should be whether there are "regular" transactions, meaning transactions that occur at sufficiently uniform or consistent intervals. The nature of any activities carried out on the land, such as whether the properties were simply bought and sold or whether any building or renovation work occurred, should not be relevant.

Time-period restrictions

Currently, the main home exclusion cannot be relied on to prevent income tax applying to land sales where it has already been used twice within the two years prior to the current sale. Officials have suggested extending this time period restriction to the residential and business premises exclusions. In particular officials are suggesting that a time-period restriction of more than twice in three years might be appropriate.

Next steps

While officials consider that the regular pattern restrictions require amendment to ensure that taxpayers cannot structure around them, it is not intended that such amendments should result in ordinary commercial or family transactions, where there is no purpose of sale, being taxed. They are looking for comments on whether such transactions are likely to be caught by the proposed amendments. Submissions on the proposals are due by 18 October 2019. It is expected that decisions on this issue will be made in late 2019, with any changes to legislation expected in a Bill in early 2020.

If you would like to discuss the implications of these proposed changes, or you are interested in writing or contributing to a submission on the policy document, please contact your usual Deloitte advisor.

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IRD Simplification Measures – Protecting the tax base at a limited compliance cost

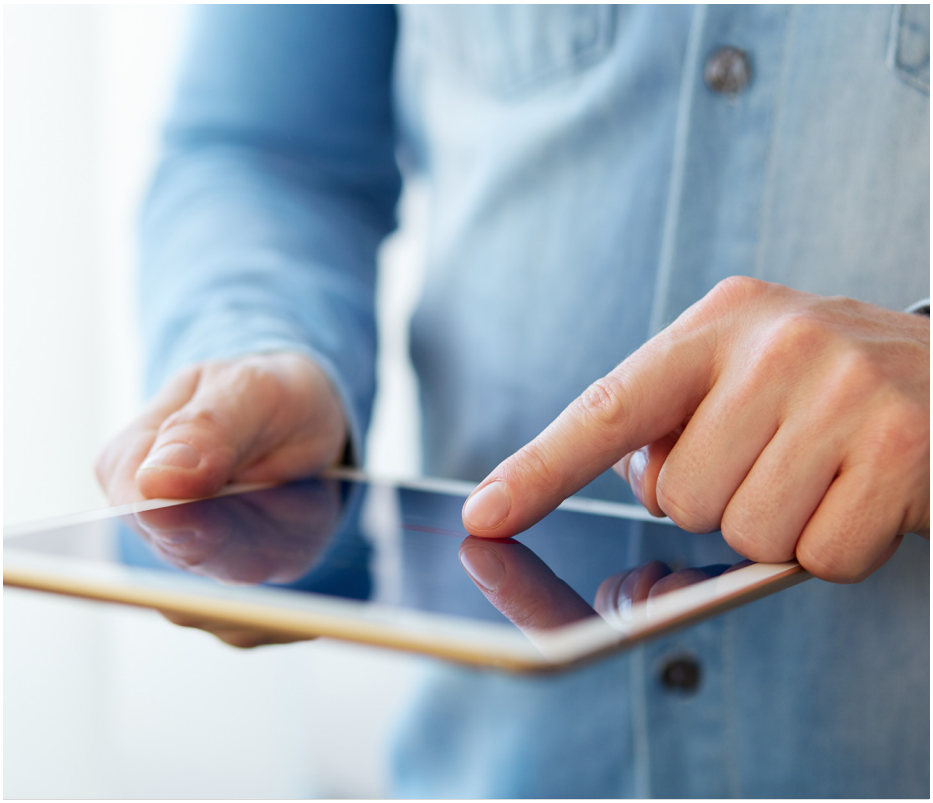
By Bart de Gouw and Eleanor Yew

When establishing the boundaries for international taxpayers to adhere to, Inland Revenue aims to employ transfer pricing rules that strike a balance between protecting the tax base whilst limiting compliance costs. Inland Revenue has implemented a range of simplification measures that intend to lower compliance costs in situations perceived to have low transfer pricing risks.

Small value loans

Inland Revenue has recently revised its position on small value loans, that is, for cross-border associated party loans by groups of companies for up to NZ$10m principal in total. From 1 July 2019, in the absence of a readily available market rate for a debt instrument with similar terms and risk characteristics, Inland Revenue considers 325 basis points (3.25%) over the relevant base indicator as broadly indicative of an arm's length rate. This is an increase of 25 basis points from the previous arm's length rate of 3% (300 basis points). Transactions priced in accordance with this simplification measure are likely to be considered to qualify as a 'low transfer pricing risk' according to Inland Revenue and hence no further benchmarking is required. The next review by Inland Revenue for small value loans is scheduled for 30 June 2020.

In light of these revised measures (and the restricted transfer pricing regime applying to inbound loans over NZ$10m), taxpayers engaging in cross-border related party loans should review their current interest rates and pricing approach to ensure they are compliant in their transfer pricing positions.



Small wholesale distributors

Inland Revenue currently considers a weighted average earnings-before-interest-tax-and-exceptional-items ("EBITE") ratio of 3% or greater as broadly indicative of arm's length for foreign-owned wholesale distributors with an annual turnover of less than NZ$30m. Foreign-owned wholesale distributors are firms that purchase and on-sell goods to other firms without significant transformation. Examples would be the inbound distributor of goods or limited risk distributor whereby the goods are purchased from related foreign entities for resale.

Such distributors within the prescribed annual turnover are likely to present a low transfer pricing risk and no benchmarking support will be required to validate an arm's length rate. Care will have to be taken to ensure that any changes in product pricing complies with the new Customs regime (see our article from last month).

Low value-adding intra-group services

Inland Revenue has adopted the Organisation for Economic Co-operation and Development's ("OECD") simplification measure for qualifying low value-adding intra-group services ("LVAIGS") with a total value below NZ$1m per annum.

This new approach replaces the previous "administrative practices for services" where a 7.5% mark up was applied on the costs of "non-core" services, or any services under a NZ$1 million de minimus threshold. This change in approach is more restricted for many taxpayers.

The OECD Transfer Pricing Guidelines state that 'qualifying services' may be priced at a cost plus a 5% mark up without having to provide benchmarking support. LVAIGS, for the purposes of the simplified approach, are services performed by one member or more than one member of a Multinational Enterprise ("MNE") group which;

- are supportive in nature
- are not part of the core business activity of the multinational group
- do not require the use of unique and valuable intangibles and do not lead to the creation of unique and valuable intangibles
- do not involve the assumption of control, or give rise to substantial or significant risk by the service provider

Inland Revenue recognises that there are considerable benefits for taxpayers in aligning their methods with well-established international standards. The benefits include reducing compliance efforts by providing greater certainty for MNEs that the price charged for the qualifying activities will be accepted by jurisdictions that have adopted the approach (assuming all the aforementioned conditions are met), and also enabling efficient review of taxpayers' compliance risks by providing targeted documentation enabling efficient review by tax administrations.

This approach will not apply where the same services are also provided to third parties.

LVAIGS will apply from income years commencing on or after 1 July 2018.

Actions

Our Transfer Pricing team can help assess whether any of the low compliance cost approaches are appropriate in a particular circumstance, including whether these increase the risk profile in other jurisdictions.

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Is Australia re-thinking the scope of their corporate tax residence rules?

By Emma Marr

Companies with links to Australia will be cautiously pleased to hear that the Australian Board of Taxation (**BOT**) is undertaking a review of Australia's tax residency rules. As a first step, the BOT has released a consultation paper to initiate the first part of its review.

It is hoped that this might lead to some reduction of the impact of recent developments in the way the Australian Tax Office (ATO) determines the tax residence of companies with some connection to Australia.

You can read our most recent article summarising the problem from February 2019 here. In summary, the ATO released a ruling, in 2018, that had the effect of treating some companies as Australian tax residents, when previously they would not have been. This was due to the ATO's interpretation of the guidance on determining the central management and control (**CMAC**) of a company. Whereas previously a company had to carry on some business in Australia to be considered tax resident in Australia, the ATO's new position was that it was enough for the company to have their central management and control in Australia.

This meant that companies with (for example) some directors in Australia, that held some board meetings in Australia, or had senior management making strategic decisions in Australia, could unexpectedly become Australian tax resident and potentially dual resident companies.

Complicating the picture, New Zealand and Australia both adopted the Multilateral Convention (**MLI**), which meant that the New Zealand/Australia double tax agreement (**DTA**) no longer had a corporate residence tie-breaker test, and companies had to seek agreement from the Inland Revenue and the ATO on where they were tax resident. Since then, Inland Revenue and the ATO have developed an administrative approach that makes this relatively simple for many taxpayers, which is a welcome development. However, this does not un-do the fundamental problem, which is that the ATO has a very wide interpretation of the CMAC test.

The consultation paper released by the BOT indicates that the primacy focus of their review will be the CMAC test. You can read a more detailed summary of the consultation paper here, and the consultation paper itself here. It is good to see that the paper discusses limitations on the CMAC test, including the compatibility of the test with modern corporate governance procedures and features. It is certainly true that the availability of different ways of communicating across borders has allowed for significant changes in the way that companies are governed in the last decade, and current tax legislation and treaties haven't evolved to take those changes into account.

If you have any concerns about the tax residence of your company, or would like to make a contribution to the BOT's consultation process, please contact your usual Deloitte advisor.

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New draft interpretation statement clarifies when foreign sourced distributions may be subject to tax as foreign trust distributions.

By Joanne McCrae & Mike Cai

On 31 July 2019 Inland Revenue's new draft interpretation statement, PUB00345: Income tax - distributions from foreign trusts ("draft statement") was released for public consultation. The draft statement brings together the proverbial certainties of death and taxes, but while attempting to provide greater certainty, it shows the complexity of the tax treatment of foreign inheritances and foreign trust distributions.

Why is this uncertain?

It is a commonly held presumption that inheritances received by New Zealand tax residents can be received tax free in New Zealand. However, a New Zealand resident for tax purposes is generally liable to income tax on income derived from worldwide sources. One such source is foreign estate/trust distributions. The draft statement explains that a transfer of property from overseas needs to be considered to determine whether it represents a simple inheritance, gift or bequest or whether it constitutes a distribution from a foreign trust. Where a foreign arrangement bears the hallmarks of a trust under New Zealand law, then distributions may be taxable foreign trust distributions.

While not all foreign trust distributions will be taxable, the draft statement notes that the ordering rules (rules designed to prevent the making of tax-free distributions ahead of taxable distributions) may still apply such that intended capital distributions become taxable.

There is an exception for distributions from non-discretionary trusts arising under a will or after intestacy. Where there is a trust in place for which this exception does not apply, the taxpayer is required to evidence through adequate documentation the source of the funds that have been distributed, applying the ordering rules.

While the Commissioner acknowledges that obtaining such information may prove difficult in practice for the domestic beneficiary of a foreign trust, the draft statement maintains that where taxpayers cannot point to evidence allowing the proper application of the ordering rules, the entire distribution is likely to be considered taxable.

Inland Revenue is likely to have more information than ever about amounts transferred to New Zealand tax residents from offshore.

The first step will be for the recipient to determine whether there is a trust arising in respect of the property being distributed. The draft statement considers this should be determined under New Zealand tax law. This removes the uncertainty that may arise where the transfer is from a country (such as a civil law jurisdiction) that does not have a legal concept of a trust. The statement determines that a trust will exist where there is an equitable obligation imposed on the person holding the property to deal with it in a certain way for the benefit of certain beneficiaries. If the distribution has been subject to such an obligation, there may be a trust in place.

What does this mean for the taxpayer?

In our view this is unhelpful, as the onus of proof is placed squarely on the New Zealand beneficiary to firstly determine there is a trust and its characteristics, but then to obtain information that is not entirely within their control to confirm it should not be subject to tax in New Zealand. This will more likely catch those that are unaware, than those genuinely seeking to misapply the rules.

One example of the perils of being caught unaware is outlined in the draft statement. It concerns the treatment of a distribution from a trust in Canada which was established upon the death of Cindy's parents. The terms of the will provide for discretionary trusts to be established for the benefit of Cindy and her family. The trustees agree to make a distribution to Cindy's daughter to pay for university fees and funds it by selling some shares in New Zealand.

However as it is a foreign trust (albeit set up under a will), the ordering rules will need to be applied. In the event Cindy cannot obtain adequate records, the distribution will likely be treated as taxable.

What is the risk of this and how can this be overcome?

The draft statement notably points out that with the introduction of Common Reporting Standard and Automatic Exchange of Information arrangements, Inland Revenue is likely to have more information than ever about amounts transferred to New Zealand tax residents from offshore. Once a trust is in place, it may become too difficult to retrospectively address issues or correct poor record keeping. Accordingly, we would recommend that New Zealand beneficiaries of inheritances pre-empt potential tax issues by seeking New Zealand specific tax advice early, as these rules are complex and the consequences can be significant.

For further information, please contact Joanne McCrae, Ian Fay or your usual Deloitte advisor.

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Glencore case – a transfer pricing win for the taxpayer

By Bart de Gouw and Eleanor Yew

The Federal Court of Australia ruled in favour of Glencore Investment Pty Ltd (GIPL) in relation to dealings with its offshore related party, Swiss based Glencore International AG, on the sale and purchase of copper concentrate in the 2007 to 2009 years (*Glencore Investment Pty Ltd v Commissioner of Taxation* [2019] FCA 1432).

The fundamental transfer pricing lesson learnt from this case is that related party transactions should be conducted in the following manner:

- substance should match form;
- contracts and supporting documents should be in place between related parties; and
- contracts made between related parties should be commercially viable, that is, the contracting terms would be those that independent parties would be willing to enter into.

With the above in place, the tax authorities should respect the actual arrangements (other than in exceptional circumstances) and not be able to reconstruct the arrangements. The judge stated that "the actual characteristics of the taxpayer must, therefore, ordinarily serve as the basis in the comparable agreement" and hence the authority should identify the actual arrangement and test it based on the arm's length principle.

Method selection from the Glencore case

The application of the comparable uncontrolled priced (CUP) method, where available, is a strong and persuasive method of justifying the terms, conditions and pricing under which independent parties would be willing to contract i.e., the arm's length terms and conditions. When transfer pricing principles are adhered to, we can avoid double taxation and minimise compliance and administrative cost.

We note for completeness that Organisation for Economic Co-operation and Development (OECD) Transfer Guidelines have been amended in 2017 which arguably give even greater emphasis on identifying the real arrangement between the related parties and pricing that arrangement.

In cases where a potential CUP exists that approach should be explored as a basis of testing the arm's length nature.

If you have any questions about your transfer pricing arrangements, contact your usual Deloitte tax advisor.

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Snapshot of Recent Developments:

Policy Developments

Canada deposits its instrument of ratification for the Multilateral BEPS Convention

On 29 August 2019, Canada deposited its instrument of ratification for the Multilateral BEPS Convention (MLI). The MLI enters into force on 1 December 2019 for Canada and the Canada/New Zealand DTA will also be modified with effect from 1 December 2019.

Protocol amending the TIEA with Guernsey signed

On 18 September 2019, a protocol amending the tax information exchange agreement (TIEA) was signed. This updates the TIEA to include model treaty provisions to prevent tax treaty abuse and improve dispute resolution as recommended by the OECD and G20.

GST treatment of supplies by hunting outfitters and taxidermists

On 28 August 2019, Inland Revenue released a draft interpretation statement, PUB00307: GST - Supplies by New Zealand hunting outfitters and taxidermists to overseas hunters, and three associated factsheets for public consultation.

This draft interpretation statement considers the GST treatment of supplies made by New Zealand hunting guides or outfitters and taxidermists to overseas hunters. It explains which supplies of goods and services to overseas hunters are standard-rated and which are zero-rated for GST purposes. PUB00337 is accompanied by three fact sheets - one each for overseas hunters, outfitters and guides, and taxidermists. The fact sheets briefly summarise the conclusions reached in the interpretation statement.

IR calling 'time' on cheques

Inland Revenue has announced that from 1 March 2020, it will no longer process any cheques if customers have an alternative payment option available as the technology used to process cheques will come to the end of its working life. Inland Revenue are also not accepting post-dated cheques dated 1 March 2020 or later.

Finalised Inland Revenue Items

Finalised QWBA – employee contribution to a fringe benefit

On 30 August 2019, Inland Revenue released the finalised QB 19/12: What is the fringe benefit tax, GST and income tax treatment of an employee contribution to a fringe benefit. QB 19/12 explains the fringe benefit tax, GST and income tax treatment of an employee contribution to a fringe benefit. The tax treatment depends on whether the employee makes a full or partial contribution to the value of the fringe benefit, and who the employee makes the payment to.

Finalised QWBA – Business Premises

On 30 August 2019, QB 19/13: Income tax - when does the business premises exclusion to the bright-line test apply, and QB 19/14: Income tax – When does the business premises exclusion in s CB 19 apply, were finalised and released by the Inland Revenue. QB 19/13 explains when the business premises exclusion applies to land that would otherwise be "residential land" and subject to the s CB 6A bright-line test. QB 19/14 considers when the s CB 19 business premises exclusion applies to sales of land that would otherwise be taxable under s CB 6 to s CB 11 of the land taxing provisions. These QWBAs have been redrafted to reflect submissions raised.

Finalised ruling on crypto-assets

On 30 August 2019, Inland Revenue released the finalised public ruling, BR Pub 19/04: Income tax – application of the employee share scheme rules to employer issued crypto-assets provided to an employee. This new ruling considers whether the provision of the crypto-assets by an employer (or other group company) to employees is an "employee share scheme" as defined in s CE 7. BR Pub 19/04 will apply for a period of three years beginning on 1 December 2019.

Commissioner's Operational Position - treatment of a beneficiary as a settlor in certain circumstances

On 27 August 2019, the Commissioner issued an operational position on new section HC 27(6) - treatment of a beneficiary as a settlor in certain circumstances.
Section HC 27 of the Income Tax Act 2007 was amended by the Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019 to ensure that beneficiaries whose current account balances at the end of the income year are not greater than $25,000 do not become settlors. This amendment comes into force on 1 April 2020, and does not have retrospective effect.

Tax Cases

Sale and purchase agreement invalidly terminated

In Wang v Y&P NZ Ltd HC Auckland [2019] NZHC 2112 the High Court considered a dispute between parties to a sale and purchase agreement in relation to whether land is subject to GST or not. The parties signed sale and purchase agreements for properties on the basis that the purchasers were not registered for goods and services tax (GST) which meant the sale would attract GST. The day before the proposed settlement, they advised the vendor they were registered for GST so the sale must be zero-rated. The vendor refused to settle and purported to cancel the agreements. The High Court held the vendor's purported cancellation of the sale and purchase agreement was invalid and ordered specific performance of the contracts and payment of interest.

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