



Connecting you to the topical tax issues

Tax Alert

June 2019

How are you affected by new individual tax assessment regime?

By Nick Cooke and Joanne McCrae

On 20 May 2019, Inland Revenue began automatically assessing the 2019 tax position for over 380,000 tax paying individuals. These assessments, which finalise the end-of-year information for the annual tax year ending 31 March 2019, are a part of Inland Revenue's business transformation programme which aims to modernise New Zealand's tax system. Inland Revenue's ultimate goal is to streamline processes, policies and upgrade

online services, making it easier for taxpayers to manage their tax affairs at the click of a button.

Who will be affected?

You will generally receive an automatic assessment if you have reportable income only e.g. salary and wages, schedular payments, interest or dividends and NZ super. See [here](#) for a comprehensive list of reportable income.

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Snapshot of recent developments

The end-of-year assessment finalises the end-of-year information for the annual tax year ending 31 March 2019. It uses employer and bank information and shows how much you've earned, how much tax you've paid and your tax calculation. If you have a myIR account, you'll be notified by email when your tax assessment is ready to view. If not, the assessment will be posted to you.

If you have other sources of income, are self-employed, or do your own tax return, you should not receive an automatic assessment. You'll still need to file an income tax return. In these cases, we recommend you reach out to your friendly Deloitte tax advisor for assistance.

What to do if you receive an assessment

We would recommend that you check the assessment as soon as possible. You will need to inform Inland Revenue if you received income over \$200 (before tax) that is not showing on your assessment, and you will have until your terminal tax date to do so. Your terminal tax date will be 7 February 2020 (or 7 April 2020 if you have a tax agent). Inland Revenue will then send you a new assessment stating your correct position.

If the assessment is correct and you have no tax to pay, you do not need to do anything else. Inland Revenue will automatically pay any refund directly into your bank account within 48 hours of the automatic assessment being completed. This means that you may receive a refund before you have even reviewed the assessment.

If you owe tax, Inland Revenue will confirm the amount owed and when it's due. A range of payment options are available, including payment plans.

Where Inland Revenue believes further information is needed

In some cases Inland Revenue's records will show more information is required in order to raise an assessment. For example, taxpayers who have schedular income and/or generally claim expenses. Inland Revenue will issue a notice to you advising that you have 45 days to provide this information, otherwise an assessment will be made based on the information held only.

Changing your details couldn't be easier, you just need to log into your myIR account and submit the changes online. We recommend that you make sure your contact and bank account information is up-to-date.

It all seems straightforward, but caution is advised

For a large majority of us, these changes will greatly increase the ease of getting back what we are owed or paying any extra tax due. We have identified however some instances where things may not be as straightforward as they seem.

Other income

Inland Revenue can only utilise the information it has readily available, which obviously doesn't include any non-reportable income. Therefore there will be instances where assessments are raised which are incorrect, and the onus is on the taxpayer to inform Inland Revenue of the changes required.

Calculation errors

Inland Revenue's system is new and untested, which means there are likely to be errors. One such error we have seen is Inland Revenue incorrectly calculating the independent earner tax credit.

Employer reporting

The assessments are driven off the income reported and PAYE withheld by employers through payroll. Therefore the importance of employers getting this right has never been more important, especially as 'payday filing' is now in effect reducing the time employers have to provide this information to Inland Revenue. The risk of mistakes is greater for overseas employers who may not be familiar with New Zealand tax or reporting rules. We would therefore recommend that employers take this opportunity to get a [PAYE compliance review](#) as mistakes are complicated and expensive to correct.



If you have other sources of income, are self-employed, or do your own tax return, you should not receive an automatic assessment. You'll still need to file an income tax return. In these cases, we recommend you reach out to your friendly Deloitte tax advisor for assistance.

Employers of globally mobile assignees

Globally mobile assignees generally receive a mixture of salary and wages, bonuses and employee share scheme income, some of which may not necessarily be taxable in New Zealand. Where the income is taxable, it may be subject to a lower effective tax rate due to the availability of foreign tax credits. If this applies to you, we would advise you to apply for a special rate tax code to avoid over withholding. Equally any under withholding by your employer is also problematic and may cause you to receive an unexpected tax bill at the end of the year and may even push you into the provisional tax regime.

Provisional tax

Where you meet the criteria for an automated assessment, by issuing these assessments in the months of May and June following the end of the tax year, Inland Revenue appear to have circumvented the ability for taxpayers to manage the timing of their provisional tax obligations under the standard uplift method for the following year.

For example, if based on your 2018 residual income tax you are not currently a provisional taxpayer and an automatic assessment is raised in May 2019 which shows your 2019 residual income tax is more than \$2,500, you fall

into the provisional tax regime and two provisional tax instalment obligations for the 2020 tax year arise on 28 August 2019 and 15 January 2020 respectively. Without such automatic assessment, you may not be required to pay provisional tax until the final instalment date of 7 May 2020.

If you are already a provisional taxpayer and do have a provisional tax obligation at 28 August 2019 and 15 January 2020, your instalment obligation at these due dates will instead be calculated by reference to your 2019 residual income tax as opposed to your 2018 residual income tax which may mean higher payments are required than otherwise would have been the case.

Where you are on our agency list, we will continue to review your tax return as pre-populated by Inland Revenue unless you advise otherwise. If you have any queries with regards to any of the above, please do not hesitate to contact us.



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GST can be very complex when it comes to land transactions. The rules that require compulsory zero-rating of land transactions have now been in place since 2011, however issues still arise when either party does not correctly state their GST registration status and/or intention.

- Settlement occurred, and consistent with the vendor's warranty that he was not GST registered, no GST invoice was provided at settlement.
- Subsequently, the purchaser made a claim for a second hand goods credit on the understanding that the vendor was not GST registered. This second hand goods credit was denied by Inland Revenue as the vendor was in fact registered for GST.

High Court decision

The High Court held that the vendor was liable to compensate the purchaser for an amount equivalent to the second hand goods credit that the purchaser was denied. This was based on the fact that the vendor had breached the warranty given on the date of the agreement, because on the date of agreement and also the date of settlement, the vendor was registered for GST. This was therefore a breach of contract.

Despite the purchaser becoming GST registered after the agreement and breaching the obligation to notify the vendor of this change, at the date of the agreement the purchaser's warranty was correct. At the date of the agreement being signed, the purchaser was not registered for GST and did not intend to be.

Had the purchaser remained unregistered, the vendor as a GST registered party would have been required to return GST at the standard rate on the sale of the land based on a GST inclusive price of \$355,000. However, when the purchaser became GST registered, the sale would

have become zero-rated. Therefore, the late registration of the purchaser did not put the vendor in a worse off position.

Further, as the vendor had stated they were not GST registered when the purchaser entered into the agreement, it was reasonable for the purchaser to contemplate the potential for them to claim the second hand goods credit if they became GST registered. Therefore the breach of warranty by the vendor meant the purchaser was not able to claim the GST second hand goods credit from Inland Revenue that they could have otherwise anticipated.

Conclusion

A focus on the detail is very important when it comes to land transactions. It is not only crucial for parties to scrutinise what is included or excluded from the standard GST clauses contained in the ADLS agreement for sale and purchase of land, but for parties to understand in depth what they are agreeing to.

This case highlights the importance of parties stating their correct GST registration status and intentions when entering agreements for sale and purchase of land. It is of particular importance to vendors who may find themselves compensating the purchaser for misrepresenting its own GST status.

As there are many traps along the road to achieving a successful property settlement, we recommend seeking advice from the Deloitte Indirect Tax team for assistance with any upcoming land transactions prior to signing.



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IR and ATO release administrative approach to determining residence

By John Lohrentz



This month there may be some good news for NZ / Australia dual-resident companies with a turnover below NZD \$260m. On 27 May, the New Zealand Inland Revenue (“IR”) and Australian Tax Office (“ATO”) (“Competent Authorities”) jointly published an [agreed administrative approach](#) on article 4(1) of the Multilateral Tax Convention (“MLI”) that allows taxpayers meeting several eligibility criteria to “reasonably self-determine” their place of effective management (“PoEM”). For larger companies, the new publication clarifies the application process and supporting information required to apply to the Competent Authority for a determination on tax residency under the Australia-New Zealand tax treaty.

A quick recap

The OECD’s MLI is an efficient and swift means of implementing the tax treaty related measures arising from the OECD’s base erosion and profit shifting (“BEPS”) project. Both Australia and New Zealand

[signed](#) the MLI and the convention came into force on 1 January 2019 for withholding taxes. For other taxes, the MLI comes into force for taxable periods commencing on or after 1 July 2019.

One effect of the MLI is that there is much less certainty about the tax residence of dual resident companies. This is because the tie breaker test that used to apply under the [Australia-New Zealand tax treaty](#), which would definitively determine the residence of a dual resident company, will now no longer apply. If there is doubt about the tax residence of a company, instead of following a tie-breaker test, the company will have to get the agreement of the two Competent Authorities.

Following ATO release of the synthesized text of the MLI and the convention between Australia and New Zealand in [February 2019](#), this administrative approach is welcome. Following the [ATO’s 2018 ruling on corporate residency](#)

more NZ companies will likely be affected by the modifications made by article 4(1) of the MLI to the Australia-New Zealand tax treaty. Currently the administrative approach is only intended to apply between NZ and Australia.

Eligibility criteria

The administrative approach sets out eligibility criteria relating to a taxpayer’s **structure, financials and compliance activities**, see below for a summary. The option to self-determine PoEM is only available if the taxpayer assesses that they meet all criteria for a relevant year, and criteria 8 and 9 are met on an on-going basis. If there is a material change in circumstances taxpayers are expected to re-assess their eligibility.

Taxpayers are encouraged to approach their Competent Authority if they are uncertain as to whether or not they meet the eligibility criteria.

The taxpayer must:

1. Be an ordinary company;
2. Reasonably self-determine its PoEM to be solely in Australia or NZ for the purposes of the Australia-NZ tax treaty;
3. Have less than AUD \$250 / NZD \$260 million in group annual accounting income;
4. Have less than 20% gross passive income compared to total assessable income in the last income year;
5. Have less than 20% of the value of its total assets be intangible assets (other than goodwill);
6. Not currently (or in the last five years) be engaged in any “compliance activity” relating to determination of residency, including members of the taxpayer’s group; and
7. Not currently be engaged in any objection, challenge, settlement procedure or litigation in relation to any dispute with ATO or IR, including members of the taxpayer’s group.
8. Notify the IR / ATO of its self-determined PoEM if a new compliance activity is begun; and
9. Not have entered into a tax avoidance scheme or arrangements that, broadly, intends to defeat the MLI or rules of residency, including actions by the taxpayer’s group.

IR will be able to review self-determinations

While the Competent Authorities reserve the right to review taxpayer self-determinations made under this administrative approach (where anti-avoidance rules may apply), they will generally not seek to review a taxpayer’s self-determination as long as all material facts and circumstances remain the same.

If a Competent Authority reviews a self-determination and comes to the opposite conclusion, the Competent Authority’s determination will apply from either 1 January 2019 or the date on which the taxpayer’s circumstances changed so that their self-determined residence became incorrect.

Applying for a determination

Taxpayers that do not meet the eligibility criteria need to apply in writing to either Competent Authority for a determination of their residency. IR’s [guidance](#) notes that taxpayers must set out:

- Why they cannot apply the administrative approach; and
- Make a submission on the entity’s jurisdiction of residence for treaty purposes, supported by relevant evidence (e.g. who makes the key management and commercial decisions for the entity, where decisions are in substance made, where the meetings of the board of directors are usually held, etc.).

Applications will be shared with the other Competent Authority and additional information will be requested if required.

As long as all information is provided, taxpayers can expect a written determination within six months.

Considerations for affected NZ companies

With the MLI now fully in force (for taxable periods beginning on or after 1 July 2019, except for some withholding taxes which have been covered since 1 January), and with the Australian Commissioner of Tax beginning to apply his resources to review foreign-incorporated company’s status as a non-residents from 30 June 2019, **it is important to be clear on, or clarify, your company’s tax residence status this month.** In particular, large taxpayers will need to consider what steps are required before the end of June to be compliant with the ATO’s ruling on corporate residency, or to apply for a determination on residence.

We also note that the supporting information required for an application to the ATO and to IR is different. Taxpayers may wish to engage in the application process quickly to clarify all relevant supporting evidence, and to avoid time-delays in determining tax residence.

Please consider contacting your usual Deloitte advisor as a matter of priority if you need to make an application to IR or the ATO, or if you are looking for assistance to consider how the administrative approach applies to you.



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What's the buzz with tax and charities?

By Sarah Kennedy and Hua Lam



The tax treatment of charities and non-profit bodies (NPBs) has come under the spotlight lately, with the various happenings including:

- Department of Internal Affairs (DIA) review of the Charities Act 2005;
- The Tax Working Group (TWG)'s comments on charities;
- GST legislative changes to NPBs;
- A recent court decision in relation to "donations" which contribute to missionary work;

A broad review of the Charities Act 2005 is being undertaken with the aim of modernising the 14 year old Act. DIA issued a discussion document in February for public comment, in this they noted that while the fundamentals of the Act are sound, further work is needed to ensure that the Act continues to function

appropriately for more than 27,000 diverse registered charities. Public consultation undertaken as part of the review covered a broad range of topics including key challenges and opportunities for the charities sector, whether the current registration and regulation system is working, how the Act is working for Maori charities and how the appeal process for Charities Services decisions works. The tax exemptions for registered charities and the definition of charitable purpose are outside the scope of this review.

In addition to the DIA review, the TWG noted in its final report that the charitable sector should be an area of future focus. The TWG recommended that the Government undertakes periodic reviews to ensure that the charitable rules work to achieve their intended social outcomes. The key questions noted were whether charities are distributing or applying

sufficient surpluses from their activities to their charitable purposes and the perceived looseness of the treatment of private charitable foundations and trusts. The TWG provided its analysis to DIA to consider as part of the Charities Act Review. In addition, the 2018-2019 Tax Policy Work Programme includes reviewing the appropriateness of the tax exemption for significant businesses associated with charities and reducing the compliance costs experienced by small charities. The TWG also provided its analysis to Inland Revenue in support of this work.

Non-profit bodies GST legislative changes

A significant change to the Goods and Services Act 1985 has taken effect with retrospective application to 15 May 2018. This change means that if a NPB has claimed GST credits on the purchase or maintenance of an asset then, the future



sale or other disposal of that asset will be subject to GST, even where that asset has not been used to make taxable supplies.

This will have a significant impact for some NPBs, so if you work for a NPB or are involved as a trustee or other advisor, make sure you have looked into these rules before the transitional election regime expires on 31 March 2021.

What you need to know

- NPBs have until **31 March 2021** to decide whether to make an election to repay GST input credits previously claimed. The effect of making this election is to take an existing asset out of the GST base and ensure that GST output tax will not be payable if the asset is sold in the future, provided no further input credits are claimed in respect of that asset in the meantime. If the election is made then the amount of GST that is repayable will be the sum of:
 - All input tax claimed in relation to the capital cost of the asset; and
 - All input tax relating to the operating costs of the asset within the past 7 years (or a reasonable estimate of these costs if agreed with Inland Revenue).
- NPBs with significant assets should examine whether they hold any assets outside of their taxable activity and, if so, if there is any advantage in making the election and repaying input credits.
- NPBs can treat newly acquired assets as being outside of their taxable activity where the asset is not used

in making taxable supplies and no input tax credits are claimed in relation to the asset or any costs of maintaining or improving the asset.

What you need to do:

Prior to 31 March 2021 NPBs need to:

1. Establish the breadth of their taxable activity and which assets are connected with the taxable activity
2. Determine whether it is likely that any assets held outside of the taxable activity will be disposed of at some future point and the likely GST status of any future purchaser. The focus should be on those assets that currently have significant value or those which are expected to appreciate over time and could be sold to non-registered purchasers (where GST will apply to the sale at 15%).

Below is an example of how a NPB may undertake this analysis:

- A building used solely as a hall as part of the NPB's charitable purposes is not part of its taxable activity. However, the office building on the neighbouring site used to earn commercial rental income is part of the taxable activity.
- The NPB did not claim any GST input credits when the hall was purchased, but has been claiming GST input credits on its ongoing maintenance. The NPB estimates that \$10,000 of GST has been claimed in respect of this maintenance in the last 7 years.

A significant change to the Goods and Services Act 1985 has taken effect with retrospective application to 15 May 2018. This change means that if a NPB has claimed GST credits on the purchase or maintenance of an asset then, the future sale or other disposal of that asset will be subject to GST, even where that asset has not been used to make taxable supplies.

- The NPB is planning to sell the hall building at some point in the next few years once their new purpose built facility is completed. They are hoping for a sale price of \$750,000.
- The hall is in a good school zone and the NPB determines that a non-registered person could purchase the property to build a private home. At a sale price of \$750,000 (inclusive of GST – if any), the NPB would be required to return almost \$98,000 on the sale to a non-registered purchaser if no election is made.
- The NPB chooses to instead to take advantage of the transitional provisions. They pay \$10,000 to Inland Revenue in March 2021 and provide Inland Revenue with sufficient information to support this estimate. Using these provisions saves the NPB nearly \$90,000 as no output tax will be payable on a future sale provided the NPB ensures that no further input credits are claimed.
- Compare the above scenario to one where the NPB decides to keep and renovate the dining hall rather than build a new facility. In that case, given the expected future outlay for renovations and the low likelihood of any future sale, the NPB chooses not to make an election so continues to claim GST input credits in relation to the property. In this case, the NPB has determined that the cash-flow benefit of the input credit claim for the renovations outweighs the contingent future liability in respect of a sale that may not happen for a number of years.

As you can see from this example, the best application of the rules is very fact dependent. Given the time it will take to identify the relevant assets, determine the future use, obtain the necessary support and liaise with Inland Revenue if appropriate, we recommend beginning the process now.

Inland Revenue wins legal fight against \$1.7m of missionary “donations”

Inland Revenue won a High Court case denying tax credits for donations. The Court held that some of these did not qualify as charitable gifts and donation tax credits were not available. This case demonstrates Inland Revenue’s increased scrutiny as to whether a “donation” is a true donation. It is not always clear cut what payments are charitable gifts.

If you act for a donee organisation, you should only provide donation receipts for payments which are made voluntarily and for which the donor receives no material benefit or advantage even if this advantage is indirect. If you are claiming donation tax credits personally, make sure you only claim these in situations where no benefit or advantage is received.

The Church of Jesus Christ of Latter Day Saints sent young men and women to proselytise in different countries. As part of their mission application, New Zealand missionaries committed to raising a standard amount which was paid to a Trust. The standard amount was then used by the Trust to fund overseas missionaries’ essential costs (e.g. basic accommodation, food etc.) in New Zealand. Overseas church-related entities had a corresponding obligation to fund New Zealand missionaries’ costs while overseas.

The Trust issued donation receipts to those donors who included the missionaries themselves, their close and extended family and other members of the Church. Donors then used the donation receipt to claim tax credits.

The Court provided some detailed commentary regarding when a donation can constitute a charitable gift. In simple terms, a charitable gift means making a payment without expecting anything in return. Specifically, there must be a

voluntary transfer of property owned by the donor to the donee and there can be no **material benefit** flowing to the donor as a result of the donation. (there was a material benefit to missionaries, their parents and grandparents in this case).

The High Court agreed with the Commissioner’s decision to disallow claims for donation tax credits by a missionary and their immediate family. The Court held that the payments were made so that an overseas branch of the Church would pay the essential personal expenses of the missionary while on a mission. They were not gifts because they were not gratuitously made to the Trust, rather a payment was made so a benefit could be received.

However, the Court held that payments to the Trust by a sibling of a missionary, a more distant relative of a missionary, and other members of the Church were gifts as any benefit to these donors was minor or immaterial.



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KiwiSaver – flexibility, suspensions, and those over 65

By James Arbuthnott



The ongoing tinkering with KiwiSaver continues, with this year seeing three main (and a couple of related) changes coming into effect. These changes are largely the result of recommendations made by the Retirement Commissioner in late 2016.

Firstly, as of 1 April 2019, a KiwiSaver member can now choose to contribute at additional rates of 6% or 10%. This is intended to give KiwiSavers more flexibility and control over their saving, and provide an additional step between the 3%, 4% and 8% rate options as that gap was a potential impediment to KiwiSavers lifting their contributions from the 4% option. That said, it's also clear that even greater flexibility in the contribution rates is not currently on the cards given the need to balance simplicity and administrative costs with flexibility for KiwiSaver members.

A second change is the result of concern that people took the 'holiday' part of a contributions holiday a little too seriously, and positively. So, in an effort to put a slightly less positive spin on it, a contributions holiday is now known as a 'savings suspension'.

Not only that, but those availing themselves of the savings suspension will now have to consider that choice more regularly. That is, while the savings suspension choice could previously last for up to five years, the maximum period is now just one year (although the ability to continue the suspension indefinitely still exists, it will just have to be actively renewed each year).

On the subject of name changes, don't expect to see a 'member tax credit' in the future; rather, it will be described as a 'Government contribution', which

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is intended to improve KiwiSavers' understanding of this particular KiwiSaver benefit.

The final significant change reflects the fact that many people over 65 are still in paid employment and that life expectancy is well beyond 65 and we therefore need continued retirement savings. Accordingly, with effect from 1 July 2019, the Government has seen fit to allow those over 65 to join KiwiSaver. This is seen as one way for those people to access managed funds that, theoretically, have a lower cost. That said, an over-65 KiwiSaver who is still in paid employment will continue to be ineligible to receive any compulsory employer contributions or Government contributions.

Given the above change, the requirement for those who joined KiwiSaver after the age of 60 to leave their funds in KiwiSaver for at least five years (i.e., the lock-in period) will generally be removed from 1 July. There is also a transitional rule for those who joined after the age of 60 and whose lock-in period extends beyond 31 March 2020 to exit the lock-in period if they are at least 65.

Despite these changes, don't expect it to end here. In fact, Officials noted that KiwiSaver needs to "remain fit for purpose and reflect current Government priorities", which suggests continual change. In that regard, the Financial Markets Authority ("FMA") has regularly raised the matter of fee levels, and the asset allocations for those in default schemes often comes up

in the media as a matter of concern; in fact, we've actually seen some recent movement from KiwiSaver providers on fees which, given the economies of scale they now have, makes a lot of sense.

Further, it was abundantly clear that the Tax Working Group saw KiwiSaver as the vehicle of choice for retirement savings (notwithstanding other good options that are out there). In that regard, the Group's proposals affecting KiwiSaver (a removal and graduated reduction of ESCT, lower PIRs, extending the Government contribution in parental leave circumstances, and increasing the Government contribution rate) may still be considered as part of Inland Revenue's work programme. So, rest assured, we'll continue to see further changes and enhancements to KiwiSaver in the future.

The importance of your PIR

On a related note, many readers may have already experienced the impact of Inland Revenue's business transformation and its increased visibility over the PIRs that people apply to their PIE investments (including KiwiSaver) – i.e., the rate at which your PIE income is taxed.

In particular, taxpayers may have received correspondence advising that their PIR was too low in the past, or reminding them that they should change their PIR now given that it is incorrect for the 2020 year.

In short, it is critical that you get your PIR right!

If your PIR is too low, Inland Revenue is now likely to chase you for the underpaid PIE tax – that is, in this situation, you should be including your PIE income and PIE tax credits in your personal tax return.

Unfortunately, this could mean that you actually suffer an increased tax cost. This is because the PIE income could be taxed at 30% or 33%, rather than the tax being capped at 28% where it is correctly taxed within the PIE.

So, get it right and ensure you effectively use your investment savings (especially locked away savings like your KiwiSaver) to meet the PIE tax liabilities, rather than having to delve into your regular bank account and make a payment to Inland Revenue.

On the flipside, what about having a PIR that is too high? Well, currently you will simply be overtaxed and there is no mechanism for having any overpaid PIE tax refunded. Given this, and now that Inland Revenue is more actively using the information it has around PIRs, we'd like to see Inland Revenue seriously consider making overpaid PIE tax refundable. It'd be only fair, right?



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Tax Bill returns from the Finance and Expenditure Committee with modifications

By Robyn Walker

The Taxation (Annual Rates for 2019-20, GST Offshore Supplier Registration, and Remedial Matters) Bill (“the Bill”) has been considered by the Finance and Expenditure Committee (“the Committee”) and has had a number of changes recommended by the Committee.

The namesake of the Bill is the new GST rules which will apply to imported low value goods. These amendments have had a number of changes from the original proposals, aimed at ensuring that the rules will be easier to comply with. Most notably the start date for the regime has also been deferred for two months, moving from 1 October 2019 to 1 December 2019. This will provide more time for those who have to apply the rules to design and implement the systems required to comply. For more detail on these proposals, refer to [GST legislation one step closer to enactment](#) in this edition of Tax Alert.

The other major policy change in the Bill related to the ring-fencing of residential rental losses. These rules will continue to apply with effect from the beginning of the 2019/20 income year (1 April 2019 for most taxpayers), with the policy substance of the rules largely unchanged from the original Bill (refer to our [March 2019 Tax Alert](#)). A number of submitters expressed concern about the complexity of the legislative drafting, and it is pleasing that on the recommendation of the Committee, the rules have been completely rewritten and reorganised into a much more understandable set of rules. The rules, however remain fairly complex. Taxpayers with residential rental properties should set aside some time to understand these rules; noting that the Committee has also recommended that the rules not apply to employee accommodation, to companies other

than close companies, and to government enterprises. We will provide more details on these rules in our July 2019 Tax Alert.

A Supplementary Order Paper (SOP) was added to the Bill in March adding an extended power to the Commissioner of Inland Revenue to make temporary, minor modifications to tax legislation to correct errors, resolve ambiguity or reconcile inconsistencies. This proposal has had a chequered past, having been removed from a previous Bill by the Committee. However, the concerns of the last variant of the proposals have largely been fixed, and the Committee is making only minor suggested changes. Our [April 2019 Tax Alert](#) contains details of these proposals.

The Bill contained a number of other proposals, which have been reviewed and tinkered with as necessary, including:

- PAYE and employee share schemes – changes are being made to ensure that tax rules do not cause undesirable financial reporting outcomes;
- Amendments to ensure beneficiaries of trusts do not become settlors of the trust when low amounts of beneficiary income are left outstanding;
- Allowing co-operative companies to make taxable distributions to certain shareholders.

The Bill has also had some additional changes added to it, either at the request of submitters or Officials. Most notable, are the following additions:

- The extension of the current exemption from tax for non-resident oil rigs. This exemption was due to expire on 31 December 2019, but has been extended for a further five years;

- An amendment to an associated person rule in the Goods and Services Tax Act 1985 to ensure there is no overreach;
- A tweak to the binding rulings regime to ensure the rules work as intended;
- An amendment to the GST exemption which applies to residential property which has been rented for a period of five years prior to sale;
- Tweaks to how the ACC rules apply;
- Clarifying the how Inland Revenue officers are bound by secrecy rules, in particular making it an offence to disclose information which may adversely affect the integrity of the tax system or prejudice the maintenance of the law.

From here the Bill will continue on its journey through Parliament, with it still needing to complete its second reading, committee of the whole house, and a third reading before it receives Royal Assent. We would expect this to happen in the next one to two months.



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Tax depreciation myths debunked

By Iain Bradley and Veronica Harley



There are some particular quirks and rules that apply when it comes to claiming a tax depreciation deduction. In this article we take a look at some of the common myths that prevail and tax rules that apply in this area.

Myth #1 – All depreciable assets with a cost of \$500 or less can be written off immediately

Not necessarily. It is true that assets with a cost of \$500 or less (low value assets) can be written off; however there is an exception where a number of low value assets are acquired at the same time from the same supplier and which have the same depreciation rate. Under the single supplier rule, if the total cost of the low value assets purchased as a group is greater than \$500, an immediate write-off cannot be taken and the assets must be depreciated.

Myth #2 – I need to own the asset before I can claim tax depreciation

This is generally correct, although the meaning of “own” is extended beyond the ordinary meaning in certain cases. For example a lessee is deemed to own and is able to claim depreciation on the cost incurred by the lessee on leasehold improvements for tax depreciation purposes. Taxpayers should note that there are a number of conditions that must be met for leasehold improvements to be able to be depreciated for tax purposes. Depreciable property subject to finance leases is deemed to be owned by the lessee and as such the lessee can claim tax depreciation on that finance lease asset.

Myth #3 – I can start to claim tax depreciation on an asset from the purchase date

This statement gives rise to two points. The first is that ownership of the asset is not enough. In order to claim depreciation on an item, it must also be used or available for use in deriving assessable income or in carrying on a business to

derive assessable income. Therefore tax depreciation can only be claimed from the point a business has commenced and those assets are used or available for use in that business. If an asset is constructed in-house, depreciation can't be claimed until the asset is able to be used.

The other point to note here is that tax depreciation is calculated on a monthly basis. Therefore if an asset is purchased on 31 March being the last day of the tax year, one whole month's depreciation can be claimed. This is because tax depreciation is claimed on a monthly, not daily basis.

Myth #4 – If I forget to claim depreciation in one year, I can claim it in the next

It's not always that simple unfortunately. The base rule is that a depreciable asset is deemed to have been depreciated even if a taxpayer neglects to claim a tax depreciation deduction in their tax return. This means the opening balance in the

following year is the closing tax adjusted value of the asset as if tax depreciation had been claimed.

If a taxpayer wishes to claim a deduction for tax depreciation missed in the prior year's return, then it is possible to self-correct "minor" and "non-material" errors in the next return but this depends on the size of the error and tax discrepancy that results. The error is considered a minor one if the total tax discrepancy resulting is \$1,000 or less. The rules in this regard have recently been amended with effect from 18 March 2019 to introduce an additional non-materiality error threshold where the tax discrepancy is equal to or less than the lower of \$10,000 of annual gross income or 2% of the taxpayer's annual gross income.

If the tax discrepancy arising from the omitted depreciation claim is greater than these thresholds, then it is possible to request that the Commissioner exercise her discretion to amend the prior years' tax returns using section 113 of the Tax Administration Act 1994. However you are subject to the Commissioner's discretion in this regard and so taxpayers will need to have taken steps to address the issues that led to the error so these don't continue. This can be a tricky issue to navigate when errors stem back a number of years.

The other option is to not claim the omitted depreciation for past years and simply start to claim depreciation from the current year on the corrected adjusted tax book value.

Which option is appropriate will depend on the quantum of omitted depreciation and any compliance costs involved. Some taxpayers may have adopted a pragmatic approach to dealing with this issue historically but it is important to be aware of what the technically correct options are.

Myth #5 – I should always claim depreciation

Most people do claim tax depreciation in order to legally maximise available deductions and reduce tax payable. However a taxpayer may not wish to claim depreciation in order to provide relief from depreciation recovery income on the eventual sale or deemed disposal of the property. For example, a person may decide to move overseas and rent out their house. While depreciation can't be claimed on the building itself any longer, it could be claimed on the chattels within, for example heat pumps, appliances, blinds, carpets and so forth. It would be necessary to establish a base value of the chattels for this purpose which would generally be market value on the date the person starts to use it for rental purposes. However if that property should revert back to private

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use or is subsequently sold, depreciation recovery income would arise if the sales proceeds exceed the adjusted tax values of the relevant assets to the extent of the depreciation claimed. There is also quite a lot of compliance involved in a scenario like this, and so some taxpayers may choose to elect that those chattels not be depreciated from the outset. If a taxpayer does not wish to claim depreciation on an asset, the taxpayer must state this in writing and attach it to the relevant tax return.

Myth #6 – I can pick and choose the best tax depreciation rate for my asset

Incorrect! In an Inland Revenue statement, the Commissioner makes it clear that the Income Tax Act 2007 contemplates only one depreciation rate applying to an item and it is therefore a matter of correctly identifying the item and then matching it to the description in the depreciation rate tables that most accurately describes the item. There is a process that should be followed to identify the correct tax depreciation rate.

Myth #7 – If the Commissioner of Inland Revenue issues a new depreciation rate for an item, I don't have to use it

This depends. Several times a year, the Commissioner will insert new asset classes and determine a depreciation rate which will apply prospectively. This mostly occurs for new types of assets. For example, in more recent years the Commissioner has added new asset classes for tablets, smart phones, iPods, remote controllers, surveillance gear, gas detectors and shearing sheds. It may be that taxpayers had been using a default rate in lieu of any specific rate. Taxpayers are actually required to commence using the new rate from the beginning of the income year specified in the determination if the new rate is higher. However if the new rate is lower, a savings provision operates so that the taxpayer can continue to use the higher rate as long as the previous rate was

a valid choice at the time. We doubt many taxpayers go back and review whether rates could be increased in light of any new determinations issued.

Myth #8 – Tax depreciation is not claimable on any building

Buildings are depreciable assets; however since the 2012 income year, buildings with an estimated useful life of 50 years or more are statutorily depreciated at the rate of 0%. Buildings with an estimated useful life of less than 50 years can still be depreciated. Admittedly there are not many in this category – but it does include barns, portable buildings, fowl houses, hothouses, pighouses, portable huts and shade houses. Further, certain structures which are “grandparented structures” such as barns, car parks, chemical works, fertiliser works, powder drying buildings and site huts which were owned on or before 30 July 2009 can continue to be depreciated at their pre-30 July 2009 depreciation rates.

Myth #9 – There is no depreciation recovered in relation to buildings because they are not depreciable

Depreciation recovery income will arise on the disposal of any asset where the consideration received is greater than the closing adjusted tax value of the asset to the extent of any tax depreciation previously claimed. Therefore if a building with a useful life of 50 years or more is sold today for greater than tax book value, any depreciation claimed prior to the 2012 income year would still be recoverable.

Myth #10 – Intangible assets are not depreciable

Intangible assets that meet certain criteria are depreciable for tax purposes. Common examples include the right to use software, the right to use a trademark, plant variety rights, the right to use a copyright, patents and the right to use a patent, the right to use land (i.e. a licence), the right to use plant and machinery and the right to use

a design, model, plan, secret formula or process. The depreciation rate and method for this type of property is largely driven by the type of property and whether it has a finite life or not.

Conclusion

This is by no means a complete list of the common misconceptions that can arise in relation to depreciation. It can be worthwhile to carry out a periodic review of tax depreciation as it can show up opportunities to make tax savings which can more than pay for any cost involved.

This article was originally published in our May 2015 Tax Alert. We have updated and republished this article.



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GST legislation one step closer to enactment

By Robyn Walker



Non-resident retailers selling to New Zealand consumers will be required to register for and charge New Zealand GST from 1 December 2019.

After legislation was first introduced in December last year we are now one step closer to having final legislation after the Finance and Expenditure Committee (FEC) completed its consideration of the legislation and points raised by submitters. The FEC has recommended some changes to the proposals, the most immediately significant one is the recommendation to delay the application date of the rules from 1 October 2019 to 1 December 2019.

From this point on, the legislation will complete its final parliamentary stages. It is unlikely that there will be any further changes to the legislation before it is enacted (which is likely to be in late June/early July).

The legislation will apply to offshore suppliers who make supplies (or expect to make) supplies of “distantly taxable goods” to New Zealand end consumers of NZ\$60,000 or more in a 12-month period. Electronic marketplaces and re-deliverers also have a requirement to register and comply with the new rules.

Distantly taxable goods are defined as imports with a customs value of NZ\$1,000 or less (excluding GST). Suppliers who reasonably expect 75% or more of its supplies to New Zealand to be under the NZ\$1,000 threshold can also make an election to charge GST on supplies over the NZ\$1,000 threshold. Tariffs and cost recovery charges will no longer apply to supplies covered by the new rules (alcohol and tobacco are excluded from these rules).

**NZ\$60,000 is equivalent to:
AU\$54,990; US\$38,028; £30,162;
€34,170, CNY298,000**

**NZ\$1000 is equivalent to: AU\$916;
US\$634; £502; €570; CNY4,971**

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

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

Offshore suppliers will not be required to return GST on supplies to New Zealand GST registered businesses, however they will have the option to charge GST if they reasonably expect over 50% of the value of supplies made to New Zealand customers will be to end consumers. This will simplify processes for offshore suppliers who predominantly supply consumer goods. The offshore supplier will be able to issue a tax invoice in order for a New Zealand business to claim back the GST charged.

An offshore supplier will not have to charge GST if the recipient notifies the supplier that they are GST registered or provides a GST registration number or New Zealand Business Number. An offshore supplier can also enter into an agreement with the Commissioner of Inland Revenue on an alternative method to determine whether the supply is made to a GST registered person (for example if the supplier sells goods of a type that are only purchased by businesses).

Non-resident marketplaces

When certain conditions are satisfied, an operator of an online marketplace may be required to register and return GST on supplies made through the marketplace, instead of the underlying supplier.

A marketplace would be required to register when customers would normally consider the marketplace to be the supplier, and this is reflected in the contractual arrangements between the parties; for example, if the marketplace authorises the charge to the customer, authorises delivery to the customer, or sets any of the terms and conditions of the transaction.

A marketplace would need to return GST to the New Zealand Inland Revenue and seek to recoup this amount from the actual supplier. If the marketplace is unable to collect the amount and writes off the amount outstanding as a bad debt, it will be able to recoup the GST as an input tax credit in the next New Zealand GST return.

Re-deliverers

Catering to the needs of New Zealand consumers who want to purchase from retailers who won't ship to New Zealand there are now a range of businesses who create local delivery addresses and then ship the goods to New Zealand (for example youshop.co.nz, myus.com, kiwishipping.co.nz, buyusa.co.nz). There are also personal shopping services available.

These businesses will be liable to register for GST and will need to collect the 15% GST on the value of the goods as well as their services (regardless of whether this includes international transport).

The sting in the tail for customers using re-delivery services is that they may end up being double taxed with New Zealand GST being added to a supply which may have also had an overseas domestic sales tax applied due to the local delivery address being supplied to the supplier.

Supplies above NZ\$1,000

Where the value of an individual good exceeds NZ\$1,000 then the current rules will continue to apply, and rather than the supplier charging GST, GST (and any applicable duty) will be collected at the New Zealand border, with the purchaser unable to collect their goods until the tax is paid.

If multiple goods are purchased in one transaction, with the total transaction value exceeding NZ\$1,000, then GST should be charged on all individual goods costing less than NZ\$1,000 by the offshore supplier. For example, if 6 items costing NZ\$200 each are purchased (NZ\$1,200 total), GST of NZ\$180 should be charged by the offshore supplier. If a consignment includes a mixture of above and below NZ\$1,000 items, then GST may be collected at the border by NZ Customs Service rather than being charged by the offshore supplier, depending whether the election has been made to charge GST on all sales (refer above).

Compliance requirements

It will be necessary for offshore suppliers to provide a GST receipt to customers which provides specific details about the supplies. It will also be necessary for the offshore supplier to ensure that the New Zealand Customs Service has the following details

Offshore suppliers will not be required to return GST on supplies to New Zealand GST registered businesses, however they will have the option to charge GST if they reasonably expect over 50% of the value of supplies made to New Zealand customers will be to end consumers. This will simplify processes for offshore suppliers who predominantly supply consumer goods.



available when the goods reach the New Zealand border:

- The name and registration number of the supplier
- Details of the goods supplied with GST charged
- Details of any goods supplied which do not have GST charged

Offshore suppliers who are required to register under these rules will be able to apply for a simplified “pay-only” registration basis, or alternatively may undertake a full registration allowing them to claim back any New Zealand GST incurred in making New Zealand sales.

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

GST returns will be due in quarterly instalments (March, June, September, and December), with the first return period being a transitional period of 1 December 2019 to 31 March 2020.

Key issues for suppliers

Suppliers who sell low value goods to consumers in New Zealand should start thinking about how the new rules could impact their business and being creating systems to comply with the new rules.

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

- Can total sales be easily tracked by jurisdiction?
- Will the level of supplies to New Zealand end consumers exceed the registration threshold?
- What type of supplier are you and what specific rules will apply – actual supplier, online marketplace operator, or re-delivery service?
- What modifications would you need to make to your website or business processes in order to determine whether New Zealand GST should apply?
- Determining the delivery address of the customer

- Determining whether the customer is an end consumer or a GST registered business
- Determining the NZD value of the transaction
- Being able to remove any local sales tax and replacing it with 15% GST
- Including freight charges when calculating GST
- How will returned or replaced goods need to be treated for GST purposes?
- Do invoicing processes need to change?
- Based on the level of expected supplies, what reporting period and compliance obligations will apply?
- Does the business wish to continue shipping to New Zealand or effectively outsource the compliance to a marketplace or re-delivery businesses?

For more information please contact a Deloitte tax specialist.



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GST obligations change for digital services to Singapore

By Hana Straight



New Zealand businesses making supplies to Singapore recipients should be aware that, from 1 January 2020, Singapore will impose goods and services tax (GST) at the current standard rate of 7% on imported digital services. This will cover all digital services including downloads, subscription-based media, software programs, electronic data management and support services performed via electronic means to arrange or facilitate transactions.

Where such services are supplied to GST-registered businesses (B2B supplies) that are partly exempt, e.g., financial institutions, charities or grant funded organizations, they will be subject to a reverse-charge regime, with the recipient of the services being required to account for output tax and claim any input tax applicable under the applicable recovery rates for that business. The supplier is required to obtain the GST registration

number from the customer and verify it before treating its services as B2B supplies.

If the Singapore customer is not able to provide a GST registration number or is not GST-registered, the supplier of the digital service will be required to treat the supply as a business-to-consumer (B2C) supply. B2C supplies of digital services will require nonresident suppliers to register for GST where the total B2C digital supplies made in Singapore for a year exceed SGD 100,000 and annual global turnover exceeds SGD 1 million.

In terms of evidence to support that the customer is not a Singaporean recipient, a supplier will be required to hold two pieces of non-conflicting evidence, e.g., a billing address, IP address, or credit card information to support that the recipient is not in Singapore, as well as the GST registration number of the business.

Once registered for GST under the B2C regime (referred to as Overseas Vendor Registration), the supplier will be required to collect GST on the value of the supplies and report the supplies made via a simplified GST return filed online. The GST collected will need to be paid to the Singapore tax authority at the same time as the simplified GST return is due.



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Self-correcting errors in subsequent tax returns

By Veronica Harley



amended assessments for smaller value errors that do not breach the above thresholds. However, care should be taken to ensure the rules are applied correctly. For more information, please contact your usual Deloitte advisor.

This article has been updated following clarification from Inland Revenue policy officials on the intended operation of the new legislation.

Taxpayers may self-correct errors in subsequent tax returns, provided the error is minor or not material. With effect from 18 March 2019, a new “non-material error” threshold rule has been introduced that is intended to make it easier for taxpayers to self-correct errors in income tax, goods and services tax (GST) and fringe benefits tax (FBT) returns.

Non-material errors

Under the new rule, an error can be self-corrected if the total tax discrepancy in the assessment (that is discovered after 18 March 2019) is equal to or less than the lower of:

- NZD 10,000 of annual gross income (for income tax and FBT returns) or output tax (in the case of a GST return); and
- 2% of the taxpayer’s annual gross income (for income tax and FBT returns) or output tax (in the case of a GST return).

This new rule will not apply if the Inland Revenue considers a taxpayer is applying the new NZD 10,000 threshold with the main purpose of delaying the payment of tax.

Minor errors resulting in no more than NZD 1,000 tax payable

The previous NZD 1,000 rule has been retained, but slightly modified. Errors can be corrected where the total discrepancy is NZD 1,000 or less. This is similar to how the rule worked previously, except the NZD 1,000 threshold now is available without the requirement that it be caused by a “clear mistake, simple oversight or mistaken understanding.”

Comments

The specific words of the new rule are slightly confusing, however we have confirmed with Inland Revenue that both the NZD 10,000 and NZD 1,000 amounts are both tax effected amounts. Thus the quantum of each error will be dependent on the tax type (GST, FBT or income tax), tax rates applicable to a taxpayer and the return frequency type.

This new rule is welcome and will help reduce compliance costs for taxpayers. It should reduce the incidence of taxpayers needing to make formal voluntary disclosures or the need to request the Commissioner make



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Snapshot of Recent Developments: June Tax Alert



Policy Developments:

R&D Tax Bill receives Royal Assent

On 7 May 2019, the Taxation (Research and Development Tax Credits) Bill received Royal Assent. The [Taxation \(Research and Development Tax Credits\) Act 2019](#), introduces a R&D tax incentive with effect for the 2019-20 income year. Finalised guidance is expected next month. Refer to our [earlier article](#) on this development.

GST rules on telecommunication services to change

On 17 May 2019, the Minister of Revenue, Stuart Nash made a pre-budget announcement proposing that the Government will align the [GST rules on telecommunications services](#) with OECD guidelines and with the treatment of other remote services. An issues paper has been released by the Inland Revenue for public consultation. It is proposed that from 1 October 2020, most of the special rules in the Goods and Services Tax Act 1985 for supplies of telecommunications services be repealed. The GST treatment of most

telecommunications services would be aligned with the treatment of other remote services and determined based on the residency of the consumer.

The proposed changes would mean that:

- Outbound mobile roaming services received by New Zealand residents overseas would be subject to GST at the standard rate of 15%; and
- Inbound mobile roaming services received by non-residents in New Zealand would no longer be technically subject to GST.

A [fact sheet](#) was also issued. Submissions close on 28 June 2019.

Betting levy to be repealed

On 17 May 2019, the Racing Minister, Winston Peters announced that the [betting levy will be repealed](#) progressively over a three year period. The levy paid by the racing industry to the Crown will be redirected to the racing and sports sectors.

Digital economy discussion document

The Government released (on 4 June 2019) a discussion document *Options for taxing the digital economy* ("discussion document") (available [here](#)). The discussion paper sets out the background to the issue, considers a DST and the OECD measures, and also includes background Appendices on the size and importance of the digital economy and New Zealand's policy for taxing multinationals. We will have more detail on this in the July edition of Tax Alert.

Finalised Inland Revenue Items: Income equalisation deposits and refunds – SPS 19/03

On 20 May 2019, Inland Revenue released a finalised standard practice statement, [SPS 19/03: Income equalisation deposits and refunds](#). This item applies from 4 April 2019 and replaces SPS 17/01. It has been reworded to recognise the repeal of the Income Equalisation Adverse Event Scheme from the 2020 income year and also fixes some incorrect section references. It should be noted that whilst the Adverse event scheme has been repealed, the main income equalisation scheme is still available to cover the same circumstances.

National average market value (NAMV) of specified livestock Determination 2019

On 23 May 2019, the [finalised National average market values of specified livestock determination 2019](#) were released by the Inland Revenue. The determination sets the national average market values to apply to specified livestock on hand at the end of the 2018-2019 income year.

Question We've Been Asked – Short term accommodation - QB 19/05 – QB 19/09

On 24 May 2019, Inland Revenue released the two Determinations and five Questions we've been asked (QWBA) items that explain tax obligations for a person who rents out their home, a room or separate

residential property. The focus is on short term accommodation provided through peer-to-peer platforms (e.g. Airbnb or Bookabach). [An overview](#) with a flowchart has been provided to assist with determining which set of rules apply. The items released include:

- [QB 19/05: Renting your own home](#)
- [QB 19/06: Which income tax rules apply?](#)
- [QB 19/07: Applying the mixed-use asset rules](#)
- [QB 19/08: Applying the standard rules](#)
- [QB 19/09: GST registration](#)
- [Determination DET 19/01: Standard-cost household service for private boarding service providers](#) and a [worksheet for using Determination DET 19/01](#)
- [Determination DET 19/02: Standard-cost household service for short-stay accommodation providers](#)

For more information refer our [previous article](#) on the draft statements noting there have been some minor changes.

Tax Cases:

Definition of financial services for GST purposes discussed

[Provident Insurance Corporation Limited v the Commissioner of Inland Revenue \[2019\] NZHC 995](#)

The Court held that the premia paid for insurance products that are designed for asset protection (covering vehicles written off in an accident and repayment obligations for credit contracts for the purchase of motor vehicles), were not exempt from GST output tax under the financial services exemption.

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