Connecting you to the topical tax issues

Tax Alert

March 2020

GST issues paper proposes some much needed R&M to the GST Act

By Allan Bullot & Robyn Walker

New Zealand's GST system is often referred to as one of the world's best value added taxes. GST currently collects approximately $28 billion per annum (or approximately 32% of tax revenue) with relative ease. However, like other tax revenue regimes, the Goods and Services Tax Act 1985 (GST Act) requires regular repairs and maintenance in order to maintain the certainty, efficiency and fairness of the GST system.

On 24 February 2020, Inland Revenue released an officials' issues paper, "GST policy issues" (the issues paper), seeking feedback on a wide range of GST-related policy issues to ensure that the GST rules remain current for modern business practices and technology while remaining fair.

A high-level summary of the issues and corresponding proposals are outlined below. Many will be of general interest to all taxpayers, however, there are a number that are industry specific.

Officials are seeking feedback on the issues set out in the paper. Submissions close 9 April 2020. Please reach out to your local GST advisor if you wish to discuss the issues or make a submission.

In this issue:

A number of the proposals are taxpayer positive, and therefore should be publically supported through submissions if taxpayers want the proposal to proceed; particularly if there is a potential fiscal cost to the proposals. While not stated in the issues paper, the supporting documents released with the issues paper allude to the need to consider the fiscal position once some of the policy proposals have been narrowed down to preferred options; indicating that not all proposals may go forward if they are not specifically supported by the business community.

The issues paper also presents the opportunity to submit on GST issues outside of those directly covered in the issues paper and to highlight any other niggles that may exist between common business practice and the black letter law.

Summary of issues discussed:

Tax Invoice requirements

The issues paper proposes some changes to GST invoicing requirements to align with changes in business practices and technology. This positive proposal suggests removing some of the invoicing requirements or making the requirements more flexible. For example, modernising legislation to deal with e-invoicing, removing the need for Inland Revenue approval for buyer created tax invoices, more flexibility around shared invoices and relaxing penalties around issuing duplicate invoices. We recommend that businesses use the issues paper as an opportunity to highlight other opportunities to simplify or improve the rules for tax invoices, credit notes and debit notes – accounts payable and receivable staff are likely to have a long wish list of possible invoicing improvements.

Crypto-assets

Cryptocurrencies (crypto-assets) are not treated as currency and therefore have an unfavourable GST treatment compared to money or other investment products, with GST charged at 15% on the supply of the crypto-asset (theoretically at least: we question whether this treatment is applied in practice). There is also a potential "double taxation" problem when income tax is later applied to the sale of cryptocurrency. The proposal suggests excluding cryptocurrencies from GST and the financial arrangement rules. An advantage of this approach is that it should provide a neutral tax treatment for those crypto-assets which are close substitutes for existing financial products such as currency or shares. Income tax will still apply to any profits made when cryptocurrencies are sold or traded.

The proposal suggests excluding cryptocurrencies from GST and the financial arrangement rules. An advantage of this approach is that it should provide a neutral tax treatment for those crypto-assets which are close substitutes for existing financial products such as currency or shares.

Apportionment and adjustment

The existing apportionment and adjustment rules are complex and difficult to apply in practice. In some situations, they can result in under- or over-taxation. The issues paper suggests a number of different amendments to specific apportionment and adjustment rules. In addition, feedback is sought on further ways in which the rules could be simplified and improved.

Domestic legs of the international transport of goods

Courier business practices will often sub-contract part of the journey for an international delivery to other providers.

Currently the GST zero-rating rules for international transport do not accommodate these sub-contracting practices, instead GST technically needs to be charged on transport within New Zealand when the goods are being moved within New Zealand by a subcontracted courier. This is seen as being against the underlying policy of GST not applying as a cost to international transportation. The issues paper proposes fixing the technical issues by zero-rating domestic transport services that are supplied to a non-resident transport supplier that is providing international transport of goods to or from New Zealand.

Business conferences and staff training

Currently it is possible for a non-resident business to register for GST and claim back GST incurred in New Zealand on business conferences and training. However, it is impractical for non-resident businesses to do this for what may be a one-off expense; the compliance costs may often exceed the GST in question. To reduce compliance costs the issues paper proposes allowing for services such as conferences, conventions and staff training services supplied to non-resident businesses to be zero-rated. Zero-rating would not apply to education

and training provided to individuals or "incentive tours" which reward employees with tourism experiences. This could make New Zealand a more desirable hosting location for large international conferences, conventions and training, and would also put the New Zealand regime on par with other destinations such as Australia and Singapore.

Managed funds

One long running issue that might be solved by the issues paper is the GST treatment of different types of management services supplied to managed funds. The rules are complex and are applied inconsistently within the industry. Some managers apply 15% GST to all their services, while others apply 15% GST to only 10% of service fees. This distorts competition by favouring certain types of managed funds based on how the supplier has chosen to interpret the GST rules. The proposal suggests developing new rules for fund manager and investment manager services. Several alternative options, which would have different fiscal consequences, are discussed:

1. Taxable (15% GST).
2. Exempt financial services.
3. Deem a percentage to be exempt (and the remainder taxable).
4. Zero-rating or a reduced input tax credit mechanism.

Insurance pay-outs to third parties

The rules around insurance pay-outs to third parties are complex. An issue arises where a GST-registered third party receives an insurance pay-out without knowing its source, and accordingly treats the payment as compensation with no GST charged. The proposal discusses three alternative options:

1. Making the insurer responsible for the GST obligations on behalf of the claimant (this would require the insurer knowing the GST status of the claimant and any associated third parties).
2. Requiring disclosure to the third party that the payment is covered by insurance and therefore GST may be required to be returned on the settlement amount.
3. No law change but Inland Revenue would provide education and guidance to advisors and taxpayers about the need to consider GST implications when negotiating insurance pay-outs.

This proposed law change complements a Commissioner's Statement issued on this topic in February 2020.

Compulsory zero-rating of land

It has been identified that there are some situations where the current compulsory zero-rating of land rules appear to produce inconsistent outcomes. The proposals include:

- Clarifying that section 5(23) applies to place the output tax liability on the purchaser, in cases where a vendor incorrectly zero-rates land.
- Clarifying that Section 5(23) applies to standard-rate the supply of land on the date that the original supply was incorrectly zero-rated.
- Adjusting the second-hand goods input credit, in cases where land should have been zero-rated in the taxable period in which it became apparent that the amount of input tax deducted was incorrect.
- Clarifying that section 20(3J), applies from the time of supply of the land.

Technical and remedial issues

Other technical or remedial changes are required to various rules in the GST Act to ensure these rules work as intended. The proposals include changes to:

- GST grouping rules.
- Claiming input credits on goods not physically received yet at the time a GST return is filed.
- Second-hand goods input credits on supplies between associated persons.
- Provide more flexibility for the Commissioner to approve the end date of a taxable period.
- Ensure that members of non-statutory boards do not have a taxable activity.
- Introducing a right to challenge the Commissioner's decision to reopen time-barred GST returns.

Next steps

We encourage anyone who has an interest in any of the above topics to consider making a submission on to the issues paper. Having your voice heard ensures that Officials get a better understanding of the importance of a particular issue. Businesses shouldn't take for granted that all of the proposals will proceed regardless of whether submissions are made.

Please reach out to your local GST advisor if you wish to understand more about how any of the proposals may impact you. We can also provide more information about the process of making submissions.

When is a gift unconditional?

Separate from the issues paper, at the end of February the Inland Revenue also released a draft interpretation statement "Goods and Services Tax – Unconditional Gifts" ("the draft statement"). This draft statement refreshes the guidance last provided by Inland Revenue in 1991 about when a GST registered non-profit body is required to return output tax on gifts received (i.e. donations).

The key issue is whether a donor is receiving an "identifiable direct valuable benefit" of more than nominal value in return for the gift. If a gift is made with an expectation of a benefit, then this will not be an "unconditional gift", and the non-profit body will be required to return output tax. There will be a spectrum of benefits being provided by non-profit bodies to donors, and this is not necessarily a straight forward matter to resolve. Non-profit bodies should use this draft statement as a reason to take a fresh look at fundraising activities to ensure GST is being properly considered. Submissions on the draft statement close on 10 April 2020.

Allan Bullot
Partner
Tel: +64 9 303 0732
Email: abullot@deloitte.co.nz

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

Another year over, and a new year just begins

By Emma Marr

As the 2020 tax year draws to a close, it is timely to remember tasks that should be done before 31 March, for those with a standard balance date. There are also various law changes taking effect from 1 April that many taxpayers should have front of mind as the new year begins.

Investment income reporting

As reported on in our December Tax Alert, from 1 April 2020 payers of investment income (interest, dividends royalties, or other taxable distributions) will need to comply with new information reporting requirements. Payers will need to be registered with Inland Revenue and have a myIR account set up in advance. The reporting requirements are fairly extensive and very regular, so it will pay to be organised in advance.

Charitable entities

Another change coming is to charitable organisations. From 1 April 2020, all entities with a charitable purpose will need to be registered with the Charities Service in order to get or retain donee tax status. This is necessary for donors to claim a donations tax credit or tax deduction.

Regular readers may also remember that the Government announced a law change late last year to provide that all charitable donations must be made in cash (including payments made by credit card or bank transfer) in order to qualify for a tax credit or to be deductible. The change will be retrospective with effect from 1 April 2008, but with a savings provision for those who have already filed a tax return or donation tax credit claim for the date of the announcement of the law change (17 December 2019). The law change has been included in a tax bill currently before Parliament.

New travel allowance rules

Inland Revenue's new operational statement on employer provided travel to a distant workplace, which we covered in the February 2020 Tax Alert, must be applied from 1 April 2020. Check the rules and make sure you understand them, or ask for assistance from your usual Deloitte tax advisor if you need assistance.

Things to remember before year end

Remember to check on the following, as it could save you some money when you come to pay your final tax bill for the 2020 year:

- **Write off bad debt:** you will only get a deduction when a bad debt is properly written off in your accounts.
- **Check the imputation credit account:** a debt balance at 31 March results in a penalty, so make sure the account is not in debit at year-end. This applies for all taxpayers, regardless of balance date.
- **Check your fixed asset register:** make sure you're using correct depreciation rates and depreciating new assets for the full month of purchase, not just from the day of purchase. Likewise, pooled assets can be depreciated for the entire year. Ensure assets you have sold or lost are properly disposed of on the fixed asset register, as this might result in a deduction. Assets that cost less than $500 can be immediately deducted, as long as you didn't buy more than one of the item on the same day from the same supplier.
- **Review trading stock valuation:** If any trading stock is obsolete, you might be able to re-value. To value it below cost you'll need to substantiate the valuation.
- **Check your losses:** If you have had a shareholding change during the year, you might have forfeited tax losses. Check shareholder continuity to ensure it remains equal to or above 49%.
- **Thin capitalisation:** If your company's debt has fluctuated over the year, you should check that it is not breaching thin capitalisation ratios. If you are, the company may have a higher tax liability than you are expecting.

As always, if you need help understanding new rules or applying old ones, contact your usual Deloitte advisor.

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

How healthy is the tax treatment of your rental properties?

By Robyn Walker & Blake Hawes

For those with rental properties there have been a number of regulatory changes impacting on landlords, most notably is the introduction of "Healthy Homes Standards" ("HHS") and the introduction of loss ring-fencing rules from 1 April 2019. In this article we provide an overview of how tax rules apply to landlords complying with HHS and provide a reminder of how the loss ring-fencing rules apply as landlords prepare to file their first returns under the new rules.

Healthy Home Standards

Since 1 July 2019, residential rental property owners have been required to make sure their properties meet certain minimum standards for insulation and smoke alarms. In addition the HHS require all rental homes to comply with specific regulations regarding heating, ventilation, moisture ingress & drainage and draught stopping by either 2021 or 2024 (depending on tenancy circumstances).

In recognition that landlords are likely to be incurring expenditure on satisfying the HHS's, Inland Revenue has released some draft guidance in the form of "QB 10/XX Can owners of existing residential rental properties claim deductions for costs incurred to meet Healthy Homes standards?" ("the draft QWBA").

The draft QWBA outlines the deductibility (or otherwise) of the costs incurred by landlords in complying with HHS. It provides some general rules for determining the deductibility of costs, considering established principles for determining when something forms part of a building and the tax treatment of repairs and maintenance. Most of the conclusions reached in the draft QWBA would probably not come as a surprise to those familiar with these tax concepts, but for landlords who are less familiar with tax rules there may be a nasty surprise that no deductions are available for certain costs incurred under the HHS's.

There are two main questions for landlords to consider:

1. Is the expenditure on something which is an integral part of and embedded within the building? If so, it forms part of the building and will be depreciable at the rate of 0% (i.e. no deductions are available).
2. Is the HHS expenditure a new item or a repair of something existing (i.e. topping up existing ceiling insulation)? If the expenditure is to bring previous parts of the building back up standard, then potentially this will be a deductible repair.

The draft QWBA provides the following conclusions (replicated direct from the draft QWBA):

Costs of a revenue nature are generally deductible in the income year they are incurred and these may include the costs of:

- repairing items that would otherwise meet the standards if operational or in a reasonable condition;
- minor additions or alterations that do not change the character of the building, such as:
  - some costs of meeting the draught-stopping standards;
  - making mechanical ventilation systems compliant;
  - installing battery-powered smoke alarms;
  - some costs of meeting the insulation standard; and
- some costs of meeting the moisture ingress and drainage standard.
- replacing items where they have previously been treated as part of the building; and
- recordkeeping and providing information in tenancy agreements.

Capital costs will generally result in a deduction for a depreciation loss unless they are for something that is part of the residential rental building. The cost of items that are part of the building are added to the building's cost and depreciated at the same rate as the building. Generally, this is zero percent.

Items that are likely to be part of the building include:

- wired-in or battery-powered smoke alarms;
- insulation;
- ducted or multi-unit heat pumps;
- flued fires (wood or gas);
- new or replacement openable windows;
- new exterior doors;
- most extractor fans or rangehoods;
- ground moisture barriers;
- stormwater drainage, gutters and downpipes; and
- underfloor vents.

Capital costs for some items acquired that are not part of the building will be either:

- depreciated over multiple income years using a rate set out in Depreciation Determination DEP80 for assets of that type; or
- depreciated at a rate of 100% in the income year the expenditure is incurred if the item is a "low-value asset" (generally, where the cost is $500 or less).

Items able to be depreciated include:

- electric panel heaters (67% DV or SL);
- some heat pumps (eg, single-split type) (20% DV or 13.5% SL); and
- through-window extractor fans, window stays, door openers and stops, external door draught excluders and devices for blocking fireplaces or chimneys (40% DV or 30% SL).

For landlords, it will be important to carefully consider each type of expenditure and whether it will be deductible or depreciable. Submissions are being taken on the draft QWBA until 10 April; Deloitte will be making a submission so please contact us if you have any thoughts.

Reminder: Residential Rental Loss Ring-Fencing

From 1 April 2019 the residential rental loss ring-fencing rules took effect, as we approach 31 March 2020, landlords will find out what the rules mean for their tax positions. As set out in our July 2019 Tax Alert, these rules ensure that unless certain criteria are met, landlords are no longer able to offset losses from rental properties against other sources of income (e.g. salary and wages or investment income). When preparing a tax return for the year ended 31 March 2020, landlords will need to make a decision as to whether to aggregate properties into a portfolio (with offsetting available between properties) or to treat each residential rental property separately.

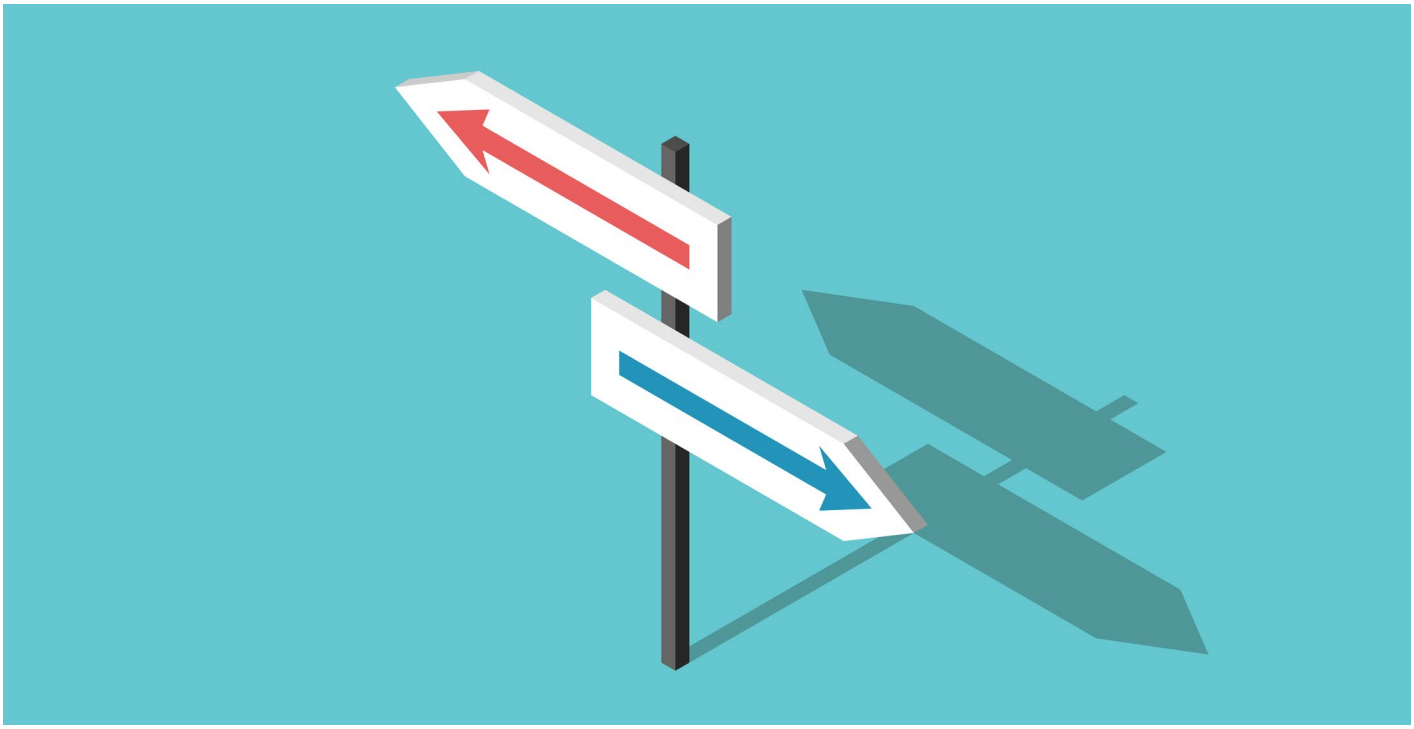
For more information about any of these changes please contact your usual Deloitte advisor.

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

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

OECD guidance on financial transactions finalised

By Bart de Gouw and Graeme Fotheringham



On 11 February 2020 the OECD released its final Transfer Pricing Guidance on financial transactions ("OECD Guidance") as a follow up to Base Erosion and Profit Shifting (BEPS) Actions 8-10. The Guidance aims to clarify the application of the transfer pricing guidelines to financial transactions. The OECD Guidance takes into account the comments received in response to the public discussion draft released in July 2018 and covers the following topics:

- The accurate delineation of financial transactions and treasury functions;
- Pricing of related party loans, cash pooling and hedging;
- Pricing of financial guarantees;
- Captive insurance; and
- Considerations with respect to determining risk-free and risk-adjusted rates of return.

A more substantive summary of the OECD Guidance by Deloitte Global can be found here.

Deloitte Comments

Accurate delineation – debt/equity determination

The Income Tax Act 2007 requires taxpayers to apply domestic transfer pricing rules consistently with OECD transfer pricing guidelines, which now includes the OECD Guidance on financial transactions. The new OECD Guidance emphasises an approach of accurately delineating the actual transaction to determine the capital structure (debt versus equity determinations), the particular terms of the financial transaction, or the lender's capacity to make decisions or control risk.

Based on a number of economically relevant factors detailed in the report, taxpayers may be required to assess whether independent parties would have agreed to the particular terms of the tested transaction.

One of the key considerations is whether a transaction should be treated as debt or equity. In effect taxpayers are required to accurately delineate any existing or proposed financing transactions before considering interest deductibility issues under thin capitalisation and restricted transfer pricing rules. The guidance includes a number of examples including scenarios where a long-term related party loan may be more accurately delineated as a series of refreshed short-term loans or where the related party loan should be better considered as an equity contribution from the shareholder. This provides another avenue for Inland Revenue to potentially challenge the interest deductions on related party borrowing of New Zealand companies.

What is clear from the guidance is that recent BEPS changes to New Zealand's domestic rules do not fully align with OECD principles and may cause unexpected outcomes and risk of double taxation.

On the flipside, the guidance may also provide opportunities for New Zealand taxpayers to consider whether any funds advanced to offshore subsidiaries should be more accurately delineated as an equity contribution rather than debt such that no interest need be charged for transfer pricing purposes. A careful analysis of the facts will be needed.

Pricing of Intragroup loans

The OECD Guidance also provides commentary on different approaches to determining an arm's length interest rate on intragroup loans. A number of factors could be considered in determining an arm's length rate including:

- Lender and borrower's perspectives;
- Borrower's credit rating and credit rating of a specific debt issuance;
- Effects of group membership and implicit support
- Guarantees; and
- Loan fees and charges.

It is clear that some of the principles discussed in the OECD Guidance do not necessarily align with some of the recent BEPS measures that have been introduced in New Zealand. For example, the commentary takes the view that a facts and circumstances driven approach should be taken to determine whether the borrower should be aligned to the group's credit rating.

In comparison the restricted transfer pricing rules can require high BEPS risk borrowers to have a credit rating one notch below the credit rating of the member of the worldwide group with the highest unsecured third party debt (or two notches where the resulting credit rating for the New Zealand-resident borrower will be BBB- or higher), regardless of that borrower's actual credit rating.

The guidance therefore serves to highlight the divergence between New Zealand's approach to pricing debt under RTP and the OECD principles used by other member states.

Guarantee Fees

We are presented with some useful approaches to accurately delineating and pricing guarantee fees. The OECD Guidance makes a distinction between explicit and implicit guarantees and requires consideration of both the benefit to the guaranteed party and the risks to the guarantor. Where the effect of a guarantee is to permit a borrower to borrow a greater amount of debt than it could in the absence of the guarantee, borrowers may consider whether this additional amount could be accurately delineated as an equity contribution from the guarantor to the borrower.

Final word

Inland Revenue will take comfort from the fact that the OECD Guidance does not preclude jurisdictions from implementing other approaches (such as the restricted transfer pricing rules) to address capital structure and interest deductibility. However, in our view, this does not extend to a green light to ignore OECD principles when pricing the debt. What is clear from the guidance is that recent BEPS changes to New Zealand's domestic rules do not fully align with OECD principles and may cause unexpected outcomes and risk of double taxation.

Inland Revenue continues to maintain that existing New Zealand legislation is consistent with OECD principles and have noted that taxpayers may use the Mutual Agreement Procedure to address any issues caused by any divergence in the OECD and New Zealand positions. In practice these procedures can be difficult and costly to apply.

If you have any questions or concerns regarding the OECD Guidance and how these might apply to your existing financing transactions we recommend you contact one of the authors or your usual Deloitte tax advisor to discuss further.

Bart de Gouw
Partner
Tel: +64 9 303 0889
bdegouw@deloitte.co.nz

Graeme Fotheringham
Senior Manager
Tel: +64 3 474 8696
gfotheringham@deloitte.co.nz

Update on OECD Base Erosion and Profit Shifting measures

By Bart de Gouw and Melanie Meyer

OECD renews commitment to address tax challenges arising from the digitalisation of economy

The OECD/G20 Inclusive Framework on BEPS has released a statement on the Two-Pillar Approach to address tax challenges arising from the digitalisation of the economy.

The proposals have the potential to materially impact the taxation of multinationals and shift the taxing rights between countries. While the OECD has released some high level analysis of the potential shift in taxing rights between high, medium, low income countries and investment hubs there has not been any analysis published by individual countries (including New Zealand) on the impact on their economies.

The statement includes two annexes:

- The first annex, an "Outline of the Architecture of a Unified Approach on Pillar One," has been agreed as the basis for upcoming negotiations;
- The second annex is a progress note on Pillar Two.

The statement explains that any agreement on a reallocation of taxing rights under Pillar One would require improved tax certainty, including effective and binding dispute prevention and resolution mechanisms. The statement highlights a number of other issues where significant divergences will have to be resolved. A more substantive summary of the statement by Deloitte Global can be found here.

OECD seeks public consultation on Country-by-Country Reporting

The OECD Inclusive Framework on BEPS has released a public consultation document on the 2020 review of Country-by-Country Reporting ("CbCR").

The deadline for submissions is 6 March 2020. The consultation document sets out several specific questions regarding CbCR which indicate potential reform.

Currently, corporate groups headquartered in New Zealand with annual consolidated group revenue over EUR 750 million in the preceding fiscal year (approximately NZ$1.2 billion measured using 1 January 2015 exchange rates, as per OECD requirements) are required to submit annual Country-by-Country ("CbC") reports to Inland Revenue. Some of the discussion questions relate to proposals that may impact the thresholds for filing CbC reports. Relevant questions include:

- Whether separate groups with common controlling ownership and aggregated revenue over the CbCR revenue threshold should be required to file CbC reports,
- Whether the CbCR revenue threshold should be reduced,
- Whether a single enterprise with one or more foreign permanent establishments should be regarded as a group for CbCR,
- Whether jurisdictions with a consolidated group revenue threshold denominated in a currency other than Euros (e.g. NZD) be required or permitted to rebase its threshold,
- Whether more than one year of preceding consolidated revenue be considered for the revenue threshold,
- Whether extraordinary or investment income should be included in consolidated group revenue, and
- Whether additional information fields should be added to the CbCR template.

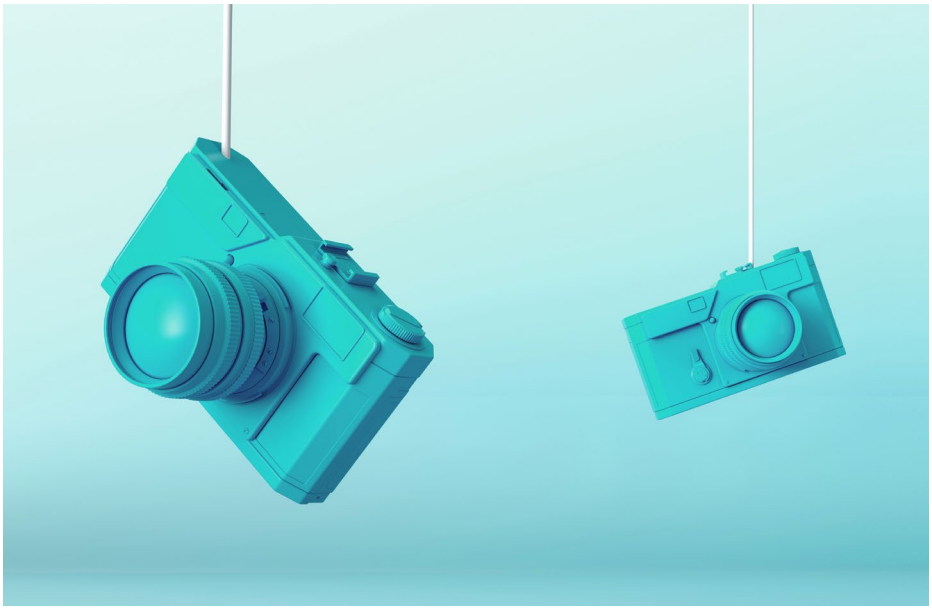
The above non-exhaustive list highlights that the number of taxpayers that are required to submit CbC reports may increase in the future depending on the answer to these questions and whether reform is enacted. The threshold has wider uses in international taxation as a number of countries, including New Zealand, have adopted it as a benchmark for the application of some international regimes. The consultation document also contains questions related to the content of CbC reports.

To discuss the potential implications for your business, please contact the authors or your usual Deloitte advisor.

Bart de Gouw
Partner
Tel: +64 9 303 0889
bdegouw@deloitte.co.nz

Melanie Meyer
Partner
Tel: +64 4 470 3575
melaniemeyer@deloitte.co.nz

Snapshot of Recent Developments:



Tax legislation and policy announcements

Consultation on proposed changes to unclaimed money

On 28 February, consultation closed on changes to the Unclaimed Money Act 1971. The purpose is to simplify the administrative processes and reduce compliance costs as part of Release 5 of Business Transformation. If amended, the new unclaimed money rules will remove the need for holders of unclaimed money to maintain physical registers, reduce the period of time which must elapse before money is deemed unclaimed and improve Inland Revenue's ability to match unclaimed money with people.

OECD releases

During February, the OECD released several documents relating to transfer pricing and the taxation of the digitised economy.

- On 11 February, the OECD published, Transfer Pricing Guidance on Financial Transactions: Inclusive Framework on BEPS: Actions 4, 8-10. This is the first time the OECD Transfer Pricing Guidelines include guidance on the transfer pricing aspects of financial transactions.
- The OECD released a progress update on its Digital Economy work-streams, where members of the Inclusive Framework reaffirmed their commitment to reaching a consensus-based long-term solution to the tax challenges arising from the digitalisation of the economy by the end of 2020. The update included a statement by the OECD/G20 Inclusive Framework on BEPS on the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalisation of the Economy. Read our Tax@hand article for more information.
- Finally, new economic analysis published by the OECD shows a proposed "two-pillar" solution to the tax challenges arising from the digitalisation of the economy would have a significant positive impact on global tax revenues. Also, see our article "OECD update on base erosion and profit shifting measures" in this issue.

Inland Revenue statements and guidance – Finalised items

Loss offset elections between group companies

On 13 February 2020, Inland Revenue finalised a standard practice statement on loss offset elections between group companies (SPS 20/02). In SPS 20/02 the Commissioner sets out certain practices deemed acceptable when offsetting losses by election between group companies. The practice statement also outlines the consequences of specific events that can affect a loss offset, and how taxpayers should address these outcomes. SPS 20/02 updates and replaces SPS 17/03, effective from 12 February 2020.

Treatment of the receipt of lump sum settlement payments

On 24 February, Inland Revenue published an updated interpretation statement (IS 20/01) on the income tax treatment of lump sum payments received to settle claims that are both capital and revenue in nature. The statement is essentially a re-issue of a previous item with a reference corrected. The interpretation statement confirms that:

- Where a single undissected sum is received, it should be apportioned between its capital and revenue elements where possible.
- Any apportionment must be made on an objective basis, with the settlement agreement and any related documents being the appropriate starting point.
- The circumstances surrounding the agreement and other relevant evidence should be considered, where necessary.
- The onus of proof is on the taxpayer to show the apportionment is appropriate, especially to prove an amount is non-taxable when the lump sum includes an amount that is taxable under Part C.
- Where a payment cannot be appropriately apportioned, the whole amount should be treated the same – generally as income.

When are tax payments received in time?

The Commissioner has finalised a standard practice statement (SPS 20/01) for accepting tax payments in time. Coverage of the practice statement includes: electronic payments, debit/credit cards, Westpac over-the-counter payments, tax pooling, tax transfers, Income Equalisation Scheme deposits, primary sector business customers, and weekends and public

holidays. The practice statement confirms that cheques will no longer be accepted as a method of payment from 1 March 2020 (except in some exceptional circumstances). This practice statement is effective from 5 February 2020 and replaces SPS 19/01.

New operational position on Part 10B transfers of excess tax, effective date for ICA entries

On 5 February, the Commissioner published an operational position (OP 20/01) on Part 10B transfers of effective tax. Part 10B of the Tax Administration Act 1994 (the TAA) enables taxpayers to sometimes choose a date (the date of transfer) from which a transfer of overpaid tax will be effective. These rules have raised a question over the effect on the imputation credit account (ICA) of both transferor and transferee companies if the transferor selects an earlier date of transfer. The Commissioner has taken the position that the correct approach is for taxpayers to update the ICA for the date of transfer i.e. the effective date chosen. The operational position applies to requests for transfers made on or after 5 February 2020 (i.e. not retrospective).

In some cases, this approach contrasts with common commercial practices (prior to the release of the operational position) which may now result in further income tax, imputation penalty tax and use of money interest for the transferor company. If you are looking to transfer excess tax with an earlier date of transfer, please get in touch with your regular Deloitte advisor to consider how the operational position may affect you.

Commissioner Statement on GST liability for insurance and settlement payments to third party claimants

On 3 February, the Commissioner issued a statement (CS 20/01) which sets out her position and operational approach to the GST liability of a GST registered third party claimant when they receive a payment for damages or loss incurred, including by way of settlement agreement, under a contract of insurance. The Commissioner's position is:

> *When an insurer of an insured person pays an amount to a GST-registered third-party claimant, in relation to a claim that the third party claimant has against the insured person, and the other requirements of s 5(13) of the Goods and Services Tax Act 1985 are met, then the third party claimant must return GST on the receipt of that payment.*

Binding rulings

Inland Revenue has published a guide on "How to get certainty on a tax position" (IR715). This guide defines binding rulings and explains the application process. The guide is also helpful to understand when Inland Revenue will / will not give a ruling.

Prosecution guidelines

Inland Revenue has updated its website with prosecution guidelines designed to ensure a consistent approach to prosecutions nationally.

Inland Revenue - draft items for consultation

Natural love and affection exception to debt remission income for look-through company

On 28 February, Inland Revenue released a draft QWBA for consultation (PUB00349). The draft QWBA considers whether a look-through company (LTC) derives debt remission income when a close friend or family member of the LTC's shareholder forgives a loan made to the LTC. In summary, section EW 46C of the Income Tax Act 2007 prevents the LTC from deriving debt remission income if the shareholder and the close friend or family member have natural love and affection for each other. Taxpayers can submit comments on the draft QWBA to Inland Revenue prior to 10 April 2020.

Other items of interest

Tax relief available for those affected by the summer drought or Coronavirus

Primary Industries Minister Damien O'Connor has declared a drought from the Northland Region to the northern part of Auckland (down to the Harbour Bridge). Inland Revenue is urging taxpayers affected by the drought to get in contact as tax relief is potentially available. Tax relief is also available to taxpayers affected by Coronavirus COVID-19.

Deloitte Tax Calendar – Order yours now

We're currently working on the Deloitte tri-fold tax calendar containing key tax payment dates, rates and quick tax facts for 2020-21. If you would like a free copy for your desk or for members of your accounting team, please click here to order. The calendar will be sent out in early April. Please be sure to order your copy by 25 March 2020.

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.

This publication is intended for the use of clients and personnel of Deloitte. It is also made available to other selected recipients. Those wishing to receive this publication regularly are asked to communicate with:

The Editor, Private Bag 115033, Shortland Street, Auckland, 1140. Ph +64 (0) 9 303 0700. Fax +64 (0) 9 303 0701.

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