

OFFICIALS' REPORT

Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)

OFFICIALS' REPORT TO THE FINANCE AND EXPENDITURE SELECT COMMITTEE ON SUBMISSIONS ON THE BILL

- Platform economy
- Cross-border workers
- Dual-resident companies
- GST apportionment
- Other policy matters
- Housing remedial items
- Foreign trust remedial items
- GST remedial items
- Other remedial items
- Matters raised by officials

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Officials' Report on the Bill

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**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Platform economy

OVERVIEW

The Bill proposes to implement an information reporting and exchange framework designed by the Organisation for Economic Co-operation and Development (OECD).

The “OECD’s reporting rules for digital platform operators” include two sets of reporting rules that require digital platform operators to collect and report information about sellers that earn income from specific activities carried out through digital platforms.

The “model reporting standard for digital platforms” refers to the *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* and covers reporting obligations for operators of digital platforms that facilitate the rental of accommodation and personal services.

The “extended model reporting standard for digital platforms” refers to Part II of the *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*. This covers reporting obligations for operators of digital platforms that facilitate the sale of goods and the rental of vehicles.

The proposals contained in the Bill would require digital platform operators based in New Zealand to collect and report information to Inland Revenue about sales made by taxpayers from their activities on digital platforms. The activities that would be subject to reporting are:

- accommodation rental and personal services (referred to in the Bill as the “model reporting standard for digital platforms”), and
- the sale of goods and vehicle rentals (referred to in the Bill as the “extended model reporting standard for digital platforms”).

The purpose of these rules is to ensure that tax authorities globally have visibility over the income earned by sellers from their activities carried out through digital platforms. Tax authorities already receive information from a broad range of sources to ensure taxpayers are compliant with their tax obligations. In New Zealand, banks and employers are required to provide Inland Revenue with information about the income earned by investors and employees and this is used as part of the year-end tax processes.

In this case, Inland Revenue would use information from operators of digital platforms about New Zealand-resident taxpayers to ensure that these taxpayers were compliant with their tax obligations. This would include checking that taxpayers had declared the income they earned from these activities in their income tax returns. Inland Revenue would exchange information with foreign tax authorities where it related to non-resident taxpayers. Information would only be exchanged with other jurisdictions that had implemented the same, or similar, reporting rules.

The Bill proposes these changes would be effective from 1 January 2024. This is the same timeframe as is proposed for Canada and the United Kingdom, and a year later than when similar rules will take effect in 27 European Union member countries.

The proposal to implement this information reporting and exchange framework was consulted on in the March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy*. The majority of submitters on the discussion

document supported the proposal. They understood the desire of tax authorities to have information about income earned through digital platforms and the preference for reporting rules to be standardised globally instead of having bespoke reporting rules designed on a country-by-country basis.

Submissions on this aspect of the Bill can be summarised into the following categories:

- supporting the proposal
- opposing the proposal and, in particular, implementation of the “extended model reporting standard for digital platforms” on grounds of compliance cost concerns
- seeking deferral of the rules in New Zealand until a “critical mass” of other jurisdictions had taken steps towards implementing the rules
- recommending changes to aspects of the OECD’s reporting rules
- requesting guidance and support in implementation and understanding of the rules, and
- technical submissions on the approach taken to implement the rules in New Zealand.

These submissions, and officials’ responses, are discussed below.

INFORMATION REPORTING AND EXCHANGE

Clauses 139(3), (6) and (8), 141, 160(1), 162, 172, 173(2), 178, 179 and 180

Issue: Support for the proposal

Submissions

(Airbnb, Accountants and Tax Agents Institute of New Zealand, Asia Internet Coalition, Baucher Consulting Limited, Booking.com, Cantin Consulting, Chartered Accountants Australia and New Zealand, EY, PwC, Uber)

The submitters support the implementation of the OECD's Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy in New Zealand.

This is an internationally recognised solution proposed by the OECD to assist tax authorities with compliance efforts in the sharing economy. Adopting this will cement New Zealand as a leader within the Asia-Pacific region committed to implementing multilaterally accepted tax policies. *(Airbnb)*

The submitter is broadly supportive of an approach that adopts the OECD rules, as opposed to the creation of bespoke New Zealand specific rules, given the need to maintain global standardisation to reduce overall compliance costs. *(EY)*

The submitter supports the proposal but considers the Committee should confirm that the reasons for implementation are convincing and that it is able to be implemented clearly and efficiently. *(Cantin Consulting)*

Recommendation

That the submissions be noted.

Issue: Opposition to the proposal

Submissions

(BusinessNZ, Corporate Taxpayers Group, Deloitte, EY, KPMG, Mayne Wetherell, Olivershaw Limited)

Submitters considered the revenue benefits from the OECD's information reporting rules did not justify the associated compliance costs for New Zealand-based digital platforms. The associated compliance costs include:

- interpreting and applying the OECD's information reporting rules
- conducting due diligence checks on sellers, including determining whether sellers meet the "excluded seller" definition as defined in the OECD rules, and
- developing IT systems to be compliant with reporting the information to Inland Revenue on an annual basis.

Some submitters that opposed the proposal considered that alternative options were preferable because they were better targeted and did not impose additional compliance costs on all digital platforms. These alternative options included:

- Continued use of Inland Revenue’s information-demand powers to obtain information considered necessary and relevant for tax administration purposes from digital platforms on an ad hoc basis. (*Olivershaw Limited*)
- Seeking information about New Zealand tax residents that operate through foreign digital platforms from treaty partners through the Exchange of Information Article in New Zealand’s double tax agreements (DTAs). (*Corporate Taxpayers Group*)

Other reasons that submitters opposed the proposal to implement the OECD’s information reporting and exchange framework in New Zealand:

- The extent to which European Union tax authorities would seek to request information directly from New Zealand-based digital platforms with European sellers is unclear. (*EY*)
- New Zealand appears to be an early adopter of the OECD’s information reporting and exchange framework and New Zealand should instead wait until there is a “critical mass” of other jurisdictions implementing the rules. (*BusinessNZ, Corporate Taxpayers Group*)
- New Zealand already has mechanisms through which it can request information from other tax authorities. Most other countries that are looking to adopt the rules are countries that New Zealand already has a DTA with. (*Corporate Taxpayers Group*)
- It is unclear whether there is any significant “underreporting” that would be solved by these proposals, and without this evidence base, the benefits of the proposals are currently outweighed by high compliance costs for businesses. (*Corporate Taxpayers Group*)
- The reporting framework is modelled on the Common Reporting Standard. Our experience with this is that it can impose significant compliance costs regardless of the size or sophistication of the organisation. (*KPMG*)
- The reciprocal benefit to New Zealand may be limited. (*KPMG*)
- The costs imposed on the private sector do not justify the supposed benefits of receiving this information (*Corporate Taxpayers Group*).
- A significant cost would be imposed on the private sector in requiring all New Zealand platforms to comply with these rules and annually provide details about all sellers and their income on a December year-end basis. (*Olivershaw Limited*)

Comment

Officials acknowledge that these proposals will impose compliance costs on digital platforms but consider this necessary to ensure that Inland Revenue has visibility over income derived through digital platforms. Officials consider an OECD-led solution is preferable to ad hoc information demands because it provides a regular flow of information sufficient to support tax compliance and is more transparent for those that must comply with ad hoc information demands. These points were acknowledged in submissions made on the March 2022

discussion document, where submitters generally favoured implementation of the OECD's reporting rules in New Zealand.

Officials note that the OECD's reporting framework allows jurisdictions to adopt an internationally standardised schema and the information exchange framework ensures that platform operators only have one reporting obligation (that is, to one tax authority as opposed to several). This lowers compliance costs for operators of digital platforms compared to an alternative model where individual jurisdictions make individualised requests for information from digital platform operators on an ad hoc basis.

Officials also do not consider that New Zealand is an "early adopter" of the OECD's information reporting and exchange framework. Other comparable jurisdictions, such as Canada and the United Kingdom, have taken steps to implement these rules from the 2024 calendar year, which is the same timeline proposed for New Zealand. This is a year later than all members of the European Union – where officials understand many digital platforms are based – where equivalent rules will apply from 1 January 2023.

Officials note that, in a New Zealand context, the concerns around compliance costs relate to the reporting obligations associated with the *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*. The Bill refers to this as the "extended model reporting standard for digital platforms". This is because there are several digital platforms in New Zealand that facilitate the sale of goods, and for those digital platforms to be compliant with the proposed rules would require potentially significant changes. The Bill attempts to reduce the compliance costs for New Zealand-based digital platforms that facilitate the sale of goods by their users by enabling New Zealand platform operators to "opt out" of reporting information to Inland Revenue that relates to New Zealand-resident taxpayers. That is, to reduce compliance costs, the Bill enables New Zealand platform operators to report only information about non-resident taxpayers to Inland Revenue, as this information could be of interest to foreign tax authorities.

The Bill, as introduced, proposed to give legislative effect to the "extended model reporting standard for digital platforms" to ensure that New Zealand's implementation of the platform reporting rules matched with other implementing jurisdictions. It was understood that New Zealand would not receive **any** information from foreign tax authorities unless it implemented the extended reporting rules because New Zealand would not have "rules of equivalence". This would have significantly reduced the benefits of New Zealand implementing the OECD's rules.

Since the Bill was introduced, however, it has been confirmed that the exchange of information between tax authorities outside of Europe will be possible where there is "partial equivalence" between Europe's rules and the rules implemented by non-EU jurisdictions. This means:

- If New Zealand implemented the reporting rules covering accommodation rental, personal services, the sale of goods, and vehicle rental, Inland Revenue would receive information from foreign tax authorities about income earned by New Zealand-resident taxpayers from all those activities on foreign digital platforms.
- If New Zealand implemented only the reporting rules covering accommodation rental and personal services, Inland Revenue would only receive information about the

income earned by New Zealand-resident taxpayers from those activities through foreign digital platforms. It would not receive information about income New Zealand-resident taxpayers earn from the sale of goods or renting out vehicles through foreign digital platforms.

To address submitters' concerns around the compliance costs associated with collating and reporting information about the sale of goods, officials have recommended that implementation of the "extended model reporting standard for digital platforms" be deferred pending further consultation with affected digital platforms (see discussion in ["Issue: Defer implementation until a critical mass of other jurisdictions exists"](#) below). This consultation is necessary because if New Zealand did not implement the reporting rules that cover the sale of goods and vehicle rentals, New Zealand platform operators could still be expected to report to foreign tax authorities under foreign laws on the basis that they enabled tax residents of those jurisdictions to earn income that would be taxable offshore. New Zealand platform operators may decide it is preferable to report information to Inland Revenue. Inland Revenue would then exchange information with foreign tax authorities. If this is the case, it would make sense for New Zealand to implement the extended reporting rules.

Recommendation

That the submissions be noted.

Issue: Defer implementation until a critical mass of other jurisdictions exists

Submission

(BusinessNZ, Corporate Taxpayers Group, Deloitte)

The information reporting and exchange framework should be delayed until such time as another measure is introduced that can reach a critical mass among participating countries.

Should the adoption of the proposals into legislation proceed, the proposals should not become operative until a critical mass of countries have adopted the rules sufficient for there to be data exchange benefits for New Zealand. *(Corporate Taxpayers Group)*

Comment

Officials note that equivalent reporting rules to those developed by the OECD came into effect in Europe Union (EU) on 1 January 2023. This includes Luxembourg, the Netherlands, and Ireland, which is where many popular multinational digital platforms are based. New Zealand's proposed implementation timeline is consistent with the timeline proposed in Canada and in the United Kingdom.

Officials also note that there are 38 OECD members. Considering the EU members of the OECD, Canada, the United Kingdom, and New Zealand, approximately two-thirds of OECD members have taken steps towards implementing the reporting rules on either an identical or faster timeline to that proposed for New Zealand in the Bill.

Officials note the following jurisdictions have taken steps towards implementing the reporting rules: Argentina, Belgium, Bulgaria, Canada, Colombia, Costa Rica, Cyprus, Estonia, Finland, Iceland, Ireland, Latvia, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, and the United Kingdom.

Officials understand that other jurisdictions will also seek to implement the reporting rules in due course. For these reasons, officials do not consider there to be strong arguments for deferring implementation of the model reporting rules that cover reporting obligations for accommodation rentals and personal services.

Point of difference

Submitters' concerns with the OECD's reporting rules for digital platforms relate to the requirements for New Zealand digital platforms to adapt their systems and processes to comply with reporting under the extended model reporting rules. The extended model reporting rules cover the sale of goods and vehicle rentals.

Officials note that at the time the Bill was introduced, it was important that New Zealand implemented the extended reporting module to ensure consistency of implementation with the EU's reporting rules. Without having rules of equivalence, New Zealand would not receive information about income earned by New Zealand tax residents from their activities on digital platforms based in the EU. It is understood that many digital platforms are based in the EU, and it was therefore considered desirable to implement the extended model reporting rules in New Zealand to ensure that Inland Revenue received information from EU tax authorities.

Since the Bill's introduction, however, it has been confirmed that jurisdictions that partially implement the OECD's reporting rules will be able to receive information from EU tax authorities. This means that if New Zealand implements the model reporting standard, Inland Revenue will receive information from EU tax authorities about income New Zealand tax residents earn from renting out accommodation and providing personal services (such as ride-sharing) through EU digital platforms. In light of these developments and following discussions with operators of New Zealand digital platforms, officials consider implementation of the extended reporting rules should be deferred.

Instead of withdrawing the extended reporting module from the Bill entirely, officials recommend that the Bill be amended to enable the extended reporting module to be brought into force by Order in Council. If not brought in within three years, the extended model reporting standard would not be brought into force unless new legislation was introduced to implement the rules. Officials recommend this approach over withdrawal from the Bill because, over time, it may become evident that New Zealand digital platform operators may prefer to report information to Inland Revenue instead of complying with foreign regulations that could result in multiple reporting obligations to foreign tax authorities.

Officials note that the decision to defer implementation of the extended reporting rules would not come at a fiscal cost because the proposal to implement these rules was not expected to raise additional tax revenue. The proposal to implement them was premised on the fact that not implementing them would mean Inland Revenue would not receive

information about income earned by New Zealand tax residents from renting property or providing personal services through foreign digital platforms.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: More time needed to implement the rules

Submission

(Booking.com, EY, KPMG, Uber)

Implementation of the OECD's model reporting rules should be deferred from 1 January 2024 to 1 January 2025, or to such a time when there is a critical mass of countries that have adopted them. This would ensure:

- the rules would only be adopted in New Zealand when, and if, there is a critical mass of other countries to share information with *(Corporate Taxpayers Group)*
- sufficient time for digital platforms in New Zealand to make the changes required to systems and processes to be compliant with the reporting rules *(Booking.com, EY, KPMG, Uber)*
- a greater opportunity to engage with additional guidance from the OECD post-implementation of the reporting rules in other jurisdictions *(EY, KPMG)*
- the risk that EU tax authorities may seek information from New Zealand digital platforms is worth taking if the overall compliance burden imposed on this sector of the economy can be lessened through a brief delay. *(EY)*

The OECD model rules have yet to be properly tested and the rules ought to be further refined (for example, the "Platform" definition is too broad, the exclusions are too narrow, the EUR 2,000 threshold for being an "Excluded Seller" of goods is far too low). *(Corporate Taxpayers Group)*

Comment

If the OECD model rules that are contained in this Bill were to have legislative effect in New Zealand as drafted, platforms would have approximately nine months lead-in time following the enactment of the legislation. As the OECD rules have been finalised since 2021 and the XML schema¹ since early 2022, these also provide platforms with certainty as to how the rules will apply so that they can prepare accordingly.

Officials note that the proposals to adopt the Common Reporting Standard in New Zealand, which is a similar OECD reporting initiative that applies to financial account information, was

¹ The XML schema is a prescribed format for information to be provided to tax authorities. The prescribed format conforms with the requirements of the OECD's Common Transmission System that manages the exchange of information between tax authorities at a technical level.

enacted on 21 February 2017, with an application date of 1 July 2017. Despite the shorter lead-in time, financial institutions were able to comply with this successfully.

Officials note that New Zealand is not an early adopter of information reporting and exchange rules. Officials consider there is already a critical mass of countries adopting the OECD rules, or the equivalent information reporting and exchange framework mandated by the EU. All considered, about two-thirds of OECD members are implementing the framework proposed in the Bill on a similar, if not faster, timeline to that proposed in the Bill.

Officials do agree that there is merit in deferring the “extended model reporting standard for digital platforms” and, in response to submissions, and following further consultation with submitters, have recommended deferring implementation of these rules. See [“Issue: Defer implementation until a critical mass of other jurisdictions exists”](#) above.

Recommendation

That the submission be declined.

Issue: Implementation timeframe driven by EU reporting rules

Submission

(KPMG)

A critical driver of implementation seems to be that foreign tax authorities may seek to impose their own information reporting requirements on New Zealand digital platforms from 1 January 2023. The Committee should confirm with officials that this is a genuine risk.

Comment

The OECD’s reporting rules match the EU reporting rules that apply to digital platforms and will be in force from 1 January 2023. Under the EU reporting rules, foreign digital platforms that have EU sellers would be subject to reporting requirements to EU tax authorities.

Officials note that for New Zealand digital platforms that did not want to report directly to EU tax authorities, New Zealand would need to implement the OECD’s reporting rules for digital platforms. This would enable New Zealand digital platforms to report on their EU sellers to Inland Revenue, and Inland Revenue would then exchange information with EU tax authorities. The alternative option is that New Zealand digital platforms comply with EU regulations or risk penalties that foreign tax authorities may seek to impose for non-compliance.

Officials are unable to speculate on whether EU tax authorities would seek to enforce their reporting regulations on New Zealand digital platforms with EU sellers.

Recommendation

That the submission be noted.

Issue: Less justification for proposals outside the EU

Submission

(Olivershaw Limited)

The submitter suggests that the proposal in the Bill is being justified on the basis that such reporting is in accord with the OECD's global guidelines. The submitter understands these guidelines are derived from the EU's rules and believes they seem less justified outside that integrated economic framework.

The submitter considers that, outside of the EU, there is no guarantee that most countries will implement the OECD rules. For example, the submitter notes that Australia is not implementing them and is instead drafting its own rules.

The submitter considers the rules would be useful in the EU, given the proximity of the various countries, because many taxpayers own property in those other countries.

The submitter notes that the costs associated with the changes seem disproportionate to the additional revenue that would be collected as a result of implementing the rules. This is based on considering the number of New Zealand tax residents that own properties in the EU that:

- are using digital platforms to earn income
- are not already reporting that income in New Zealand, and
- would have a tax liability for that income after considering foreign tax credits for foreign tax that would likely have been paid.

Comment

The rules the Bill proposes to implement were developed by the OECD and were subsequently adapted by the European Commission for the EU.

The purpose of the rules is to create a standardised reporting framework for digital platforms to ensure tax authorities have visibility over income earned through those digital platforms. The rules would also reduce the compliance costs associated with those digital platforms compared to the status quo, which currently sees digital platform operators responding to requests for information from multiple tax authorities.

Officials have noted that other jurisdictions are taking steps towards implementing the reporting rules and these include non-EU jurisdictions.

Officials also note that the Australian reporting rules were developed in response to recommendations made by an Australian Black Economy Taskforce in 2017. These recommendations were made before the OECD commenced work on a global reporting framework for digital platforms.

Recommendation

That the submission be noted.

Issue: Use of Inland Revenue's existing information-demand powers

Submissions

(Corporate Taxpayers Group, KPMG, Olivershaw Limited)

The Commissioner of Inland Revenue has the power to obtain information on a targeted basis using existing powers in the Tax Administration Act 1994. Submitters consider the Commissioner could use these powers to target areas of concern as an alternative to implementing the OECD's information reporting and exchange framework.

Alternatively, many of the countries currently considering implementation of these rules (or their equivalent) are countries with which New Zealand has a DTA. Therefore, Inland Revenue could make use of the 'Exchange of Information' article in the relevant DTA. *(Corporate Taxpayers Group)*

No issue arises with Inland Revenue seeking information from platforms where that can reasonably be justified as necessary and relevant to Inland Revenue. Presumably Inland Revenue currently seeks relevant information from platform providers. It is understood that when Inland Revenue seeks information from taxpayers, it is directed at identified tax risks and, in most cases, the same information is not sought every year. The submitter questions why the Bill requires broad information, not targeted at tax risks, to be provided every year about every seller. *(Olivershaw Limited)*

Comment

Information-demand powers used on an ad hoc basis will not result in regular information flows to support tax compliance effectively, and they do not provide transparency and certainty for platforms. These criticisms were echoed by submitters on the March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy*. There can also be difficulties in obtaining information from offshore platforms through these mechanisms as platform operators often have no presence in New Zealand.

Consistent with many affected digital platforms, officials consider that the OECD-led solution is the preferred mechanism of information reporting and exchange and a critical mass of countries have already indicated they will adopt the OECD or equivalent rules. A key feature of the OECD framework is that it supports standardisation, with the information reporting to be undertaken in a standardised format to reduce compliance costs for platforms. Platforms will only have one reporting obligation under the OECD rules, and the exchange of information is handled by the jurisdiction in which the platform is tax resident. This is preferable to platforms having multiple reporting obligations using multiple different formats, as would be the case if countries used information-demand powers or treaty provisions for exchange on an ad hoc basis.

One submitter noted that Inland Revenue could request information from treaty partners under Article 6 of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*. Officials note that the exchange of information from digital platforms would be in accordance with these provisions of the Multilateral Convention, which authorises the exchange of information subject to an agreement between competent authorities. A specific

agreement has been developed for the exchange of information between competent authorities on information reported by digital platform operators – the *Digital Platform Information – Multilateral Competent Authority Agreement*. New Zealand’s treaty partners would not share this information if New Zealand was not party to this agreement or a similar bilateral agreement. Officials therefore disagree with the submitter’s suggestion that the information could be obtained under New Zealand’s tax treaties without a supplementary agreement between competent authorities.

Recommendation

That the submissions be declined.

Issue: Scope of the reporting rules is too broad

Submission

(Corporate Taxpayers Group, Deloitte)

The model rules and extended model rules will inadvertently impact significantly more New Zealand businesses than just those platforms that support the gig economy. For example, any business with a loyalty scheme may be caught, including those whose sellers are all established businesses and not individual gig workers. *(Corporate Taxpayers Group)*

Because the rules apply to a very broad definition of “Platform” with limited exclusions, platforms that connect non-gig sellers to customers are also caught under the rules and will need to build expensive IT systems to report information about sellers, even though there are no compliance concerns. For example, a platform that allows customers to accumulate “loyalty points” that they are then able to spend in an online store listing goods sold by “High Street Retailers”. *(Deloitte)*

Comment

Officials note the definition of “Platform”, and the reporting rules more generally, were the subject of extensive consultation, including with affected digital platforms, led by the OECD and then subsequent agreement amongst OECD members.

Officials also note that uncertainties are associated with the scope of the sale of goods reporting module (the extended module), and on balance, officials have recommended that implementation of the extended module be deferred. See [“Issue: Defer implementation until a critical mass of other jurisdictions exists”](#) above.

Recommendation

That the submissions be noted.

Issue: Option to report on New Zealand tax residents and the sale of goods

Submission

(Corporate Taxpayers Group, Olivershaw Limited)

The purpose of proposed section 185S(3) of the Tax Administration Act 1994 is to reduce the reporting requirements for reporting platform operators. This provision enables New Zealand-based digital platform operators to report to Inland Revenue on consideration received by non-resident taxpayers from the sale of goods made through their platforms. It allows New Zealand-based digital platform operators not to provide Inland Revenue with information about the consideration received by New Zealand tax residents from selling goods through New Zealand-based digital platforms.

In some instances, this concession would not materially reduce the compliance burden on reporting platform operators as they will still be required to collect, verify and routinely re-verify all necessary information on potential reportable sellers to be able to then exclude some sellers from their reporting. *(Corporate Taxpayers Group)*

While there is a benefit to collecting information where there is a known risk of tax evasion, the breadth of information to be collected under the OECD rules is not justified in light of the compliance costs that would be suffered by the private sector. It would be unclear whether information collected from sales of goods platforms would be income (sale of personal goods). In addition, major retailers selling goods through these platforms are largely tax compliant. *(Olivershaw Limited)*

Comment

Given the opposition in New Zealand to implementing the extended reporting rules, which cover the sale of goods, and the fact that implementing the standard reporting module would enable Inland Revenue to receive information about income earned by New Zealand tax residents from renting out accommodation or providing personal services through foreign digital platforms, officials have recommended that implementation of the extended reporting module be deferred. See [“Issue: Defer implementation until a critical mass of other jurisdictions exists”](#) above.

Recommendation

That the submissions be noted.

Issue: Optional exemption for New Zealand platforms facilitating the sale of goods of New Zealand residents

Submission

(Chartered Accountants Australia and New Zealand)

Submitter does not support the proposal to allow New Zealand-based digital platforms to

opt out and not provide information on the sale of goods and vehicle rentals if the seller is a New Zealand tax resident.

Allowing reporting operators based in New Zealand to choose to apply only the model reporting standard for digital platforms and not the extended model reporting standard for New Zealand tax resident sellers limits the benefits of this regime. (*Chartered Accountants Australia and New Zealand*)

Comment

The rationale for providing New Zealand-based platforms with the option not to provide information on the sale of goods and vehicle rental for New Zealand-resident sellers was because Inland Revenue did not intend to use this information for tax compliance purposes. This is because, for the sale of goods, it is not clear whether information about the consideration a person received from selling goods through a digital platform would give rise to income that would be taxable (that is, the occasional sale of secondhand goods does not necessarily mean the person selling the goods has a corresponding income tax obligation). Vehicle rental services that are facilitated through a digital platform are not currently available in New Zealand on any identifiable scale. The provision of vehicle rental services directly in New Zealand involves businesses providing vehicle rental services directly to consumers without any third-party vehicle owner involvement.

The requirement for platforms to report sale of goods and vehicle rental information for their non-resident sellers was to ensure New Zealand's rules remained equivalent to the EU's. Equivalence was necessary to ensure New Zealand would be able to receive information from foreign tax authorities about New Zealand resident sellers operating through foreign platforms.

However, as explained in "[Issue: Defer implementation until a critical mass of other jurisdictions exists](#)" above, officials have now recommended that the sale of goods module be deferred.

Recommendation

That the submission be declined.

Issue: Change in consideration following the reporting deadline

Submission

(Corporate Taxpayers Group)

The model rules and extended model rules state that when there has been a subsequent change in the consideration following the reporting deadline, the reporting platform operator needs to submit a corrected report to Inland Revenue and to the reportable seller.

It is too onerous and costly from a compliance perspective to track and amend. This requirement should be removed from New Zealand's implementation of the rules.

Comment

The Commentary to Section III of the *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* (which explains the reporting requirements) states:

3. There may be circumstances in which part or all of the Consideration is refunded to the Reportable Seller after the reporting deadline, for instance in case of cancellations of transactions. In that respect, it is expected that Reporting Platform Operators submit a corrected report, reflecting any relevant changes in relation to Reportable Sellers and the Relevant Services. Such a corrected report should also be submitted in case other information in relation to the Reportable Seller or the Relevant Services is corrected after the reporting deadline.

As this requirement is imposed by the reporting rules themselves and is not an optional provision, there is no scope to change the requirement without potentially putting at risk New Zealand's ability to receive information about New Zealand taxpayers from other jurisdictions. However, officials note that, in a New Zealand context, the concerns around compliance costs with the reporting rules have been with the reporting module that requires digital platforms facilitating the sale of goods to provide Inland Revenue with information. Officials have proposed that those rules be deferred.

Officials also note that, as the information reported could have significant tax implications for the seller to whom the information relates, it is important that the information reflects the transactions and circumstances of the seller for the relevant period. If this is not done, sellers could face tax on amounts that are not income. Further, Inland Revenue will make it easy for platform operators to provide the information, which officials understand would be collected and recorded for accounting and commercial reasons regardless.

Recommendation

That the submission be declined.

Issue: Guidance on the reporting rules

Submission

(BusinessNZ, Cantin Consulting, Corporate Taxpayers Group, Deloitte, PwC)

To help platform operators to comply, Inland Revenue should provide clear guidance material regarding the OECD documents and what is required to satisfy the rules.

Comment

Inland Revenue will continue to work with the OECD and other jurisdictions that have implemented the rules to ensure there is sufficient guidance to address any questions raised by digital platform operators in New Zealand that are affected by the reporting rules.

Recommendation

That the submission be accepted.

Issue: Binding rulings on the application of the reporting rules

Submissions

(Corporate Taxpayers Group, Deloitte, New Zealand Law Society)

Inland Revenue should be able to issue binding rulings on the OECD's reporting rules to provide guidance and certainty to "Reporting Platform Operators" regarding the application of the reporting standards and whether a taxpayer is a "reporting platform operator".

It will also be important that Inland Revenue notify platform operators of any amendments to the two sets of OECD rules so that the operators are able to make any necessary changes to their systems and processes to adopt the changes required by the amendments.

(Corporate Taxpayers Group, Deloitte)

Comment

The core of these submissions is that New Zealand-based platform operators want certainty over the application of the OECD's reporting rules and how they would be affected by them, if at all. Officials do not consider the binding rulings regime is an appropriate mechanism for providing this certainty because:

- as a matter of principle, binding rulings are generally only available on matters that affect a person's tax liability, being the amount of tax they must pay
- Inland Revenue is generally prevented from issuing binding rulings on other administrative matters, including on the application of other OECD reporting rules (such as the Common Reporting Standard and Country-by-Country Reporting), and
- were Inland Revenue required to issue binding rulings on the application of the OECD's reporting rules, this could result in digital platform operators effectively receiving an exemption from the reporting requirements, which was unintended (as the Commissioner can only withdraw binding rulings on a prospective basis).

Officials therefore recommend that Inland Revenue be required to provide assurance to platform operators in New Zealand as to the effect of the OECD's reporting rules outside of the binding rulings regime. This assurance could be provided following consultation with other OECD members that are applying the rules and without the costs associated with applying for binding rulings. This has been the approach taken for matters arising on the application of the Common Reporting Standard and Country-by-Country Reporting.

Officials note that the recommendation to defer implementing the extended model reporting rules in New Zealand for now largely addresses concerns around the uncertainty associated with the reporting rules.

Recommendation

That the submissions be declined.

Issue: 31 January reporting date

Submission

(EY)

New Zealand-based digital platforms would be required to report to Inland Revenue by 31 January following the end of the calendar year. This is an unreasonably short timeframe because:

- the demand for reportable services is highest over the holiday period, and that could increase the number of transactions that need to be checked for reporting purposes, and
- many of the staff involved with this reporting are likely to take leave during the holiday period, and this could reduce the ability of platforms to ensure their reporting is completed accurately and on time.

The reporting date should be deferred until later in the year. In addition, the Government should advocate for and pursue extensions to these timelines in discussions with the OECD.

Comment

The reporting date for all digital platforms under the reporting rules is 31 January following the end of the relevant calendar year. This is because tax authorities must then exchange information by the end of February. This timeframe is driven by the desire of foreign tax authorities to use the information from the exchange in the pre-population of income tax returns. The great majority of jurisdictions require taxpayers to report their income and deductions for a calendar year.

While officials do sympathise with the points raised by the submitter, it is noted that the collection of information should largely be an automated process. The data reported under the OECD rules is required to be broken down on a quarterly basis. This means that, to the extent that platforms have data integrity and verification issues to work through, it is likely that these time pressures would only arise in relation to the October – December quarter.

Inland Revenue would work with New Zealand-based digital platforms that had a reporting obligation and would exercise administrative discretion around the imposition of penalties. (The penalties proposed in the Bill do not apply on an automatic basis where information has not been provided by the due date.)

Officials note that, following experience with the Common Reporting Standard, Inland Revenue is generally required to work alongside information providers to ensure the information provided is ready for exchanging with other tax authorities. Under the proposals in the Bill, Inland Revenue would need sufficient time to check that the information provided by New Zealand digital platform operators is ready for exchange by the end of February.

Officials also note that the reporting dates are provided for in the OECD’s model reporting rules. If, in enacting the rules in New Zealand, the reporting date were to be changed, foreign tax authorities may not exchange information with New Zealand on the basis that New Zealand did not have “rules of equivalence”. Changing the reporting date would likely frustrate the ability of foreign tax authorities to use information from New Zealand in pre-populating the income tax returns of their tax residents.

Given the recommendation to defer the “extended model reporting standard for digital platforms”, officials note that the 31 January reporting date would have limited application in New Zealand. Officials understand that most digital platforms in New Zealand that were affected by the reporting rules were affected because of the requirement to report on the sale of goods. Officials note the number of digital platforms in New Zealand that facilitate accommodation rental and personal services is a lot smaller.

Recommendation

That the submission be declined.

Issue: Exemption process on the likelihood of sellers being non-reportable

Submission

(PwC)

An exemption process should be introduced that allows a digital platform to apply to Inland Revenue for confirmation that it will not be required to report information under the OECD’s information reporting and exchange framework. This exemption could be provided on the likelihood of the underlying sellers being New Zealand residents.

Comment

The reporting standards require reporting on sellers that receive consideration from carrying out certain activities on digital platforms. The standards do not provide the flexibility that would enable tax authorities to develop exemption processes based on the “likelihood” of the sellers not being reportable. The reporting standards require reporting platform operators to collect information from sellers that enables them to identify whether the sellers were reportable or excluded from reporting.

Officials therefore note that Inland Revenue would not be able to implement an exemption process, such as that suggested by the submitter, as this would have the effect of overriding the reporting standards. Modifying the rules in such a way would mean New Zealand would not have rules of equivalence with foreign jurisdictions, and therefore would be at risk of not receiving information from foreign tax authorities. This would undermine one of the primary benefits of implementing the rules in New Zealand.

Recommendation

That the submission be declined.

Issue: Compliance costs associated with the “Excluded Seller” definition

Submission

(Corporate Taxpayers Group)

Under the OECD rules, the platform operator is required to perform due diligence procedures at least three-yearly on reportable sellers. This would likely impose unreasonable compliance costs.

While the model rules and extended model rules mention some exclusions from a “reportable seller”, reporting platform operators will have a significant compliance cost to track the relevant information about sellers to confirm any exclusion from the reporting requirements. This carve-out does not actually work to ease any compliance obligations for the platform and would, in fact, do the opposite.

Examples include verifying whether a seller is still listed on a stock exchange and therefore still an excluded seller, as well as determining whether the seller is still excluded under proposed section 185S(3) of the Tax Administration Act 1994, which would allow platform operators with only New Zealand tax residents that sell goods or vehicle rentals to be excluded from the reporting requirements.

Comment

The OECD’s reporting rules have been designed to minimise compliance costs as much as possible for platform operators. Officials acknowledge that the rules impose compliance costs to the extent they require platform operators to obtain and verify information that is not currently obtained from taxpayers that sell through their platform. However, officials note that the additional information required to be collected under the reporting rules is intended to be limited to information necessary to identify the taxpayer and the income they earn from their activities carried out on the digital platform. Most information that needs to be collected will already be held by the platform, such as the value of sales attributable to the seller that is reportable.

The “Excluded Seller” definition is narrow and the policy rationale for this is because these sellers represent a limited compliance risk from a tax perspective. Further, officials note that the due diligence procedures in the rules for “Excluded Sellers” allow platform operators to rely on their available records (in the case of an accommodation host, such as a hotel) and on publicly available information or confirmation from the seller (in the case of governmental entities and entities that are traded on established securities markets).

Officials also note that the due diligence procedures do not need to be carried out every calendar year provided the primary address of the seller has been either collected and verified or confirmed within the last three years, and the platform operator has no reason to know that the information it holds about the seller has become unreliable or incorrect.

Recommendation

That the submission be noted.

Issue: Drafting clarity on reporting exemption

Submission

(DoorDash Technologies New Zealand)

Proposed section 185S(2) of the Tax Administration Act 1994 (TAA) requires the platform operator to comply with all requirements in the “extended model reporting standard for digital platforms”, which is defined in clause 139(3) of the Bill to encompass both the OECD’s July 2020 Model and the OECD’s June 2021 Model.

For improved clarity, subsection (2) should start with “Subject to subsection (3)” to signpost subsection (3). This would make it clearer that, pursuant to subsection (3), a platform operator can choose not to report on sellers of goods who are New Zealand-resident sellers and not resident elsewhere.

Comment

Officials note the intent of proposed sections 185S(2) and (3) of the TAA is to enable New Zealand digital platforms to ignore the effect of the extended model reporting standard for sellers that are New Zealand tax residents if they choose to. Officials will consider making this clearer in the revision-tracked version of the Bill or the guidance explaining the changes.

Recommendation

That the submission be noted.

Issue: “Excluded Seller” definition and the use of European currency

Submission

(PwC)

The OECD’s reporting rules define an “Excluded Seller” as a person who receives consideration of below EUR 2,000 from the sale of goods through a digital platform during the reportable period. They must also have fewer than 30 sales on the digital platform for the reportable period.

The reference to EUR 2,000 should be converted to New Zealand dollars for the Tax Administration Act 1994 to reduce compliance costs associated with converting foreign currency amounts.

Comment

Officials agree with the submitter. The EUR 2,000 threshold should be expressed as NZD 3,500. Officials note this is similar to the approach taken by the United Kingdom in their draft regulations – *The Platform Operators (Due Diligence and Reporting Requirements) Regulations 2022* – where the EUR 2,000 threshold has been converted to GBP.

Despite officials’ recommendation that implementing the extended reporting module in New

Zealand be deferred, officials consider the Bill should be amended in the manner suggested by the submitter as it should reduce compliance costs associated with tracking foreign exchange movements in the event the sale of goods reporting module is implemented in New Zealand in the future.

Recommendation

That the submission be accepted.

Issue: “Excluded Seller” definition monetary threshold

Submission

(BusinessNZ)

The threshold contained in the definition of an “Excluded Seller” seems low and both the number of relevant activities and the total amount of consideration paid should be significantly increased.

Comment

Officials note that the “Excluded Seller” threshold is a core aspect of the reporting standards and has been set by the OECD in the extended model reporting standards. To implement a different threshold would represent a fundamental change to the rules, which could result in New Zealand being regarded as not having equivalent rules to other jurisdictions. This could compromise Inland Revenue’s ability to receive information from foreign tax authorities, which would significantly reduce the benefits of implementing the rules in New Zealand.

Officials also note that the proposals in the Bill do not require New Zealand-based digital platforms to report information about the sale of goods made by New Zealand tax residents. This is optional for New Zealand-based digital platforms. The proposals in the Bill would require New Zealand-based digital platforms to provide Inland Revenue with information about income earned by foreign tax residents through New Zealand digital platforms from the sale of goods. Foreign tax authorities may consider information based on this threshold to be relevant for administering their tax systems.

Recommendation

That the submission be declined.

Issue: Importing defined terms into Tax Administration Act 1994

Submission

(Corporate Taxpayers Group, Deloitte, New Zealand Law Society)

Key definitions and requirements from the OECD documents should be set out in the Tax

Administration Act 1994 (TAA) to ensure it is clear who the reporting rules apply to.

Comment

Officials note that defined terms in the Bill have the same meaning as set out in the applicable reporting standards. The Bill achieves this outcome with the inclusion of proposed section 185S(5) of the TAA.

Officials agree that it should be clear who the reporting rules apply to. Officials therefore recommend that Inland Revenue publish guidance on who would be affected by the reporting requirements proposed in the Bill. This would include core definitions and supplementary guidance.

Officials note that if the Bill were to be amended to incorporate key definitions within the TAA, these would be at risk of becoming out-of-date if changes were made to the OECD documents, and amendments would be required to update the definitions. This would be at odds with the preferred approach that changes made to the reporting standards be incorporated automatically into New Zealand law to ensure international alignment.

Recommendation

That the submission be declined.

Issue: Version of the reporting standards being implemented

Submission

(New Zealand Law Society)

The Bill includes references to the OECD's reporting rules. These references should be amended to refer to the dates of the reporting rules so that it is clear which version of the rules are being implemented in New Zealand.

Comment

Officials do not favour the approach suggested by the submitter. This is because the reporting standards may be updated over time, and if the legislation refers to the reporting standards as at a specific date, the legislation will need to be updated to ensure these changes flow through into New Zealand law. This automatic flow-through approach is consistent with the approach taken for another OECD information reporting and exchange framework, the Common Reporting Standard.

In terms of changes to the reporting standards, officials note that any changes to the OECD's reporting standards would require extensive discussion at the OECD and full consensus amongst members. This would be preceded by a public consultation period on any proposed changes (which includes stakeholder engagement as to feasibility) and any changes would generally be widely communicated with a long lead-in time to ensure transparency and adequate time for implementation by both tax administrations and platforms. Separately, Inland Revenue would also communicate changes to affected digital platforms in New Zealand.

The option to block the effect of changes made by the OECD to the reporting standards is proposed to be included in a regulation-making power. This approach is also consistent with the approach taken for the Common Reporting Standard.

Recommendation

That the submissions be declined.

Issue: Support for incorporating the OECD's reporting rules by reference

Submission

(PwC)

The submitter supports implementation of the OECD's reporting rules in New Zealand. The submitter notes that incorporating the rules by reference has the following advantages:

- it is consistent with other countries adopting the rules and this reduces the risk of differing interpretations between jurisdictions, and
- it allows future changes to the rules to flow through and be applied in New Zealand.

Inland Revenue should provide New Zealand-specific commentary to help New Zealand platforms comply with the requirements.

Comment

The Bill proposes to give legislative effect in New Zealand to model reporting rules developed by the OECD that affect digital platform operators. It achieves this by referring to the OECD's rules rather than fully transposing the rules into the Tax Administration Act 1994.

Officials considered this approach preferable for the reasons noted by the submitter. Further reasons for this approach are outlined in ["Issue: Opposition to incorporating the OECD's reporting rules by reference"](#) below. Officials also note that the approach taken in this Bill is consistent with the approach taken for implementation of the Common Reporting Standard and Country-by-Country Reporting, which are other OECD information reporting and exchange frameworks that have been implemented in New Zealand.

Officials note that Inland Revenue would, as a matter of course, provide guidance on the application of the rules on its website and in other materials. Inland Revenue would also work with affected digital platform operators in New Zealand to ensure that the rules were understood. Some questions may require resolution at an international level and Inland Revenue would seek to raise these issues on behalf of New Zealand at the OECD.

Recommendation

That the submission be noted.

Issue: Opposition to incorporating the OECD's reporting rules by reference

Submission

(BusinessNZ, Mayne Wetherell)

The OECD's reporting rules should be incorporated into New Zealand's domestic legislation. *(BusinessNZ)*

Clauses 139 and 180 of the Bill do not provide adequate safeguards in respect of future changes to the OECD's reporting rules and, in any case, do not make sense as drafted. The Bill should be amended to:

- clarify that it is only the current versions of the OECD's reporting rules that are enacted into New Zealand law, and
- require that any amendments to those rules be incorporated directly by subsequent legislative amendment or, if it is considered that enacting primary legislation would take too long to respond to future amendments, by Order in Council.

If, and when, Parliament does wish to incorporate the OECD's reporting rules into New Zealand law, it should include the relevant rules in New Zealand legislation (following the usual Select Committee scrutiny of the Bill containing the text of the rules). Incorporating the rules by way of legislative reference leads to legislation that is not accessible, intelligible, clear or predictable. *(Mayne Wetherell)*

Comment

The approach taken in the Bill towards incorporating the OECD's reporting rules into New Zealand's legislation follows the same approach taken with the Common Reporting Standard (CRS). The CRS is another OECD information reporting and exchange framework that applies to financial institutions for financial account information. The CRS took effect in New Zealand in 2017 and is currently working well.

The rationale for incorporating the OECD rules by legislative reference is to ensure that our rules remain equivalent to those adopted by other jurisdictions. A risk of incorporating the rules into legislation directly is that this could result in inadvertent differences between our rules and those adopted by other jurisdictions. This undermines the benefits of standardisation achieved through rules agreed by international consensus, which allows multinational platforms operating in numerous jurisdictions to comply with only one set of rules. If transposing the rules directly into New Zealand legislation did result in inadvertent differences, this could also mean that other jurisdictions would not exchange information with New Zealand because of issues around equivalence.

Incorporating the rules by legislative reference rather than direct incorporation also provides legislative flexibility. This is because any changes made to the rules at OECD level will automatically flow through into New Zealand legislation, without the need for legislative amendment. This would be advantageous in circumstances where the rules were amended to clarify their intent or resolve overreach on an expedient basis. For these reasons, officials also do not agree with the submitter that the OECD's reporting standards currently referred to in

the Bill should refer to the specific dates of these documents. Doing so would hamper future changes automatically flowing through into New Zealand law (see also [“Issue: Version of the reporting standards being implemented”](#) above).

Officials also do not agree that the approach in the Bill leads to legislation that is not accessible or intelligible, or that allowing the OECD to maintain the rules leads to a lack of scrutiny in New Zealand.

The rules are publicly accessible by affected digital platform operators on the OECD’s website. The rules include supplementary guidance on their scope and application. This guidance will continue to be developed over time in response to questions around the application of the rules and following international consensus at the OECD. Inland Revenue would also continue to work with digital platform operators in New Zealand that had reporting obligations to ensure that issues were raised and resolved and that the rules were understood.

Officials note that the decision to implement the OECD’s reporting rules in New Zealand has largely been made on an “all or nothing” basis. If this approach was not taken, New Zealand’s implementation of the reporting rules could be considered a bespoke reporting system, which would undermine the benefits of an internationally aligned ruleset and could result in foreign tax authorities being unable to share information with Inland Revenue on the grounds that New Zealand had not implemented equivalent rules.

Recommendation

That the submissions be declined.

Issue: Support for regulation-making power

Submission

(Chartered Accountants Australia and New Zealand)

The regulation-making power is appropriate and would enable changes to the reporting standards to be made without the need to go through the legislative process. The regulations would be subject to parliamentary review and possible disallowance if the regulations do not meet the requirements of the primary legislation.

Recommendation

That the submission be noted.

Issue: Opposition to regulation-making power

Submission

(New Zealand Law Society)

The proposed regulation-making power, which would enable the Governor-General to make

Orders in Council modifying the OECD's reporting rules, should be removed. This is because Orders in Council could be made without input from the New Zealand public, who did not have input into the rules. If the Committee considers the regulation-making power should be retained, the Bill should provide statutory guidance as to the purpose of the power and specify parameters for the types of changes that may be made by exercising those powers.

Comment

The intent of the Bill is to provide for automatic flow-through of any changes made to the OECD's reporting rules into New Zealand law. This is consistent with the approach that has been taken for other OECD information exchange frameworks, such as the Common Reporting Standard and Country-by-Country Reporting. Officials note it is desirable for changes to automatically "flow through" as this would ensure that New Zealand would have equivalent rules with other jurisdictions that are adopting the rules. The purpose of including the regulation-making power is to ensure that New Zealand has the necessary flexibility to block any changes to the rules from having effect in New Zealand.

It is noted that any changes made by the OECD to the OECD's reporting standards would require extensive discussion at the OECD and would require full consensus. These changes would also be subject to extensive consultation and a long lead-in time to ensure platforms could make any necessary changes. Officials have described the process for changes to the OECD rules in greater detail in ["Issue: Scope of regulation-making power"](#) below. Further, if the OECD sought to make minor clarifications to operational or technical aspects of the rules, it would be undesirable and inefficient for the government to have to introduce these clarifications by way of Order in Council.

Recommendation

That the submission be declined.

Issue: Scope of regulation-making power

Submission

(New Zealand Law Society, Regulations Review Committee)

The proposed regulation-making power should be limited to implementing changes made by the OECD to the OECD's reporting standards. Additional changes that are unrelated to any changes made to the OECD's reporting standards should be made by primary legislation and subject to public scrutiny before implementation. *(New Zealand Law Society)*

The regulation-making power in proposed section 226F of the Tax Administration Act 1994 (TAA) should more clearly indicate how it is intended to operate. *(Regulations Review Committee)*

Comment

The proposed regulation-making power is intended to provide protection against future changes to the model reporting standards that are considered inappropriate to implement in

New Zealand. This is consistent with the approach taken for other OECD information reporting and exchange frameworks, such as the Common Reporting Standard (see the current regulation-making power in section 226E of the TAA, which the proposed power in the Bill was modelled on).

Officials note that changes agreed at the OECD to the model reporting standards would:

- **Be subject to extensive consultation.** This includes targeted consultation with the business community (that is, those digital platforms affected by any proposed changes) ahead of public consultation.
- **Require unanimous agreement.** Before changes are made by the OECD, there must be unanimous agreement among OECD members, including New Zealand.
- **Be expected to apply prospectively from the beginning of the next reportable period at the earliest.** This reflects the fact that material changes made on a retrospective basis would be impractical to comply with.

Officials also note that the Bill only proposes that changes made to the “model reporting standard for digital platforms” would have automatic flow-through. These changes, by their nature, would be minimal and clarifying in scope. Officials do not expect that changes could be made to add new categories of services to be reported on as this would require a new reporting module be developed (in which case, if New Zealand were to give this legislative effect, further legislation would be required).

The proposed regulation-making power is not intended to enable Orders in Council to be made that change aspects of the reporting rules that are not changes made by the OECD.

Officials will ensure that this approach is reflected in the proposed regulation-making power.

Recommendation

That the submissions be accepted.

Issue: Regulation-making power – timing of changes

Submissions

(Corporate Taxpayers Group, Deloitte, Regulations Review Committee)

Any change to the rules should include a grace period in which reporting platform operators are able to prepare for any change in advance of the date it becomes applicable. Proposed new section 226F(2) would allow for changes to be made to the model reporting standards and extended model reporting standards with immediate application. Changes that require immediate compliance could become burdensome and costly to implement. *(Corporate Taxpayers Group, Deloitte)*

Officials should clarify whether the retrospective application of regulations is contemplated, and if so, whether officials have considered if any retrospectivity may disadvantage any person. *(Regulations Review Committee)*

Comment

Officials have recommended that the scope of the regulation-making power be clarified (see [“Issue: Scope of regulation-making power”](#) above). Consistent with the approach taken on implementation of the Common Reporting Standard, it is intended that changes initiated by the OECD to the OECD reporting standards would take effect in New Zealand from the date set out by the OECD unless blocked from having effect in New Zealand by an Order in Council.

It is anticipated that changes made by the OECD would be communicated well in advance of them coming into force and would be the subject of public consultation. Inland Revenue would also communicate the changes to affected digital platform operators in New Zealand so that they were aware of them.

Officials anticipate that changes made by the OECD to the reporting standards would be minor or technical in nature and would not involve significant changes. For example, if new activities were to be reported on, these would need to be given separate legislative effect in New Zealand on the basis they were included in an additional module developed by the OECD.

Officials also anticipate that changes made by the OECD would generally be expressed as applying on a prospective basis from the next reportable period. It would be unlikely that changes would be expressed as applying from a date during a current reportable period.

For these reasons, Orders in Council would not need to have retrospective effect. Officials also note that a grace period before an Order in Council came into force would be unnecessary because Orders in Council would only be made on a prospective basis (for example, to block a future change from having effect in New Zealand).

Recommendation

That the submissions be noted.

Issue: Public consultation should be required before regulations are made

Submission

(Corporate Taxpayers Group)

Any changes made by Orders in Council should be put forward for public consultation on whether they should apply in New Zealand before any regulations are made.

Comment

Officials note that any changes to be made to the reporting standards by the OECD would be signalled well in advance of them taking effect. Inland Revenue would also communicate any changes to affected digital platform operators in New Zealand to raise awareness.

Officials also note that changes are unlikely to be substantive (for example, requiring new

activities to be reported on) and instead are likely to be focused on clarifying technical aspects of the existing text.

The purpose of the regulation-making power is to block changes made by the OECD to the reporting standards from having effect in New Zealand. Before such an Order is recommended, officials would undertake consultation with stakeholders, including affected digital platforms, as a matter of course.

Recommendation

That the submission be declined.

Issue: Support for due diligence procedures

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposal to require digital platform operators to collect identifying information and complete the due diligence procedures set out in the reporting standards.

Recommendation

That the submission be noted.

Issue: Government verification service

Submission

(Chartered Accountants Australia and New Zealand, Uber)

If platforms are expected to verify the accuracy of certain information provided by sellers (for example, IRD numbers), then Inland Revenue should provide access to a database to assist with verification. This could significantly reduce the risk of incorrect data.

Comment

Inland Revenue currently provides an IRD number validation service that could be used by digital platform operators to verify information provided to them by sellers operating on their platforms. This should ensure that information provided by digital platform operators is attributed appropriately to the correct taxpayer in Inland Revenue's computer system.

Officials note that the Inland Revenue website has information about how the IRD number validation service works and a Software Developer Kit for those that want to use the service. Inland Revenue would not be able to provide a service that enabled verification of information about sellers that it did not hold. For example, not all sellers necessarily provide Inland Revenue with their bank account information, and it would therefore not be possible to verify these records. The purpose of the information reporting rules is to ensure that income earned through digital platforms is appropriately attributed to the taxpayer that

earned the income. The IRD number is one of the main identifiers, in addition to the seller's name and date of birth, used for this purpose.

Inland Revenue cannot provide a service that enables verification of foreign taxpayer identification numbers (TINs) because it does not hold this information. Officials note that the OECD provides a mechanism for verifying the format of foreign TINs and this is available free of charge. This service is used by financial institutions that are required to provide information under the Common Reporting Standard. This service is available on the OECD's website here: <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>

Recommendation

That the submission be noted.

Issue: Support for proposed penalties

Submissions

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Support for the proposed penalties that could apply to:

- reporting platform operators that do not take reasonable care to meet the requirements of the reporting standards, and
- sellers that do not comply with their obligations to provide information about themselves or another person to a reporting platform operator.

Also support for the proposal that platform operators and sellers cannot be convicted of an absolute liability or strict liability offence if they fail to comply with requirements under the reporting standards. *(Chartered Accountants Australia and New Zealand)*

Support for Inland Revenue applying discretion not to apply penalties in the first years of operating under the rules. *(Corporate Taxpayers Group)*

Recommendation

That the submissions be noted.

Issue: Proposed penalties – standard of “reasonable care”

Submission

(Uber)

Platforms are required to adhere to a standard of reasonable care when meeting their requirements under the OECD model rules. If this standard is not met, the platform is exposed to penalties.

This standard of reasonable care should be discharged if:

- the required data is reported in the required format, and
- the platform operator has taken reasonable endeavours (such as through its usual business systems and processes) to check the accuracy of the information supplied by third parties.

If “reasonable endeavours” are not enough to discharge the standard of reasonable care, then further guidance should be provided on what level of “reasonable care” is required.

Additional due diligence to verify information beyond a reasonableness standard would greatly increase compliance costs and involve a multitude of stakeholders, both within and outside the platform operator’s organisation, and verification procedures.

Comment

If platforms follow the due diligence procedures set out in the OECD’s reporting standards, then they would not be subject to any penalties. The penalties that are proposed in the Bill are based on the penalties that apply for the application of the Common Reporting Standard (CRS) in New Zealand. Officials note that Inland Revenue would work with operators of digital platforms to mitigate the compliance costs associated with carrying out the due diligence procedures by exploring mechanisms such as the Government Verification Service.

The Commentary on the Bill notes that the Commissioner of Inland Revenue would exercise discretion in applying penalties during the first years of operation of the reporting standards. This is provided platform operators and sellers, as applicable, had demonstrated a willingness to comply with their obligations under the standards. This is referred to as a “soft landing” and is consistent with the approach taken by the Commissioner when the CRS was implemented in New Zealand in 2017.

Recommendation

That the submission be noted.

Issue: Penalties for platform operators

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed sections 142J(2) and 142J(4) provide that platform operators are liable for penalties for each “occasion” in which the operator does not meet the requirements. Further clarification is needed on what constitutes an “occasion” (for example, would one missing data point for one reportable seller constitute an “occasion”?).

Further guidance is also required to make it clear whether Inland Revenue would apply these penalties to platform operators that miss the 31 January reporting deadline.

Comment

The OECD expect that jurisdictions introduce “effective enforcement provisions to address non-compliance”. The penalties in the Bill are therefore intended to provide a financial

disincentive for those with obligations under the reporting standards that choose to be non-compliant. They are modelled on the penalties that were introduced when the Common Reporting Standard was implemented in 2017.

The proposed penalties are not intended to be applicable in circumstances where there is one missing data point for one reportable seller. The Bill proposes that the penalties are discretionary and could be applied where there were serious cases of non-compliance on a large scale. In addition to providing that penalties would not apply on an automatic basis where information was not provided by 31 January, this approach also provides Inland Revenue with the flexibility not to impose penalties in circumstances where innocent errors have been made. Consistent with Inland Revenue's compliance approach, Inland Revenue would not seek to impose penalties unless there were serious cases of non-compliance. If non-compliance was identified, Inland Revenue would work with affected platform operators to resolve issues before penalties were considered. The penalties could be assessed in circumstances where platform operators had demonstrated they were unwilling to comply with their obligations under the reporting standards despite attempts by Inland Revenue to ensure that they were compliant.

Officials also note the Bill provides protection from excessive penalties in circumstances where the operator (or seller, if applicable) establishes in proceedings challenging the penalties that the penalties are excessive. Given Inland Revenue's compliance approach, and the expectation that penalties would be reserved for more serious large-scale cases of non-compliance, officials consider it unlikely that a person would need to rely on this protection.

Officials will include guidance on these penalties in a *Tax Information Bulletin* or Special Report published following enactment of the Bill.

Recommendation

That the submissions be accepted.

Issue: Proposed penalties for non-compliant sellers

Submission

(Corporate Taxpayers Group)

Proposed section 185S(4) of the Tax Administration Act 1994 refers to a "seller" complying with the requirements to provide information to the "platform operator". However, the model rules and extended model rules only seek to apply to "reportable sellers" and "reportable platform operators".

Proposed section 142K refers to reporting requirements for "sellers", under which they may be liable to pay a penalty of \$1,000 if they do not meet certain requirements. This needs to be updated to "reportable sellers" as there should be no opportunity for sellers who fall into the definition of "excluded seller" to be penalised for not providing information that is not ultimately reportable under the rules.

Comment

A person who is a “seller” may have an obligation to provide information to a reporting platform operator despite not being a “reportable seller”. For example, Section II, paragraph B(1) requires individual sellers to provide information about their name, address, taxpayer identification number, and date of birth to the reporting platform operator. Officials therefore consider it appropriate that proposed section 185S(4) refers to “seller” instead of “reportable seller”.

Officials note that before the Commissioner of Inland Revenue could assess a penalty under proposed section 142K, a person would have to have been non-compliant with their obligations under the reporting standard. The effect of this is that if a person was not required to provide information to the reporting platform operator under the OECD reporting standards, the Commissioner could not assess a penalty. Officials therefore consider no change to section 142K is necessary to achieve the outcome noted by the submitter.

Recommendation

That the submission be declined.

Issue: Obligation for platform operators to comply with the reporting requirements for all sellers

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed section 185S(2) states that a “platform operator” must comply with the requirements in respect of “all sellers”. However, the requirements set out in the model rules and extended model rules only apply to “reporting platform operators” and “reportable sellers”. The wording should be tightened in line with the model rules.

Comment

The intent of proposed section 185S is to require a person that has obligations under the OECD’s reporting rules for digital platforms to comply with those rules. It is not intended to broaden or narrow the requirements as set out in the rules.

Officials note that amending the Bill in the manner suggested by the submitter could result in an inadvertent narrowing of the rules. This is because reporting platform operators would arguably not be required to collect information about individual sellers as is required by Section II, paragraph B(1) of the model reporting standard.

Point of difference

Officials agree the Bill should be amended to clarify that a reporting platform operator would only need to comply with the requirements of the applicable reporting standard. This addresses the concern that the Bill has extended the requirements set out in the reporting standards.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Exemption for small reporting platform operators

Submission

(Booking.com, Corporate Taxpayers Group)

The inclusion of smaller scale digital platforms within the reporting rules is welcomed. Excluding them would put big digital platforms at a competitive disadvantage. An exemption may lead to incomplete data about sales of those sellers who provide services via big and small platforms. *(Booking.com)*

The United Kingdom has chosen not to implement the exemption for small digital platforms to ensure alignment with the EU's DAC7 reporting rules² and enable sharing of all data between jurisdictions. If the exemption were to be implemented in New Zealand, then it would be likely that no information would be shared by the EU, and given the relatively small number of countries currently considering implementation of these rules, this would seriously limit the amount of information being shared. *(Corporate Taxpayers Group)*

Comment

The OECD's reporting rules include an optional provision to allow small reporting platform operators (with less than EUR 1 million of turnover) to be exempt from the reporting requirements. This optional exemption has not been proposed in New Zealand.

This exemption was not proposed to be implemented in New Zealand due to the exemption not being included in the EU reporting rules. If New Zealand did implement the exemption, New Zealand's implementation of the rules would likely be regarded as not being "of equivalence" with the EU rules. This would mean Inland Revenue would not receive information from tax authorities in the EU. The benefits of implementing the reporting rules in New Zealand would be highly limited if EU tax authorities were unable to share information with Inland Revenue. This is because many large digital platforms with New Zealand users are based in the EU.

As noted by one submitter, this approach has been taken by the United Kingdom in their draft regulations.

Recommendation

That the submissions be noted.

² DAC7 refers to the EU tax directive that requires digital platform operators in the EU to collect and report information about sellers to EU tax authorities. The activities covered are the same as those covered by the OECD's reporting rules for digital platform operators.

Issue: Support for no Code of Conduct agreements

Submission

(Corporate Taxpayers Group)

Support for Inland Revenue's intention not to enter into any Code of Conduct bilateral agreements with reporting platform operators. Entering such agreements would extend compliance obligations further than the model rules and extended model rules.

Recommendation

That the submission be noted.

Issue: Use of information and pre-population of returns

Submission

(Accounting and Tax Agents Institute of New Zealand, Cantin Consulting, Corporate Taxpayers Group, Olivershaw Limited)

Inland Revenue should ensure it has the resources to manage the additional information it will be receiving and to take any appropriate enforcement action. *(Accountants and Tax Agents Institute of New Zealand)*

The Committee should consider whether the rules have the flexibility to enable pre-population of income tax returns. The Committee should also test how Inland Revenue plans to use the information. *(Cantin Consulting)*

The proposed delay to pre-population of data into income tax returns if the proposals are introduced is reasonable. Given the mismatch between reportable periods and income tax years, and the question of how reliable the information obtained may be, the submitter is concerned around the practicalities of pre-population. *(Corporate Taxpayers Group)*

A significant amount of information may not be that useful to Inland Revenue. *(Olivershaw Limited)*

Comment

The March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy* – asked for feedback on how the information that would be reportable under the OECD's reporting rules for digital platforms should be used, including whether pre-population was desirable. The discussion document noted that pre-populating sellers' income tax returns with information from the reporting rules would pose practical difficulties because the information reported under the OECD's rules is for a calendar year as opposed to New Zealand's tax year, which runs between 1 April and the following 31 March.

Officials note that pre-population of sellers' income tax returns is not proposed in the Bill. Further legislative changes would be required to enable this. Officials consider these changes should be explored in the future and following further public consultation.

Inland Revenue would use the information in a similar way to the way it uses information it

receives from other tax authorities and financial institutions under the Common Reporting Standard. The information could be used by Inland Revenue to undertake compliance work, including checking whether sellers have included income they have earned from their activities on digital platforms in their income tax returns.

Recommendation

That the submissions be noted.

Issue: Multilateral Competent Authority Agreement

Submission

(Cantin Consulting)

The competent authority in New Zealand signed the *Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived Through Digital Platforms*. The proposals in the Bill appear to be necessary to facilitate the exchange of information.

Comment

New Zealand signed the *Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived Through Digital Platforms* (the DPI MCAA) in November 2022, alongside 21 other jurisdictions. It is an administrative agreement that facilitates the exchange of information between tax authorities that are party to it. The DPI MCAA expresses an intention to exchange information that will then need to be followed up with notifications to the Coordinating Body of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* confirming that New Zealand has made changes to its domestic legislation that enable it to fulfil its obligations under the DPI MCAA.

The proposals in the Bill do not themselves enable the **exchange** of information between tax authorities, but instead they enable the **collection** of information by Inland Revenue from digital platforms based in New Zealand.

If the proposals in the Bill were not to proceed, New Zealand would not be able to notify the Secretariat at the OECD that New Zealand has made the necessary changes to enable it to fulfil its obligations under the DPI MCAA.

Recommendation

That the submission be noted.

Issue: Payment service providers and bulk data regulations

Submission

(Cantin Consulting)

The Tax Administration (Regular Collection of Bulk Data) Regulations 2022 require “payment

service providers” to provide information to Inland Revenue. A double-up of information may result if the same, or similar, information is provided under the proposed information reporting rules for digital platforms as is provided under the regulations.

In addition, offshore digital platforms and offshore underlying suppliers may not be covered by the regulations affecting payment service providers.

Comment

Implementation of the OECD’s reporting rules in New Zealand would enable Inland Revenue to receive information about income earned by New Zealand tax residents from their activities conducted through foreign digital platforms. Foreign digital platforms are unlikely to use New Zealand-based “payment service providers” that would be subject to reporting obligations under the Tax Administration (Regular Collection of Bulk Data) Regulations 2022.

To the extent that a “digital platform” is also a “payment service provider” for the regulations, resulting in two reporting obligations about the same information, the exemption provisions of the bulk data regulations could be applicable. The exemption provisions enable the Commissioner of Inland Revenue to provide an exemption to a payment service provider in certain circumstances if the information being collected is already being provided by some other mechanism or reporting obligation.

Officials also note that without implementing the OECD’s information reporting and exchange framework for digital platforms, Inland Revenue would not receive the benefit of information about New Zealand taxpayers that would be reported to foreign tax authorities.

Recommendation

That the submission be noted.

Issue: Annex A of the model reporting standard for digital platforms

Submission

(Corporate Taxpayers Group)

The *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* contain an optional “Annex A: Extending the definition of Reporting Platform Operator”.

A provision should be included, similar to proposed section 185S(5) of the Tax Administration Act 1994, clarifying that this Annex does not apply in New Zealand.

Comment

The purpose of Annex A of the OECD’s model reporting rules for digital platforms is to enable jurisdictions that implement the reporting rules to include in their domestic legislation a requirement for foreign digital platform operators to report to that jurisdiction’s tax authority where the foreign digital platform does not operate in a jurisdiction that has

implemented the OECD's model reporting rules.

Officials note that Annex A is expressed as not being a part of the rules and therefore should not have legislative effect in New Zealand. However, officials agree with the submitter that an amendment should be made to the Bill to make this clear.

Recommendation

That the submission be accepted.

Issue: Cross-referencing issue

Submission

(Corporate Taxpayers Group)

The reference within proposed section 185S(5)(c) is to the extended model rules. However, section I(A)(3) sits within the model rules. This should be updated for clarity.

Comment

The intent of proposed section 185S(5)(c) is to ignore the effect of an optional provision included in the *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy*. This optional provision relates to "Excluded Platform Operators", and it is not proposed that this optional provision be given legislative effect in New Zealand.

The *Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy* is referred to in the Bill as the "model reporting standard for digital platforms". Officials therefore agree that proposed section 185S(5)(c) of the Tax Administration Act 1994 should be updated to refer to the "model reporting standard for digital platforms" and not the "extended model reporting standard for digital platforms", which covers the sale of goods and vehicle rentals. Officials note that as the optional provision is not proposed to be given effect in New Zealand, the modification to the optional provision included in the extended model reporting standard for digital platforms would have no practical effect.

Recommendation

That the submission be accepted.

Issue: Only Part II of International Exchange Framework should be given legislative effect

Submission

(Corporate Taxpayers Group)

Clause 139(3) of the Bill defines extended model reporting standard for digital platforms and refers to the *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods*. Part I of that document is a template agreement and

therefore clause 139(3) should incorporate Part II of that document only.

Comment

Officials agree.

The template agreement included in the *Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods* does not need to have legal effect in New Zealand because the actual agreement is not contained in the reporting rules and is instead contained in an administrative instrument referred to as the *Multilateral Competent Authority Agreement on Automatic Exchange of Information on Income Derived Through Digital Platforms* ("DPI MCAA"). The DPI MCAA is an administrative agreement between competent authorities and was signed on behalf of the Commissioner of Inland Revenue, who is New Zealand's competent authority, in November 2022.

Officials agree that if the extended model reporting rules are to be implemented in New Zealand in the future, amendments should be made to the Bill to ensure that it is only Part II of the document that is given legislative effect in New Zealand.

Recommendation

That the submission be accepted.

Issue: Reference in the rules to a "list" should be clarified

Submission

(Matter raised by officials)

In the model reporting standard, Section III paragraphs B(2) and B(3) refer to a "list". This should be replaced with "the list maintained by New Zealand outlining which receiving jurisdictions use financial account identifier information".

Recommendation

That the submission be accepted.

Issue: Definition of "civil penalty"

Submission

(Matter raised by officials)

The definition of "civil penalty" in section 3(1) of the Tax Administration Act 1994 (TAA) should be amended to include a reference to the new penalties in proposed sections 142J and 142K of the TAA. This would ensure the administrative provisions in the TAA that apply to other civil penalties would apply to the proposed new civil penalties.

Recommendation

That the submission be accepted.

OVERVIEW

The Bill proposes amendments to the Goods and Services Tax Act 1985 that would require operators of electronic marketplaces to collect GST on supplies of:

- taxable accommodation (short-term rental and visitor accommodation)
- ride-sharing services, and
- beverage and food delivery.

Operators of electronic marketplaces would be responsible for collecting GST on all supplies facilitated by the marketplace regardless of the GST registration status of hosts, drivers, or deliverers.

The proposals in the Bill have been designed to:

- improve the fairness, efficiency, and sustainability of the GST system in a way that is consistent with New Zealand's broad-based GST framework, given the growth and popularity of electronic marketplaces
- minimise compliance costs for those that operate through electronic marketplaces – hosts, drivers and deliverers would not be required to register for GST, and
- provide sufficient time for electronic marketplaces to make the necessary changes to their systems and processes.

The proposals leverage existing rules for electronic marketplaces that have applied to sales through online app stores and other "remote services" since October 2016. Crucially, they do not require hosts, drivers or deliverers (underlying suppliers) to register for, or comply with, GST calculations, payments, and return filing obligations.

The Bill proposes that underlying suppliers that are not registered for GST (and who therefore would not be able to claim deductions for GST on their expenses) would be entitled to a "flat-rate credit" that would be applied by marketplace operators. This credit is a proportion of GST charged that would be required to be passed on to underlying suppliers by marketplace operators and recognises the average amount of GST these underlying suppliers would be able to claim as a deduction if they chose to register for GST. GST-registered underlying suppliers would continue accounting for GST on their expenses in the normal way through their GST returns.

The Bill also proposes to allow large commercial enterprises to enter "opt-out" agreements with marketplace operators that would enable them to continue managing their own GST obligations. This would enable large enterprises, such as hotels that list their rooms on electronic marketplaces, to continue with their existing processes and practices.

The proposals would apply from 1 April 2024 to give operators of electronic marketplaces 12 months following the anticipated enactment of the Bill to make changes to their processes and systems.

These proposals were consulted on in the March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy*. They follow consideration of the Organisation for Economic Co-operation and Development's (OECD's) report – *The*

Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration. They are also consistent with international trends, such as changes implemented by Canada in 2021 and the European Commission's report on *VAT in the Digital Age* (December 2022), which also makes recommendations like those proposed in the Bill requiring operators of digital platforms to collect GST on passenger transport and accommodation services.

Submitters largely opposed these proposals in the Bill or considered they should be deferred until there was greater international consensus. Other submissions focused on technical aspects of the proposals and sought clarification on aspects of the proposals. These submissions, and officials' responses, are discussed below.

Some key terms used in the following discussion are:

Underlying supplier, which refers to the host, driver, or deliverer that provides their services through an electronic marketplace.

Marketplace operator, which refers to the person responsible for running the electronic marketplace.

Flat-rate credit, which is the proposed credit that represents the average amount of GST that an underlying supplier would be able to claim as a deduction if they were registered for GST themselves. It is required to be claimed by marketplace operators and passed on to underlying suppliers that are not registered for GST.

GST – MARKETPLACE RULES FOR ACCOMMODATION AND TRANSPORT SERVICES

Clauses 103(2), (4) and (8), 106(1) and (3), 109, 111(1) and (3), 129(1), (3), (5) and (6)

Issue: Support for proposals from providers of short-term accommodation

Submission

(Aaron Gilmore, Clint Green, Hospitality New Zealand, Kirsty Henderson, Michael Fielding, Penelope Davidson-Boles, Phillip Ander, Rachel Grant, Reid Stewart, Susanna Graveley, Wendy Palmer Vineyards Ltd)

Support for the proposals that require operators of electronic marketplaces to collect GST on supplies of short-term rental accommodation, ride-sharing services, and beverage and food delivery provided in New Zealand.

The reasons for support included the following:

- The proposals would improve fairness of competition between those who are registered for GST and those who are not. *(Aaron Gilmore, Hospitality New Zealand, Kirsty Henderson, Michael Fielding, Phillip Ander, Reid Stewart, Susanna Graveley, Wendy Palmer Vineyards Ltd)*
- The short-term rental accommodation industry in New Zealand is driving up the shortage of rental housing supply and the proposed GST changes would help to address supply shortages and result in reduced rents. *(Reid Stewart)*
- The increased tax revenue could be spent on government services such as healthcare. *(Rachel Grant)*

Recommendation

That the submissions be noted.

Issue: Opposition to the proposals from providers of short-term accommodation

Submission

Opposition to the proposals that would require operators of electronic marketplaces to collect GST on supplies of short-term rental accommodation provided in New Zealand.

Sixteen submitters opposed the proposal but did not include reasons for their opposition (see Appendix One).

Other submitters' reasons for opposing the proposals are summarised below. Submitters who opposed the proposals for multiple reasons appear in the data multiple times, as each

reason was recorded separately.

Table 1: Reasons for opposing the proposals

Reason	Number of submitters
Local providers can market accommodation off electronic marketplaces and therefore would not be affected by the changes.	4 (See Appendix One, Reason 1)
The increased costs associated with GST applying to short-term accommodation could be damaging for the tourism industry or economy.	88 (See Appendix One, Reason 2)
Hosts were concerned that the proposals would lower their income. Hosts were also concerned about the effect of GST on their pricing and anticipated a decrease in demand for bookings. They were concerned that they would have to pay the GST themselves. Many considered this particularly challenging given high inflation and an already reduced demand for their properties due to the impact of COVID-19.	161 (See Appendix One, Reason 3)
Suppliers operating below the GST registration threshold should not have to account for GST on supplies of services they make. Some submitters noted that taxing beneath the registration threshold is regressive and disproportionately falls on lower-income earners.	141 (See Appendix One, Reason 4)
There would be additional compliance costs associated with the proposals for hosts that provide short-term accommodation through electronic marketplaces.	13 (See Appendix One, Reason 5)

Comment

The Bill proposes that operators of electronic marketplaces that facilitate short-term accommodation in New Zealand would be required to collect GST on these services that are provided through the marketplace. Hosts that do not earn more than \$60,000 in any 12-month period would not be required to register for GST or pay GST to Inland Revenue.

Officials' responses to the concerns raised by submitters are as follows:

Reason 1: Local providers can market accommodation off electronic marketplaces and therefore would not be affected by the changes

Officials note that there are many non-tax reasons why hosts choose to use an electronic platform to market their accommodation. Utilising electronic marketplaces ensures listings are visible to buyers and provides both buyers and sellers with consumer protections. Officials consider it unlikely that hosts would migrate off platforms and have to deal with the compliance costs of setting up, promoting, and monitoring their own websites to list their services simply because of the proposed changes.

Reason 2: The increased costs associated with GST applying to short-term accommodation could be damaging for the tourism industry or economy

Officials acknowledge the proposals in the Bill would have the likely effect of increasing the cost of short-term rental and visitor accommodation in New Zealand. Officials note that whether GST applies to accommodation provided in New Zealand is unlikely to be a significant factor in tourists determining whether to travel to, or holiday in, New Zealand.

New Zealand has a broad-based GST system, and in principle, GST should apply to accommodation supplied to tourists. In many circumstances GST already does apply, such as accommodation provided by a hotel or motel. Tourists visit New Zealand for a variety of reasons and officials do not consider the application of GST to be a significant factor in their decision whether to visit New Zealand, particularly given New Zealand's geographic isolation.

Reason 3: Hosts were concerned about the impact of GST on their income and pricing

GST is a tax that is borne by the final consumer. Although officials recognise that hosts may need to raise their prices to account for this, it is noted that traditional suppliers of accommodation (such as hotels and motels) are already charging GST. As a result of these proposals, hosts that are not registered for GST would also receive a proportion of the GST charged to account for the GST on their costs. They are therefore treated in a similar way to hosts and other providers of short-term rental accommodation that are including GST in their pricing.

Reason 4: Suppliers below the GST registration threshold should not have to account for GST

Officials note the policy rationale for the GST registration threshold is to recognise that there is a trade-off between GST applying to the broadest possible range of goods and services supplied in New Zealand, and the compliance and administration costs associated with GST registration. The rationale for the GST registration threshold falls away in the context of electronic marketplaces because the operators of these marketplaces can efficiently undertake the costs of complying with GST on behalf of the underlying seller. Electronic marketplaces are well-placed to perform these functions because they are inherently digital and often process payments on a large scale.

Electronic marketplaces facilitate the supply of short-stay accommodation on a large scale, and charging GST is necessary to minimise any competitive distortions. They facilitate viable and alternative options to other forms of traditional suppliers that are typically already including GST in their pricing.

Reason 5: Concern around the anticipated additional compliance costs

Officials note the proposals in the Bill are designed to minimise compliance costs on individual sellers that provide services through electronic marketplaces. Sellers that are not registered for GST would not need to become registered for GST under the proposals. The obligation to collect and return GST on supplies made through electronic marketplaces would reside with the marketplace operator and not the underlying seller.

The Bill also proposes a flat-rate credit scheme that provides sellers not registered for GST with a credit to account for the GST component of their costs. This ensures sellers do not have to register for GST and can avoid the associated compliance costs.

Sellers would continue to be responsible for informing the marketplace operator of any changes to their GST registration status and for monitoring the value of their supplies for the GST registration threshold. These are existing obligations under current settings that the Bill does not seek to change.

Recommendation

That the submissions be noted.

Issue: Other opposition to the proposals

Submission

(Airbnb, Asia Internet Coalition, Booking.com, Digital Economy Group, Uber)

Opposition to the implementation of the proposals in New Zealand for the following reasons:

- Operators of digital platforms are not suppliers of accommodation and transportation services. Digital platforms act as a facilitator only, connecting buyers with sellers. It is the sellers themselves that should remain responsible for their own GST obligations. *(Asia Internet Coalition)*
- The Government should solely adopt the OECD reporting rules and maintain the status quo of individuals being responsible for their own unique tax circumstances. *(Airbnb)*
- Operators of digital platforms already pay GST on the fees they charge sellers for connecting buyers with sellers that use their platforms. *(Airbnb)*
- The proposals would increase costs for consumers that purchase services from sellers through digital platforms. *(Airbnb, Asia Internet Coalition, Booking.com, Uber)*
- The proposals could or would have negative consequences on the tourism industry in New Zealand. The proposals would disproportionately impact regional areas that are more reliant on tourism. *(Airbnb, Booking.com)*
- The proposals do not create a level playing field between other suppliers and suppliers that operate through digital platforms. *(Uber)*
- The proposal removes the benefit of the GST registration threshold for sellers that operate below the threshold. *(Airbnb, Uber)*
- Operators of digital platforms do not always facilitate the payment for the underlying supply. Making the platform liable in circumstances where they are reliant on the capacity of a third-party operator is technically infeasible. *(Booking.com)*
- The platform operator may not have sufficient systems in place to collect GST. If the proposals were implemented, the platform would need to balance the costs of complying with the proposal against the benefit of operating in the country that implemented such rules. *(Booking.com)*
- Platforms could change their operating model, contracts or terms and conditions in ways not foreseen by the electronic marketplace rules because of the proposed

changes. (*Booking.com*)

- The proposals would generate complex, inconsistent, and unfair GST outcomes for platforms and individual taxpayers. (*Digital Economy Group*)

Comment

Electronic marketplaces facilitate income-earning opportunities for small operators on a large scale, and many of these supplies occur below New Zealand's GST registration threshold and are therefore not currently subject to GST. Although this does not amount to much on an individual supplier basis, viewed collectively this has the potential to undermine the sustainability of the GST base and has a disruptive effect on traditional business models that generally are charging GST. For these reasons, officials consider it appropriate for GST to apply to supplies of listed services facilitated through a digital platform.

Although the platform is the facilitator and not the supplier, officials consider it appropriate for the platform to comply with GST as opposed to the underlying supplier. Officials recognise there will be compliance costs for digital platforms but consider platforms are best placed to collect GST on behalf of the underlying supplier, rather than all individual underlying suppliers being required to register for and comply with GST themselves. This is because platforms are large and technologically sophisticated entities with the ability to process transactions at scale. Requiring GST to be collected at the platform level ensures the integrity of the rules. It is also noted that electronic marketplace rules have already been applied in the remote services and low-value imported goods context and are seen to be working well.

As noted in greater detail in ["Issue: Opposition to the proposals from providers of short-term accommodation"](#), officials do not consider that the application of GST will be a significant factor for tourists in determining whether to visit New Zealand, particularly given New Zealand's geographical isolation. Although officials do recognise that price rises may be required to account for these proposals, it is noted that traditional suppliers of listed services are generally already charging GST.

Recommendation

That the submissions be noted.

Issue: Deferring implementation of the GST proposals

Submission

(*Asia Internet Coalition, Deloitte, EY, PwC, Uber*)

The proposals in the Bill to extend the current marketplace rules to apply to "listed services" (short-term rental accommodation, ride-sharing, and beverage and food delivery services) should be deferred for the following reasons:

- New Zealand should follow the approach of jurisdictions focused on implementing the Organisation for Economic Co-operation and Development's (OECD's) information reporting and exchange framework first, and then evaluate whether changes to the

GST system are needed after more data becomes available. (*Asia Internet Coalition*)

- Before New Zealand implements these proposals, there should be greater consensus on an appropriate solution at an OECD level and among comparable jurisdictions. (*PwC*)
- More time is needed to understand the rules and for operators of digital platforms to make the required changes to the systems, processes, practices, contracts, and pricing. (*Deloitte, EY, Uber*)
- The proposals should be delayed by at least 12 months to give time to those affected to make any necessary changes. (*EY*)

Comment

The proposals in the Bill were developed following careful consideration of the options included in the OECD's report – *The Impact of the Growth of the Sharing and Gig Economy on VAT/GST Policy and Administration* – which was published in April 2021. This report outlines a range of different options that jurisdictions with VAT systems could consider implementing. It notes that the preferred option depends on the policy objectives of the government considering the proposals. For example, jurisdictions could focus on efforts to promote and ensure compliance with existing rules in reliance on information from digital platform operators. The OECD's report also identifies the option for jurisdictions to implement a "full liability regime" that requires digital platform operators to collect GST on behalf of those selling services through their platforms.

Officials note that other jurisdictions with VAT systems have implemented similar reforms to those proposed in the Bill. This includes Canada, India, and Mexico. Officials also note that the European Commission has recently published its report – *VAT in the Digital Age* – and one of the recommendations in this report is to require digital platforms that facilitate passenger transportation and short-term accommodation to collect VAT on behalf of providers of these services that are not registered for VAT. This is consistent with the proposals contained in this Bill.

Officials also note that:

- The proposals in the Bill are considered appropriate from the perspective of New Zealand's GST system, which is recognised as one of the broadest-based GST systems in the world. The broad-based nature of New Zealand's GST system is one of the reasons it is recognised as being a model consumption tax.
- The variation in VAT systems from a global perspective means it is unlikely that harmonised rules would be possible. Other jurisdictions have special rules for certain activities and these special rules negate the need for, or significantly reduce the benefits of, marketplace rules as proposed in the Bill for those sectors. For example, in Australia and Canada, all ride-sharing services are subject to GST as the registration threshold does not apply. In Australia, short-term accommodation provided in residential dwellings is not subject to GST. This can be contrasted with New Zealand's GST system, which seeks to tax the broadest possible range of goods and services equally to keep the tax simple, fair, and efficient.

- In discussions with digital platform operators at an OECD level, the operators expressed a general preference for sufficient implementation time to make changes to their systems and practices. A common theme in feedback was that 12 months' time was sufficient for changes of this scale. Officials acknowledge the proposals in the Bill give rise to up-front and ongoing compliance costs. Officials also note that policy decisions were made to closely align the proposals in the Bill with existing rules that digital platform operators are already applying and complying with in New Zealand.
- Officials do not consider that implementing the OECD's information reporting and exchange framework first and then evaluating whether any changes to New Zealand's GST system are worthwhile based on this data would fundamentally change the analysis that led to the proposals in the Bill. This is because the proposals in the Bill are premised on one of the primary objectives of New Zealand's GST system, which is for GST to apply to the broadest possible range of goods and services supplied in New Zealand, bearing in mind the compliance and administration costs associated with GST registration.

Recommendation

That the submission be declined.

Issue: Impact on gross domestic product

Submission

(Airbnb)

Modelling based on an Oxford Economics Report predicts up to a \$0.5 billion decrease to New Zealand's GDP that would have otherwise been generated from tourists staying in Airbnb listings. Travellers are highly price sensitive and often make travel decisions based on price.

Comment

Officials have not seen the analysis behind the modelling that the submitter refers to.

Officials also consider it unlikely that a tax change that is estimated to raise additional GST revenue of \$13 million per annum from the inclusion of short-term accommodation facilitated by electronic marketplaces could result in a reduction to GDP equal to half a billion dollars. The suggested negative consequences do not seem proportionate to the estimated additional revenue estimated to be raised.

Officials also note that, given New Zealand's geographic isolation, the price of accommodation in New Zealand is unlikely to be a significant factor in whether tourists will decide to travel here. Officials acknowledge that the proposals in the Bill are likely to increase the cost of accommodation facilitated by digital platforms in New Zealand but do not consider the submitter's claims about the economic impact of the proposal are proportionate to the estimated additional tax revenue.

Recommendation

That the submission be noted.

Issue: Complexity of the legislation

Submission

(Airbnb)

Feedback from our hosts indicates that this legislation is “overly complex” and ultimately creates uncertainty and unfairness for the entire visitor economy.

Comment

The proposals in the Bill are designed around minimising compliance costs for underlying suppliers below the GST registration threshold. This includes hosts that provide accommodation through digital platforms.

Under existing law, hosts are required to inform the digital platforms that they operate on of their GST registration status. Hosts are also required to monitor their sales and register for GST if they expect to make sales of more than \$60,000 over any 12-month period. Hosts that are registered for GST under existing law would be required to complete and provide GST returns, keep records of, and claim deductions for, GST on their costs and would potentially have to apply apportionment rules for assets with mixed use (that is, partial use in a taxable activity and partial use for private purposes). The Bill does not add additional compliance costs for hosts in this regard.

Under the proposals in the Bill, GST would be collected and returned to Inland Revenue by operators of electronic marketplaces. A notable feature of the proposals is that a flat-rate credit would be available to sellers below the \$60,000 registration threshold. This would compensate these sellers for the GST component of their costs without them having to interact with the GST system.

Inland Revenue has published guidance on its website on the tax implications of earning income through digital platforms and provides general assistance on tax matters through a range of different forums.

Inland Revenue would update its guidance to explain the changes if these proposals become law. The proposals would not take effect until at least 12 months following the anticipated enactment of the Bill, which provides a reasonable time for Inland Revenue to communicate the changes to affected taxpayers.

Officials also note that many digital platforms refer their users to the websites of tax authorities in the jurisdictions in which their users operate to educate them on the associated tax implications of earning income from their activities carried out on digital platforms. Inland Revenue would produce practical guidance on the proposed rules to which marketplace operators could refer their users.

Officials do not consider that the proposals would create any unfairness for the visitor

economy. The proposals would ensure that supplies of all forms of visitor accommodation are subject to the same GST treatment, regardless of how they are supplied.

Recommendation

That the submission be noted.

Issue: Deviation from orthodox GST treatment of services

Submission

(New Zealand Law Society)

The proposals in the Bill represent a significant deviation from the orthodox GST treatment of services supplied in New Zealand.

Comment

Officials consider the proposals to be consistent with New Zealand's broad-based GST framework, which seeks to ensure that the tax applies comprehensively and to a broad range of consumption that occurs inside New Zealand.

Officials also note that New Zealand's GST system currently makes use of marketplace rules to ensure that GST applies to services supplied to New Zealand in a cross-border context (that is, imported digital services and goods). The proposals in the Bill expand the scope of those marketplace rules and apply them in the context of services supplied inside New Zealand. Officials also consider the proposals to be consistent with international trends and direction.

Recommendation

That the submission be noted.

Issue: Average earnings of hosts

Submission

(Airbnb)

The median earnings of hosts in the 12 months to 30 June 2022 was \$5,600. Applying GST to this group amounts to an unfair tax on individuals not currently liable for GST.

Comment

Officials note that hosts earning below the GST registration threshold do not need to register for GST. The implications of being registered for GST include:

- being required to include GST in prices charged for goods and services supplied
- accounting for GST on expenses and claiming deductions
- preparing GST returns and filing them with Inland Revenue, and

- paying GST to Inland Revenue.

The Bill does not change the obligations of hosts operating below the GST registration threshold in this regard. The Bill does require GST to be collected on sales facilitated by electronic marketplaces and marketplace operators, but it is the marketplace operators that would be responsible for returning the GST to Inland Revenue. The proposed flat-rate credit scheme will compensate sellers for the average amount of GST they would have been able to recover on their expenses if they were registered for GST.

Officials also note that GST is generally a tax on consumption and not a tax on production. This means that GST should not be a cost to individual hosts and instead should be borne by those that receive goods and services, such as accommodation facilitated by electronic marketplaces, not the underlying provider of those goods and services.

Recommendation

That the submission be noted.

Issue: Comparable countries

Submission

(Airbnb)

The proposals in the Bill go beyond practices observed in almost any other comparable country (excluding Canada and Mexico).

Comment

Officials note the proposals in the Bill are broadly aligned with New Zealand's approach to its GST system, which includes the broadest possible range of goods and services within the base. Officials also note that the proposals in the Bill are broadly aligned with options identified by the Organisation for Economic Co-operation and Development (OECD) and the European Commission.

Other countries' VAT systems have substantive differences from New Zealand's, which mean that these proposals may not be appropriate for them. For example, in Australia, short-term rental accommodation in a residential dwelling is not subject to GST (which is in contrast with the approach taken in New Zealand under our current GST framework). Similarly, in Australia and Canada, ride-sharing services are always subject to GST because the registration threshold for suppliers of these services is nil.

Officials also note that the reports by the OECD and the European Commission that observe the benefits associated with involving digital platforms in the collection of GST on services they facilitate are recent and are still being considered by other policymakers. In December 2022, the European Commission published its report on *VAT in the Digital Age*. That report includes a recommendation that digital platforms be involved in the collection of VAT/GST on passenger transportation and accommodation services. Since July 2021, Canada has required digital platform operators to collect VAT on supplies of short-term rental accommodation.

Officials note the fact that other jurisdictions have not announced their intention at this time to go down a similar path as is proposed in the Bill for New Zealand is not suggestive that this is not an option that other jurisdictions will explore, and could seek to implement, in the future.

Recommendation

That the submission be noted.

Issue: Unfairness for those operating through digital platform

Submission

(Airbnb)

It is difficult to reconcile why a landscaper earning under the GST registration threshold would be treated differently from an average host earning less than \$60,000.

Hosts that use a metasearch site, such as Google, would arguably not be liable for GST as this is not an “electronic marketplace”.

Comment

The policy rationale for the GST registration threshold is to recognise the trade-off between a broad-based GST, which taxes the supply of goods and services in New Zealand comprehensively, and the compliance and administration costs associated with GST registration.

The proposals in the Bill enable services supplied in New Zealand to be taxed in the same way that they would be if the supplier was registered for GST, but without the requirement that the supplier register for GST. This is because operators of electronic marketplaces themselves can collect GST at the time the buyer pays for the services that are facilitated by the marketplace operator. This opportunity does not exist:

- in the context of digital platforms that only enable sellers to “list” their services because the transaction between the buyer and the underlying supplier or seller is concluded independently without the involvement of a platform operator, or
- for those that supply goods and services to their customers directly. This is because, for GST to apply, these suppliers must be registered for GST. Officials note that many taxpayers that supply goods and services directly to their customers do choose to register for GST despite being below the registration threshold.

Officials note that hosts that engage with guests directly would not be required to charge GST on the accommodation unless they were registered for GST themselves. Officials have not seen evidence to suggest that the proposals in the Bill will create more of an incentive for hosts to engage with prospective guests outside of their existing practices. Electronic marketplaces provide hosts with convenience and access to a market to which they otherwise may not be able to advertise.

Recommendation

That the submission be noted.

Issue: Owner-occupied housing should be exempt

Submission

(Annette Inglis, Barbara Mackenzie, Emily Fisher, Judy Dolman, Trish Smart)

Owner-occupied housing should be exempt from the proposals.

The GST treatment of short-term accommodation provided in owner-occupied housing should be exempt from GST. GST should only apply to accommodation that is provided on commercial terms, such as where the guests have sole and exclusive use of an entire property. It should not apply where a guest is staying in a guest room of the host's property.

(Annette Inglis)

Short-term rental accommodation should be excluded where the room rented is part of the owner's home or the accommodation is a small home on the property where the owner lives.

(Barbara Mackenzie)

There should be a main home exemption because people providing short-term accommodation in their own home will be below the GST registration threshold. *(Emily Fisher)*

Comment

New Zealand has a broad-based GST system, which means it applies equally to most goods and services supplied in New Zealand with very few exceptions. This keeps it simple, fair, and efficient.

Under this principle, all accommodation is subject to GST, with the exception of accommodation that is used as a person's principal place of residence (residential accommodation). Officials do not consider a principled basis exists on which accommodation provided in a person's own home should not be subject to GST. To make such accommodation not subject to GST would:

- introduce additional compliance costs for operators of electronic marketplaces who would need to capture information about whether the accommodation was supplied in a person's "own home"
- create complex boundary issues that would need to be resolved, such as whether converted sheds in a person's garden, for example, would be considered to be accommodation provided in a person's "own home", and
- provide a deliberate concession that favours owner-occupied suppliers of accommodation over other suppliers of accommodation.

Recommendation

That the submission be declined.

Issue: Precedential effect

Submission

(Airbnb, Digital Economy Group)

The precedent set by the Bill for other persons earning income in the gig and sharing economy and who earn less than the \$60,000 GST registration threshold should be considered. *(Airbnb)*

A key feature of a well-designed GST system is that it achieves neutrality on the treatment of the same supplies and suppliers within the GST net. Introducing measures applying exclusively to the suppliers that choose to make their supplies available through electronic marketplaces, including through adjustments of registration thresholds, could create distortionary effects in the market. *(Digital Economy Group)*

Comment

The Commentary on the Bill explains that “listed services” could be expanded over time in response to new and emerging business models and activities. The OECD identified transportation and accommodation services as creating the most “urgent pressures” from a VAT perspective, hence the proposals in the Bill.

Officials note that under New Zealand’s existing GST legislation, various services of the gig and sharing economy that are facilitated by digital platforms are currently subject to GST because of the rules for remote services. Examples include services performed offshore and facilitated through non-resident electronic marketplaces at the request of a person in New Zealand, such as online tutoring and entertainment subscriptions.

Officials consider the proposals in the Bill would provide a more neutral GST treatment than the status quo. This is because currently traditional suppliers of short-term rental accommodation and transportation services nearly always charge GST, whereas GST does not apply when the same services are supplied through electronic marketplaces by suppliers that are not registered for GST. The latter comprises a large percentage of the overall market for these services. Although GST would continue not to apply to bookings made directly with smaller-scale suppliers that had chosen not to register for GST, these bookings are currently a small percentage of the overall market.

Officials expect this will continue to be the case following enactment of the proposals in the Bill as consumers often prefer to use electronic marketplaces to source these services as it provides them with more choice and convenience.

Officials also consider that New Zealand’s GST system should adapt to new and emerging business models and technologies, so it is responsive and remains simple, fair, and efficient. The proposals in this Bill follow earlier proposals involving operators of electronic marketplaces collecting GST on supplies of remote services (for example, app store sales) and low-value imported goods.

Recommendation

That the submission be noted.

Issue: Complexity characterising underlying supplies

Submission

(Digital Economy Group)

The supply of residential accommodation is treated differently to the supply of short-term rental accommodation. The discrepancy and the need to distinguish the two types of accommodation could cause practical compliance issues and give rise to potential penalties for incorrect characterisations.

Where a homeowner supplier offers multiple services to a guest, the GST treatment of composite versus mixed supplies may also be difficult to ascertain, particularly by a marketplace operator not involved in the underlying supply.

Comment

Officials note that, under New Zealand's GST system, all forms of accommodation (other than accommodation in a person's principal place of residence where they would have rights of quiet enjoyment) are subject to GST. The issue raised by the submitter is therefore unlikely to arise in the context of the proposals.

On the matter of mixed supplies, the Bill proposes that services closely connected with accommodation services supplied in New Zealand would be subject to GST. This means that a charge for cleaning associated with short-stay accommodation would be subject to GST under the proposals in the Bill.

Officials also note the Bill does not include specific penalties for marketplace operators in the context of these proposals. The proposals enable marketplace operators to rely on information they receive from underlying suppliers. This is intended to provide protection from penalties for marketplace operators for matters that are not knowable by them.

Recommendation

That the submission be noted.

Issue: Marketplace operators do not always collect payments

Submission

(Digital Economy Group)

The proposals in the Bill would be challenging for platforms that do not collect money on behalf of the underlying supplier and where the end-user directly pays the underlying supplier.

Comment

Officials note that before a marketplace operator is treated as making a supply, they must authorise a charge or set terms and conditions associated with the supply. This means that websites and other services that only enable users to advertise their services would not be

affected by the proposals.

For marketplace operators that do not process payments, the Bill acknowledges this issue and allows marketplace operators to claim a bad debt deduction equal to the amount of GST payable on listed services that a marketplace operator is treated as making in circumstances where it does not recover payment from the underlying supplier of the services. These are existing rules that are understood to work well in the context of other marketplace rules for imported digital services and goods.

Under these rules, bad debt deductions for GST can be claimed where the marketplace operator has not received consideration for the services. The bad debt deduction is then reversed to the extent that consideration is recovered (such as from the underlying supplier) in the future.

Officials note that marketplace operators generally charge commissions for connecting their users (underlying suppliers) with buyers. For marketplace operators that do process payments, the commissions charged are often deducted from the payments they process before the remaining amount is passed on to underlying suppliers. Officials understand that the more common business model for electronic marketplaces involves marketplace operators processing payments so they can deduct their commission before paying the underlying supplier.

Recommendation

That the submission be noted.

Issue: Clarity around input tax deductions

Submission

(Digital Economy Group)

The procedure enabling underlying suppliers (for example, hosts) to claim input tax deductions on their costs is unclear:

- If a marketplace operator is responsible for returning GST, underlying suppliers using the marketplace may not be able to claim input tax deductions for the GST on expenses they incur on the acquisition of their business inputs.
- The risk of double taxation may extend past the traditionally targeted industries and into any other sector that chooses to adopt and use modern mediums of advertising by making their supplies to customers through digital platforms.
- Rules allowing the marketplace operator to pass a percentage of the GST back to the underlying supplier can result in difficulties in determining the appropriate rate. This may result in some underlying suppliers being over-taxed and others being under-taxed.
- If the proposals were modified to allow marketplace operators to apply an “opt-in” scheme for domestic supplies, a marketplace operator should be allowed to claim input tax deductions on any deemed taxable supplies that it acquires from the

domestic underlying supplier.

Comment

Officials note the Bill contains provisions that deal with input tax deductions for sellers that operate through electronic marketplaces and who supply listed services. These provisions are explained in the Commentary on the Bill.

In summary:

- For sellers that are registered for GST, they will be treated as making a zero-rated supply of services to the marketplace operator. This means that the marketplace operator is not charged GST on the supply, and there is therefore no GST to be claimed by the marketplace operator in respect of this supply. This also means that these sellers can continue claiming input tax deductions for GST on their costs in the normal way, as part of their GST return filing process.
- For sellers that are not registered for GST, the Bill proposes a flat-rate credit scheme. This scheme involves marketplace operators returning a proportion of the GST they collect to sellers to recognise the GST on their costs. The flat-rate credit is claimed as an input tax deduction by the marketplace operator at a fixed rate of 8.5 percent of the value of the supply. It is then required to be passed on to the underlying supplier of the listed services, provided the underlying supplier of the listed services has not notified the marketplace operator they are registered for GST.
- Officials note the flat-rate credit was determined based on a sector analysis of GST returns provided by GST-registered persons supplying accommodation in holiday homes and taxi drivers. Officials also note that sellers can choose to register for GST and account for input tax deductions on their actual expenditure if they prefer greater accuracy.
- The Bill does not allow marketplace operators to “opt-in” to the rules. Officials also note that, as the supplies from underlying suppliers to marketplace operators are zero-rated under the proposals in the Bill, there is no need to enable marketplace operators to claim input tax deductions for these services they are treated as receiving from underlying suppliers. This is because no GST has been incurred.

Recommendation

That the submission be noted.

Issue: Adjustment events

Submission

(Digital Economy Group)

Under a mandatory regime, where a marketplace operator is responsible for all GST consequences of domestic suppliers, practical difficulties will arise where the marketplace operator may be responsible for attending to the GST consequences of refunds,

cancellations, bad debts, and correct tax invoicing. For example, if a marketplace operator collects and pays GST, but the underlying supply is later cancelled, it may be difficult for the marketplace operator to know the cancellation has occurred. This would lead to overtaxation.

Comment

Officials note that hosts would have an incentive to inform the marketplace operator that accommodation was cancelled as cancellations would affect the commissions charged by marketplace operators. Marketplace operators would have processes in place to resolve these sorts of issues because they currently charge hosts for facilitating the supply of accommodation services. If the accommodation is cancelled, the fees for facilitating the accommodation would not apply.

Officials also note that, in many cases when services are cancelled, they would be cancelled through services offered by the marketplace operator (instead of direct with the host). In these cases, the marketplace operator would know that the supply had been cancelled.

Recommendation

That the submission be noted.

Issue: Managing different GST treatments

Submission

(Digital Economy Group)

There is a practical concern that marketplace operators may have to determine and manage GST on two supplies under different GST rules: the GST rules for inbound services and GST on domestic supplies.

This could apply where a foreign marketplace operator charges an underlying supplier for the service they supply to them, and then the marketplace operator becomes responsible for charging GST on supplies made by an underlying supplier that it is treated as making.

Comment

Officials note that, under the proposals in the Bill, all listed services that are “performed, provided, or received” in New Zealand would be subject to GST at the standard rate of 15%. Officials acknowledge the point made by the submitter that a different GST treatment may apply to the services that the marketplace operator supplies the underlying supplier. However, marketplace operators are currently complying with those rules, and the Bill does not propose any changes to them in the context of these proposals.

Recommendation

That the submission be noted.

Issue: GST and the taxi industry

Submission

(Uber)

Inland Revenue does not hold information on the GST registration status of the population of taxi drivers. Without this information, it is difficult to conclude that there is a tax advantage for drivers that do not have to charge GST on the services they supply.

Comment

The submitter notes that changes made to transport regulations in 2017 effectively removed the requirement that taxi drivers had to be registered for GST, despite the GST registration threshold. Before the 2017 changes, taxi drivers generally had to be members of "Approved Taxi Organisations" (ATOs). ATOs would, among other things, set pricing for their members, and this pricing typically included a GST component. The effect of this was that taxi drivers were required to be registered for GST because, under New Zealand's GST laws, the supplier must be registered for GST where the price charged for a service includes GST.

The submitter notes that it is no longer a requirement for taxi drivers to be a member of an ATO, as ATOs no longer exist at law. Officials understand, however, that the fares charged for taxi services generally contain a GST component. This means that taxi drivers, including those below the GST registration threshold, must be registered for GST. Officials note this outcome has more legislative certainty in some other jurisdictions with VAT systems because they have no registration threshold for ride-sharing services. This is the case in Australia and Canada, for example. Officials also note that, from Inland Revenue's discussions with the taxi industry, it appears there are very few independent taxi drivers who operate their services individually (and not through a taxi company that includes GST in its pricing). It is therefore understood that most taxi drivers are accounting for GST on the services they provide.

Recommendation

That the submission be noted.

Issue: Qualified support for proposals

Submission

(Chartered Accountants Australia and New Zealand)

The submitter does not support the introduction of the proposals at this time but notes that targeting electronic marketplaces that facilitate taxable accommodation and transportation services is their next preferred option.

The submitter also supports including a list of relevant services in the legislation because this gives the opportunity for further services to be added in the future following full public consultation.

Recommendation

That the submission be noted.

Issue: Employment status of ride-sharing drivers

Submission

(Cantin Consulting, New Zealand Law Society)

The Committee should consider how the proposed rules will apply if sellers through an electronic platform are confirmed as employees of the platform rather than independent contractors. *(Cantin Consulting)*

A recent decision of the Employment Court of New Zealand has held that ride-sharing drivers for a particular digital platform are employees and not independent contractors. The proposals in the Bill, which are premised on the assumption that ride-sharing drivers are not employees, should be deferred until the legal status of these drivers has been concluded through the courts. There are both income tax and GST implications if the decision is upheld. *(New Zealand Law Society)*

Comment

The proposals in the Bill would not apply to employees of entities that are providing ride-sharing services directly to consumers. This is because employees cannot be registered for GST under New Zealand's GST framework. In these circumstances, it is the employer of the employees that must account for GST on supplies of goods and services that the employer makes to their customers.

Officials note that the declaration made by the Employment Court in the case referred to by the submitters did not apply to all drivers on all ride-sharing platforms. The declaration was based on a fact scenario that is not necessarily applicable in the context of all ride-sharing digital platforms. Officials therefore consider the proposals in the Bill should proceed as they would still affect ride-sharing drivers who are not employees.

Recommendation

That the submission be declined.

Issue: Support for treating supplies as zero-rated

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed amendments that would treat supplies made by GST-registered underlying suppliers to operators of electronic marketplaces as zero-rated supplies. This is essential to simplify compliance for digital platforms and to ensure GST is not charged twice. It will mean the underlying supplier will need to make sure that supplies they make through

the digital platform are not standard rated.

Recommendation

That the submission be noted.

Issue: Compliance costs for GST-registered persons

Submission

(Corporate Taxpayers Group, Digital Economy Group, New Zealand Law Society)

The rules will impose significant compliance costs on GST-registered accommodation providers and create operational complexity. There is a material risk that incorrect amounts of GST will be paid to Inland Revenue if the proposed rules proceed. *(Corporate Taxpayers Group)*

The Bill would require domestic suppliers to distinguish between supplies made through an electronic marketplace and those made directly for GST reporting and accounting purposes. This could be challenging to implement. *(Digital Economy Group)*

The proposals will impose considerable compliance costs on GST-registered suppliers of listed services without any additional GST being collected. These additional compliance costs and the associated complexity could be avoided if GST-registered suppliers were able to enter into opt-out agreements with the relevant electronic marketplace on which they operate. *(New Zealand Law Society)*

Comment

The compliance costs the submitters are referring to relate to the requirement for GST-registered sellers to track whether supplies are made through electronic marketplaces or through other means. This information is required to be kept as part of the general record-keeping requirements and should be readily available from their records with the marketplace operator. Officials understand the compliance costs associated with splitting the sales on the GST return will be minimal.

Officials note that allowing GST-registered taxpayers to continue returning their own GST would:

- result in increased complexity for marketplace operators, who would need to accommodate a broader range of GST treatments
- provide an opportunity for motivated taxpayers to avoid GST applying to services supplied through electronic marketplaces (as an unregistered person could purport to be registered for GST, resulting in the marketplace operator not returning GST on the person's behalf), and
- reduce the efficiency of collecting GST.

Officials also note that the proposals in the Bill allow for opt-out agreements in some circumstances. These are targeted at underlying suppliers with existing accounting systems and practices that result in GST being charged on the services they supply.

Recommendation

That the submission be declined.

Issue: Clear and practical guidance should be published

Submission

(Airbnb, Deloitte, Uber)

Many hosts are confused about the proposals in the Bill and unable to understand how the proposals would work in practice. *(Airbnb)*

Inland Revenue would need to be clear about what obligations would exist for marketplace operators. It should be clarified whether marketplace operators would be required to monitor supply levels and notify an underlying supplier if they have exceeded the GST registration threshold, and whether marketplace operators would be required to provide this information to Inland Revenue. The OECD's Code of Conduct for digital platforms outlines an expectation that digital platforms are proactively educating underlying suppliers about their tax obligations. *(Deloitte)*

Inland Revenue should prepare detailed practical guidance and provide education to enable platforms and sellers to comply with the proposed rules. *(Uber)*

Comment

Officials agree.

Inland Revenue would work with stakeholders to address questions and issues that arise in implementing the changes proposed in the Bill. This includes providing education and guidance as part of its usual processes, for example, in a *Tax Information Bulletin*. The proposals in the Bill would not take effect until 1 April 2024, which is at least 12 months following the anticipated enactment of the Bill. This long lead period will provide a reasonable amount of time for Inland Revenue to work with stakeholders to ensure the changes are understood and implemented effectively.

Officials note that the Bill outlines the legislative requirements for marketplace operators, and these do not extend to requiring them to monitor underlying suppliers' supplies or share such information with Inland Revenue.

Recommendation

That the submission be accepted.

Issue: Basis for "listed services"

Submission

(EY, PwC)

The scope of the rules should be reframed to focus on the nature of the activities being

performed by a business and not exclusively on whether that business is a digital platform operating within a specified sector. The proposals in the Bill apply to transportation and accommodation services but not to other actors in the platform economy, such as content creators and influencers. (EY)

Further consideration should be given towards a more principled basis for determining the kinds of services that would be subject to GST under the proposals in the Bill. (PwC)

Comment

The proposals in the Bill apply to “listed services”, which are:

- taxable accommodation – short-stay and visitor accommodation, and
- transportation services – ride-sharing and beverage and food delivery.

These activities were identified by the OECD as the most significant activities in the gig and sharing economy currently. Officials also note that focusing on transportation and accommodation services is consistent with the approach proposed by the European Commission in the recommendations in their December 2022 report, *VAT in the Digital Age*. Officials note that other activities are subject to GST under New Zealand’s remote services rules. This could include the activities of content creators and influencers that operate through online electronic marketplaces where they receive consideration for their services conducted through the marketplace.

The proposal in the Bill to introduce “listed services” is intended to be scalable over time in response to new and emerging business models and trends. The Government could consider including future activities in “listed services” in the future, subject to resourcing and prioritisation of the tax and social policy work programme.

Recommendation

That the submission be noted.

Issue: Listed services – definition of “ride-sharing”

Submission

(Corporate Taxpayers Group, Deloitte, PwC)

The Bill does not define “ride-sharing” in the proposed definition of “listed services”. The Bill should include a definition of “ride-sharing”, such as the definition referred to in the Commentary on the Bill, to bring in the concept of the service being provided for consideration and remove other ride-sharing/carpooling intermediaries. (Deloitte)

A definition of “ride-sharing” would be useful. (Corporate Taxpayers Group)

Definitions, such as “ride-sharing” for example, should be included within the legislation itself. (PwC)

Comment

Officials note that the proposals in the Bill would treat the operator of an electronic

marketplace that facilitates ride-sharing services as the supplier of the ride-sharing services. The marketplace operator would be required to collect GST on these supplies if they were provided for a consideration.

The Bill does not include a definition of “ride-sharing” because it is intended that the ordinary definition applies. According to the Oxford English Dictionary, the ordinary definition describes “ride-sharing” as the use of a mobile app or website to engage a personal driver to collect and transport a fare-paying customer to a chosen destination. This is also reflected in the term “ride-hailing”, which officials recommend be included in the Bill to address any potential confusion that might arise given there are two terms that describe the same thing.

Because the definition in the Bill does not depart from the ordinary meaning of “ride-sharing”, officials do not consider it necessary or desirable to define the term within the Act itself.

Recommendation

That the submission be declined.

Issue: Listed services – “beverage and food delivery services” and the cost of food and beverages

Submission

(PwC)

The Bill should clarify that food and beverages supplied as part of the supply of a listed service is a separate supply for GST purposes (and does not form part of the listed service).

Comment

The definition of “listed services” in the Bill includes the “supply of transportation services in New Zealand in the form of beverage and food delivery services”.

It is therefore the delivery services that are included in the definition of “listed services” and not the food or beverages that are being delivered. The food and beverages being delivered would ordinarily be subject to GST as they would be supplied by a GST-registered restaurant, or another GST-registered business that supplied food and beverages to their customers. The Bill seeks to impose GST on beverage and food delivery services that are supplied by a person operating through an electronic marketplace. It does not seek to change the existing GST treatment of food and beverages supplied by GST-registered (or unregistered) suppliers.

Officials note the Bill already creates a separate supply of delivery services, which does not include the supply of the beverage or food being delivered. Officials recommend this be made clearer in the drafting and supplemented with guidance that explains the changes.

Recommendation

That the submission be noted.

Issue: Listed services – definition of “beverage and food delivery services” and effect on supermarket deliveries

Submission

(Deloitte)

- a. It would be useful to provide a definition of “beverage and food delivery services” in the Bill.
- b. The interaction between electronic marketplaces and the proposed “listed services” definition is too broad. Is it intended that a franchise supermarket operator selling goods through a national online website and charging a delivery fee would be subject to the proposed rules?

Comment

- a. The Bill includes, in the definition of “listed services”, “a supply of transport services in New Zealand in the form of beverage and food delivery services”. Officials do not consider it desirable or practicable to define this further than what is included in the Bill. If interpretive uncertainty arises on the scope of these services, officials consider it preferable that this be managed with supplementary guidance and examples, which could be included in a *Tax Information Bulletin*.
- b. The proposals in the Bill are not intended to affect supermarkets that offer beverage and food delivery services to their customers. To address this, officials consider persons that are required to maintain a two-monthly or monthly taxable period should be able to choose not to apply the marketplace rules that would require a marketplace operator to account for GST on supplies they make through the electronic marketplace. See discussion in [“Issue: Unilateral opt-outs”](#) below.

Recommendation

- a. That the submission be declined.
- b. That the submission be noted.

Issue: Listed services – how the rules work in different scenarios

Submission

(PwC)

The “listed services” definition gives rise to uncertainties around whether particular activities would be subject to GST under the proposals in the Bill. These uncertainties are:

- whether tour operators that facilitate cruises to New Zealand would be supplying accommodation that would be subject to GST under the proposal

- whether technological disruption could change the current understanding of concepts such as “ride-sharing”
- the different contractual arrangements and structures for food delivery services, and
- how the rules would apply to bundled services.

Clear guidance on how “listed services” will work in these situations is needed.

Comment

Officials note that marketplace rules generally only operate where there is an underlying supplier that supplies goods or services through an electronic marketplace to a recipient. If all these factors are not present, the marketplace rules do not apply.

It is possible the proposals could affect tour operators that facilitate cruises to New Zealand. This would be provided all the requirements for marketplace rules were satisfied and what was being supplied fell within “listed services”. However, officials also note that this would depend on the facts, and whether the ability for underlying suppliers to opt out of the marketplace rules would change outcomes for tour operators (see [“Issue: Unilateral opt-outs”](#) below).

For ride-sharing, officials note the proposals in the Bill only apply to ride-sharing arrangements facilitated by electronic marketplaces that involve an underlying supplier or driver where the recipient of the services provides consideration for the supply of the services. If there are technological advancements or disruption to the concept of “ride-sharing”, officials acknowledge there would then be the need to consider whether the law would need to be adapted. Officials do not consider this point creates a complexity or uncertainty that can or should be addressed in the context of these proposals.

Officials note that the contractual arrangements for businesses and electronic marketplaces that supply beverage and food delivery services are varied. In this regard, the proposals in the Bill would only affect those electronic marketplaces that involve an underlying deliverer that supplies delivery services through an electronic marketplace. In situations where a business provides services involving the delivery of food direct to their consumers (as opposed to being a facilitator), the proposed rules in the Bill would not apply. Officials note that GST already applies to such services (where businesses supply food and beverage delivery direct to their customers), and the proposals in the Bill would therefore result in GST being applied to food and beverage delivery on a more consistent basis.

Inland Revenue has published guidance on determining the GST treatment of bundled services (see for example *Interpretation Statement 18/04 – Goods and Services Tax – Single Supply or Multiple Supplies*). Officials acknowledge that further guidance on the GST treatment of listed services that are included in bundled supplies could be desirable and would look to publish further guidance on the matter as and when questions arose.

Recommendation

That the submission be noted.

Issue: Place of supply

Submission

(Chartered Accountants Australia and New Zealand)

Support for the approach that the marketplace operator would be treated as the supplier of listed services subject to GST at the standard rate where the services were “performed, provided, or received in New Zealand”.

It is assumed that the marketplace operator would be entitled to rely on information about the physical location provided by the underlying supplier.

Comment

The proposals in the Bill enable marketplace operators to rely on information provided to them by underlying suppliers. This would include, for example, the address of property being rented out by an underlying supplier through the electronic marketplace. The marketplace operator could use this information to determine whether a supply of listed services was “performed, provided, or received in New Zealand”.

Recommendation

That the submission be noted.

Issue: New Zealand-based ride-sharing digital platforms

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposal to treat the marketplace operator as the supplier of listed services, noting this is consistent with the current rules for imported services and goods.

The commentary should make it clear whether this applies to New Zealand-based ride-sharing digital platforms.

Comment

The proposals in the Bill for listed services would apply to a marketplace operator whether they were a non-resident or resident marketplace operator. Officials note the Bill proposes amendments to section 60C of the Goods and Services Tax Act 1985 to achieve this outcome and preserve the status quo for supplies of remote services and low-value imported goods supplied through an electronic marketplace.

Recommendation

That the submission be noted.

Issue: Support for not applying special valuation rule for domestic goods and services

Submission

(Chartered Accountants Australia and New Zealand)

Support for proposal that the special valuation rule for domestic goods and services supplied in a commercial dwelling should not apply because of the associated practical difficulties for marketplace operators in determining whether the special valuation rule applies.

Recommendation

That the submission be noted.

Issue: Campervans and motorhomes

Submission

(Deloitte)

It is understood that the supply of motor homes or vans people drive, but also sleep in, is not currently proposed to be caught under listed services. It would be useful if this point was clearly made in guidance on the new Act.

Comment

The Bill defines “listed services” as including “a supply of accommodation services in New Zealand, other than an exempt supply under section 14(1)(c)”. Accommodation is exempt from GST where it is supplied in a dwelling that is used as the person’s principal place of residence provided that the person has rights of quiet enjoyment.

Under New Zealand’s broad-based GST framework, GST should apply in principle to all consumption in New Zealand. This includes the supply of motor homes and vans that are used as temporary accommodation. Officials note that for the supply of campervans and motor homes to be subject to GST under the proposals in the Bill for listed services, they would have to be supplied by an underlying supplier (that is, owner) of the vehicle through an electronic marketplace.

The proposals in the Bill do not affect businesses that supply motorhomes and campervans directly to their customers. In these circumstances, GST is most likely collected on the basis that the supplier would be registered for GST.

Recommendation

That the submission be noted.

Issue: Support for the definition of transportation services

Submission

(Chartered Accountants Australia and New Zealand)

Support for proposal to define transportation services, in the context of listed services, as ride-sharing services and beverage and food delivery services.

Recommendation

That the submission be noted.

Issue: Support for inclusion of closely connected services

Submission

(Chartered Accountants Australia and New Zealand)

Support for proposal that closely connected services that are advertised, listed, or otherwise made available through the electronic marketplace should be included in the definition of "listed services". Detailed guidance should be provided on the meaning of "closely connected services".

Comment

Officials agree that detailed guidance on the meaning of "closely connected services" should be provided. This guidance would be included in a *Tax Information Bulletin* or Special Report published following enactment of the Bill.

Recommendation

That the submission be noted.

Issue: "Listed services" definition – closely connected services are too broad

Submission

(KPMG)

The inclusion of closely connected services in proposed new section 8C(7) of the Goods and Services Tax Act 1985 in the definition of "listed services" is too broad and may capture services that are not provided by an underlying supplier.

An additional paragraph should be included in subsection (7) that would require the closely connected services to be provided inside New Zealand. Alternatively, the paragraph could exclude services that are wholly performed outside of New Zealand.

Comment

The submitter notes an example of a service that could be caught by the proposed provision is a “fix currency fee”, which is an amount charged by marketplace operators directly to their customers that enable them to fix the overall cost in a foreign currency. Officials agree that the current drafting of the closely connected services provision could include services such as the example posed, which are not intended to be caught by the definition.

Point of difference

However, officials consider the provision should be amended to exclude services supplied directly by the marketplace operator to the recipient (that is, not involving a third-party “underlying supplier”). Officials consider this preferable to amending the provision to exclude services that are wholly performed outside New Zealand. This is because a New Zealand resident marketplace operator could provide a fixed currency service to its consumers and this service would not be provided outside New Zealand and therefore not excluded. Similarly, if the provision was amended to require a closely connected service to be a service that was supplied in New Zealand, the New Zealand resident marketplace operator providing a fixed currency service would still be treated as falling within the provision. In either case, the submitter’s proposed amendments would result in an undesirable outcome.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: Listed services definition – technical drafting matters

Submission

(Corporate Taxpayers Group, Deloitte)

- a. The zero-rating rules for listed services are in proposed section 8C and not included in existing section 11A, which contains the rules for the zero-rating of services generally.
- b. The proposed section 8C definition of “listed services” refers to “**the** listed services”, which gives the appearance that it is not an exhaustive definition.
- c. Proposed section 8C(7) extends the definition of “listed services” in proposed section 8C(2) and it is unclear why this extended definition has been given its own subsection.
- d. The proposed section 8C definition of “listed services” is hard to find and inconsistent with the rest of the Goods and Services Tax Act 1985 (GST Act). The definition of “listed services” should instead be included in section 2 of the GST Act along with other defined terms.

Comment

- a. Section 8C is intended to be a signpost to other provisions in the GST Act that are relevant for determining how the extended marketplace rules would apply to listed services. For GST-registered underlying suppliers of listed services, they are treated under existing rules in the GST Act as making a supply of zero-rated services to the

marketplace operator (and the marketplace operator is treated as making a supply of standard-rated services to the recipient). For the supply of services from the underlying supplier to the marketplace operator, the services are zero-rated under existing section 11A(1)(j) of the GST Act.

- b. Officials agree with the submitter. The definition of “listed services” is intended to be exhaustive. Officials recommend this be clarified in the revision-tracked version of the Bill following consideration by the drafter.
- c. Services that are closely connected with listed services are treated as if they were listed services but are not themselves “listed services”. It would therefore be inappropriate to include “closely connected services” within the definition of “listed services”. Instead, the drafting approach has been to introduce an additional subsection that expands the scope of “listed services” to include closely connected services.
- d. The Bill amends section 2 of the GST Act to insert a new defined term, “listed services”, and this refers to the listed services as set out in proposed section 8C of the GST Act. It was considered more appropriate from a drafting perspective that the substantive definition of “listed services” be included in a provision that was outside of the “Interpretation” section of the GST Act.

Recommendation

- a. That the submission be noted.
- b. That the submission be accepted.
- c. That the submission be noted.
- d. That the submission be declined.

Issue: Exclude supplies of listed services from GST registration threshold

Submission

(Deloitte)

Supplies made by an underlying supplier through an electronic marketplace should not automatically count towards the \$60,000 GST registration threshold.

For example, for supplies of accommodation, this would mean that the underlying asset (the property) can remain outside of the GST base with GST only being returned on the income from the commercial use of the asset through the marketplace.

Given the proposals in the Bill appear to be focused on ensuring that the numerous underlying suppliers are not needlessly brought fully into the GST base, such a change to the registration threshold makes practical sense.

Precedents exist for excluding certain activities from the GST registration threshold calculation, for example, unit title body corporate levies and international telecommunication suppliers.

Comment

The submitter is concerned that supplies of taxable accommodation made through an electronic marketplace may result in persons that provide taxable accommodation having to account for GST on the disposal of the land they use to provide the accommodation. The suggested solution to this is to ignore supplies made through electronic marketplaces when determining whether the supplier needs to be registered for GST.

This would mean that all suppliers, even those who are required to be registered for GST because they make taxable supplies of more than \$60,000 in a 12-month period, would be entitled to access the proposed flat-rate credit for supplies they make through electronic marketplaces. This could enable large commercial enterprises that supply taxable accommodation to take advantage of a flat-rate credit that was not based on, or targeted at, their operations.

The precedents referred to by the submitter were to preserve the status quo for unit title bodies corporate (where there was mixed GST treatment based on differing interpretations of the rules among bodies corporate) and to reduce compliance costs on international suppliers of telecommunication services to non-residents who were in New Zealand (who would otherwise be required to register for, and account for, GST on supplies that were made to non-residents in New Zealand (mobile roaming)). Officials do not consider the policy rationale for these exclusions would apply in the context of listed services.

Excluding listed services from supplies that count towards the GST registration threshold could also incentivise commercial operators to restructure their operations to receive the flat-rate credit, which may result in more generous deductions than should be claimable. The flat-rate credit was not determined with commercial enterprises in mind, and officials note the expense profiles of commercial operators would likely differ significantly from holiday homeowners and taxi drivers.

Officials note that the Bill also proposes amendments to the apportionment and adjustment rules for GST. These proposals would ensure that a person who had not claimed input tax for land they purchased to make supplies of taxable accommodation would not have to account for GST on its subsequent disposal provided the person's principal purpose of acquiring the land was not for making taxable supplies.

Recommendation

That the submission be declined.

Issue: Reasonable endeavours to comply should be sufficient

Submission

(EY)

Marketplace operators should specifically not be exposed to tax risk or non-compliance liabilities because of a failure by the underlying suppliers to meet their tax compliance obligations or in the case of mistaken disclosures or false declarations.

A reasonable endeavour to implement necessary processes to comply with the requirements should suffice to shelter the operators from risk and liability. The responsibility should always rest on the underlying supplier in relation to the provision of information.

The rules should provide flexibility for non-compliance by the marketplace operators themselves where reasonable attempts have been made to develop and maintain good compliance processes.

Comment

The Bill contains several provisions intended to provide protections for electronic marketplace operators that have relied on information provided to them by underlying suppliers. These include:

- proposed section 60H(1) of the Goods and Services Tax Act 1985 (GST Act), which requires underlying suppliers to provide operators of electronic marketplaces with information relevant to the operator for determining entitlement to the flat-rate credit
- proposed section 60H(2) of the GST Act, which requires underlying suppliers to notify the operator of the relevant electronic marketplace of any change in their GST registration status as soon as practicable
- proposed section 60H(3) of the GST Act, which officials recommend be clarified to provide adequate protections to operators of electronic marketplaces (see [“Issue: Purpose of proposed section 60H\(3\) of the GST Act”](#) below), and
- proposed section 8C(3)(c) of the GST Act, which ensures it is the underlying supplier, and not the operator of the electronic marketplace, that must make an adjustment for a flat-rate credit they received that they were ineligible for.

As drafted in the Bill, officials consider these provisions provide protections to digital platform operators on a more objective basis than the “reasonable endeavours” test proposed by the submitter.

Recommendation

That the submission be declined.

Issue: Reference to “tax shortfall”

Submission

(Deloitte)

Proposed section 8C(3)(c)(ii) contains a reference to a “tax shortfall”. It should be clarified whether this is intended to trigger a penalty.

Comment

The purpose of proposed section 8C(3)(c)(ii) of the Goods and Services Tax Act 1985 is to ensure that a person who receives the flat-rate credit, and who is registered for GST, has a tax shortfall equal to the amount of the flat-rate credit they received. This shortfall could be

subject to shortfall penalties set out in the Tax Administration Act 1994.

Officials agree that this could be made clearer with an amendment to section 141 of the Tax Administration Act 1994, which contains the rules for tax shortfalls.

Recommendation

That the submission be accepted.

Issue: Public register of GST-registered underlying suppliers

Submission

(KPMG)

A public register of GST registrations should be established to assist in checking that the GST registration status of underlying suppliers is correct.

Comment

Marketplace operators may want to verify the information provided to them by underlying suppliers about their GST registration status (and their identity, such as their name, date of birth, and IRD number) is correct. This information is relevant to marketplace operators for determining whether to claim a deduction of input tax for the flat-rate credit, which is required to be claimed and passed on to underlying suppliers that have not notified the marketplace operator that they are registered for GST.

Officials agree that this information should be accessible to marketplace operators to ensure the effective operation of the proposed flat-rate credit scheme. The Bill enables the Commissioner of Inland Revenue to disclose information about a person's GST registration status to ensure the effective operation of the proposed flat-rate credit scheme (see proposed clause 3B, part A of schedule 7 of the Tax Administration Act 1994).

Point of difference

Officials consider that information about a person's GST registration status should only be made available to operators of electronic marketplaces to determine eligibility for the proposed flat-rate credit. Inland Revenue would work with such operators on systems and processes for providing this functionality.

A public register of GST registrants would require further consideration and public consultation before being proceeded with, and this would be subject to resourcing and prioritisation as part of the Government's tax and social policy work programme.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Zero-rating of facilitation services

Submission

(EY, Uber)

One of the options included in the March 2022 discussion document was that facilitation services be zero-rated regardless of the recipient's GST registration status. Officials should give that proposal further consideration. If facilitation services were zero-rated, GST would only apply to the service fees that are charged to consumers. GST would apply at a zero rate to fees that marketplace operators charge sellers.

Comment

The Government sought feedback on the appropriate GST treatment of facilitation services in the March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy*. The discussion document noted that there were different options for the GST treatment of facilitation services, including:

- The status quo: where the GST treatment of facilitation services depends on the GST registration status of the recipient. If the recipient of the facilitation services is registered for GST, facilitation services are either zero-rated or not subject to GST. This is on the basis that the recipient would be able to recover, as input tax, GST charged on any facilitation services they purchase.
- One consistent treatment, regardless of the recipient's GST registration status. Under this option, facilitation services could either be always standard rated (subject to GST at 15%) or always zero-rated (subject to GST at 0%).

Those that submitted on the discussion document had mixed views on the appropriate GST treatment of facilitation services. Some considered the status quo to be preferable. Others considered that the services should always be standard rated, and others considered full zero-rating to be the preference. As there were mixed views, officials recommended that the status quo be maintained.

Officials note that in a typical transaction involving an electronic marketplace, which involves a buyer, a seller, and a marketplace operator, there are two supplies of services:

- the marketplace operator supplies the seller with the service of facilitating a connection between the seller and the buyer ("facilitation services"). The cost of these services to the seller is an expense that enables the seller to make the supply of their services to the buyer, and if the seller is registered for GST, the services are either non-taxable or are zero-rated (on the basis that the seller would be able to recover GST on the services as input tax).
- the seller supplies services to the buyer. These services will be subject to GST if the seller is registered for GST. Services will not be subject to GST if the seller is not registered for GST.

The marketplace operator collects the fee for both supplies from the buyer. It deducts the fee for the facilitation services before paying the rest to the seller. The fact that marketplace operators collect the fee for both services from the buyer does not result in double taxation.

For sellers that are not registered for GST, entitlement to the flat-rate credit compensates them for GST on their expenses. If all facilitation services were to be zero-rated (regardless of the seller's GST registration status), this could require modification of the flat-rate credit percentage.

Recommendation

That the submission be declined.

Issue: Interaction with the new invoicing rules

Submission

(Chartered Accountants Australia and New Zealand)

Inland Revenue should provide guidance covering how the new invoicing rules will affect the application date and time of supply. As part of this, Inland Revenue should clarify whether a booking confirmation would qualify as "supply information" and trigger the time of supply.

Comment

Officials agree that detailed guidance should be provided on how the proposals for listed services interact with the new requirements around supply information. This guidance would be included in a *Tax Information Bulletin* or Special Report published following enactment of the Bill.

Recommendation

That the submission be accepted.

Issue: Definition of "electronic marketplace" and boundary issues

Submission

(Corporate Taxpayers Group, Deloitte)

The definition of an "electronic marketplace" is very broad and appears wide enough to capture Global Distribution Systems (GDS), which are interfaces for registered travel agents to make reservations with accommodation providers (that are subscribed with that GDS). Only registered travel agents with an industry ID number, such as an IATA (International Air Transport Association) number, can use a GDS to make reservations. A GDS is not accessible by the public.

Operators of a GDS are not involved in billing arrangements between the travel agents/guests and accommodation providers, and it is not appropriate that accommodation providers would need to enter into opt-out agreements with the providers of a GDS. Further consideration of the boundary issues inherent in the rules is required to ensure digital

platforms and taxpayers are not inadvertently impacted and do not incur unnecessary compliance costs.

Comment

The definition of “electronic marketplace” in the Goods and Services Tax Act 1985 is comprehensive. The definition includes “a website, internet portal, gateway, store, distribution platform, or other similar marketplace”. The definition could therefore include a Global Distribution System (GDS) as described by the submitter.

A GDS would only be treated as a supplier of accommodation if an underlying supplier (that is, a host) supplied taxable accommodation through the GDS to a recipient. To be treated as the supplier, the GDS would need to either authorise the charge for the supply of the accommodation or set a term or condition for the supply. Based on the submitter’s explanation of a GDS, it seems unlikely that the proposals would treat the operator of a GDS as a supplier of listed services as it would not carry out these functions.

In response to a submission about chains of marketplace operators and the flat-rate credit, officials have recommended that the Bill include amendments that would zero-rate supplies of listed services made between marketplace operators (see [“Issue: When more than one marketplace operator is involved”](#) below). Given this, officials note that even if a GDS was treated as an electronic marketplace, the proposed zero-rating provision would ensure that supplies of listed services made to a GDS were not subject to GST at the standard rate, and the operator of the GDS would not need to enter opt-out agreements with other marketplace operators.

Recommendation

That the submission be noted.

Issue: Drafting clarity on when supplies are made through an electronic marketplace - section 8C

Submission

(DoorDash Technologies New Zealand)

The phrase “through the electronic marketplace” in draft section 8C is not defined but, in context and with reference to the current section 60(1C), it does not require that the underlying supply is transmitted via the digital platform. All it requires is that the formation of the agreement between the underlying supplier and the customer for the supply is facilitated by the platform.

It seems to follow that a supply of services that is contractually made **to** the platform operator is not, for section 60(1C) and proposed section 8C, made **through** the marketplace.

Proposed section 8C(1) should be clarified to make it clearer that supplies made **to** a platform operator, such as those they receive in the course of carrying on their business, are not treated as being made by the platform operator. The section could be drafted as follows:

This section applies to determine the taxation of a supply of certain services (listed services) made **through** an electronic marketplace, *not being a supply to the operator of the electronic marketplace*, and performed, provided, or received in New Zealand.
[Italicised words added]

The submitter considers that if supplies made to a marketplace operator were caught within these rules, then this would result in double taxation (GST would apply on the actual supply made to the platform operator and then again as it would become a deemed supply by the platform operator to the customer).

Comment

Officials disagree. To avoid the issue of double taxation, the Bill treats a supply made from an underlying supplier of listed services to the marketplace operator as a zero-rated supply where the underlying supplier is registered for GST. This means that, for example, a GST-registered deliverer that provides \$10 of delivery services through an electronic marketplace is treated as making a supply with a value of \$10 and GST of \$0. The marketplace operator would not claim an input tax deduction on this supply, which it is treated as receiving. When the delivery services are then treated as being supplied by the marketplace operator to the recipient of the services, the marketplace operator would account for output tax on the value of the supply. This would result in a GST liability of \$1.50 (that is, 15% of \$10).

A deliverer that is not registered for GST would not be charging GST on the services they are treated as supplying to the marketplace operator. Once again, the marketplace operator would not claim an input tax deduction on that supply.

Therefore, there is no double taxation, and officials do not consider it necessary to amend proposed section 8C in the manner suggested by the submitter.

Recommendation

That the submission be declined.

Issue: Mechanism to avoid the need to register for GST

Submission

(Michael Fielding)

Some mechanism should be developed to avoid the need to register for GST and make quarterly GST returns while enjoying some relief from GST on expenses. Automatically refunding a de minimis percentage (for example, 15%) of GST collected on short-term accommodation income would probably be a simple solution to this.

Comment

Officials agree that the Bill should include a mechanism to enable persons that are not registered for GST, but who make supplies that would be liable for GST under the proposals, to be compensated for GST on their expenses without the need to register for GST.

The Bill proposes a flat-rate credit scheme to ensure that hosts, drivers, and deliverers that

are not registered for GST are compensated for GST on their expenses. Under this scheme, a host, driver, or deliverer that operates below the GST registration threshold would not need to register for GST to receive a credit for GST on their expenses. The credit would be provided by the operator of the marketplace that the host, driver, or deliverer is operating on.

Recommendation

That the submission be noted.

OPT-OUT AGREEMENTS

Clauses 129(4) and (6), and 134

Issue: Definition of “large commercial enterprise” – 2,000-night threshold should apply collectively

Submission

(Corporate Taxpayers Group, Deloitte)

The 2,000-night threshold for a “large commercial enterprise” should be tested collectively across all electronic marketplaces that a seller utilises and not tested separately for each marketplace as the rule is currently drafted. This would ensure accommodation providers can continue to use multiple marketplaces and accommodate trial periods with new marketplaces. The rules should not limit or put in place any barriers to suppliers continuing to operate their business as usual.

Comment

Officials agree in principle with the submitters that the rules should not limit or put in place barriers to suppliers continuing to operate their business as usual.

However, officials’ concern with the submitters’ suggestion is that opt-out agreements could become available to a person who owns two properties that are advertised on several marketplaces all-year-round. This is not the intent of the proposals.

Officials acknowledge that there may be circumstances where an underlying supplier does not meet the 2,000-night threshold and yet is sufficiently large enough to be excluded from the impact of marketplace rules. This would be based on them having existing accounting systems and practices in place that enable them to comply with their GST obligations (and which would be disruptive to unwind in light of the proposals in the Bill). For this reason, the Bill proposes that the Commissioner of Inland Revenue would have a determination-making power that would enable the Commissioner to determine the circumstances where a person could meet the criteria to qualify for an opt-out agreement. These determinations could only be made following public consultation, which would enable the Commissioner to understand the circumstances and characteristics of a category of taxpayers that should be eligible for an opt-out agreement.

Recommendation

That the submission be declined.

Issue: Definition of “large commercial enterprise” – 2,000-night threshold should apply on a group basis

Submission

(KPMG)

In determining whether an enterprise is a large commercial enterprise, consideration should also be given to whether the enterprise is part of a group of companies (that may not necessarily be GST grouped) that would meet the 2,000 nights of accommodation threshold.

This is because, in some large hotel groups, each individual hotel will be owned by a separate legal entity, and while most entities would meet the 2,000-night threshold, there may be instances where an individual entity within the group does not. From an administrative perspective, it would be more practical if the large commercial enterprise could be considered from a group perspective.

Comment

Officials agree with the submitter and recommend the opt-out provisions in the Bill be amended to allow a large commercial enterprise to be a member of a “group of companies” that collectively satisfies the 2,000-night criterion. The “group of companies” definition from the Income Tax Act 2007 could be used in this context. This would enable companies that have at least 66 percent common shareholding to make use of opt-out agreements provided the group of companies that were commonly-owned satisfied the 2,000-night threshold.

Recommendation

That the submission be accepted.

Issue: Consultation and guidance on appropriate threshold

Submission

(Chartered Accountants Australia and New Zealand)

Officials should consult with the industry to determine the appropriate threshold (which is currently proposed at more than 2,000 nights). Guidance should be published on what records would be required to substantiate it.

Comment

The 2,000-night threshold is intended to provide a bright-line test that is simple to understand. The threshold is based on a similar threshold in the OECD’s reporting rules for digital platform operators, where a person that has more than 2,000 accommodation listings through a digital platform is not reportable under the reporting rules.

The 2,000-night test will be supplemented with further criteria, which would be set out in a determination made by the Commissioner of Inland Revenue following a period of public consultation.

Officials also agree that Inland Revenue should publish additional guidance on what is required to substantiate an opt-out agreement.

Recommendation

That the submission be accepted.

Issue: Expanding the scope of opt-out agreements and enabling Inland Revenue agreement

Submission

(PwC)

The scope of the opt-out rules could be expanded further than those “large commercial enterprises” that provide taxable accommodation through electronic marketplaces. In circumstances where an arrangement is potentially caught under the proposed rules, contrary to the policy intent, there should be an ability to opt out with Inland Revenue’s agreement.

Comment

Officials agree that the scope of the opt-out agreements should be expanded further than just those large commercial enterprises that supply taxable accommodation. In principle, an opt-out agreement should be available in circumstances where marketplace rules are inappropriate due to the underlying supplier of listed services having established accounting systems and practices in place that make marketplace rules unduly disruptive to a taxpayer’s operations.

Officials therefore recommend that the scope of the opt-out agreement provisions be expanded to apply to listed services generally, and not just taxable accommodation. This would enable the Commissioner of Inland Revenue to make a determination that sets out the criteria a person that supplies listed services must meet to enter into an opt-out agreement. Such a determination would be the subject of public consultation to ensure it was appropriately targeted.

Point of difference

Officials do not consider it necessary to amend the Bill to enable a person to opt out of marketplace rules with Inland Revenue’s agreement. This is because it would be difficult to prescribe the circumstances in which the Commissioner of Inland Revenue could enter into such an agreement outside of the:

- 2,000-night bright-line test for accommodation providers
- criteria a person must meet, as set out in a determination made by the Commissioner, that would enable them to enter into an opt-out agreement, and
- ability to unilaterally elect out of the marketplace rules for large GST-registered taxpayers (see the discussion in [“Issue: Unilateral opt-outs”](#) below).

Recommendation

That the submissions be accepted, subject to officials' comments.

Issue: Support for determination-making power

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed amendment to enable the Commissioner to determine the circumstances where other categories of taxpayers in the accommodation sector can enter into an opt-out agreement.

Recommendation

That the submission be noted.

Issue: Unilateral opt-outs

Submission

(Corporate Taxpayers Group, Deloitte)

For a large commercial enterprise to opt out of having the operator of the electronic marketplace returning GST on their behalf, they must enter into a written agreement with the marketplace operator that they remain responsible for their own GST obligations. For example, a hotel that wants to continue returning its own GST would need to enter into an agreement with the digital platforms that they operate on to continue doing their own GST.

There are potentially significant power imbalances between marketplace operators and large commercial enterprises. Large commercial enterprises should not need to enter into an agreement with marketplace operators and instead should only have to notify the marketplace operator that they will continue being responsible for returning GST themselves.

Comment

Officials consider there are compliance risks associated with the suggestion by the submitters. Allowing unqualified unilateral opt-outs could result in persons that do not meet the criteria being able to unilaterally opt out of the rules, and this could result in GST not applying to the services they provide.

There are also benefits in having an agreement between marketplace operators and underlying suppliers where opt-outs are used. This is because an agreement makes it clear who the GST liability resides with. If unilateral opt-outs were available to all persons, this could result in incorrect GST outcomes. For example, neither a marketplace operator nor the underlying supplier of taxable accommodation may end up returning GST to Inland Revenue as each party could claim the other party was responsible.

Point of difference

Officials acknowledge there will be circumstances where large commercial enterprises that do not meet the criteria for an opt-out agreement would be subject to the marketplace rules. This would mean that marketplace operators would take on the enterprises' GST obligations in accounting for GST on supplies that are made through the marketplace. This could cause significant compliance costs for underlying suppliers that are already accounting for GST.

Officials therefore recommend that a person who is required to maintain a monthly or two-monthly taxable period (that is, a person with sales that exceed \$500,000 in a 12-month period) should be able to unilaterally opt out of the marketplace rules for listed services. In these circumstances, a person should be able to notify the marketplace operator that they are choosing not to be an underlying supplier for the marketplace rules. This would enable them to continue managing their own GST liabilities. Officials recommend this be optional to cater for circumstances where a large supplier did want the marketplace operator to account for GST on their supplies.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Allowing sellers to account for their own GST

Submission

(Corporate Taxpayers Group, New Zealand Law Society)

Canada has recently enacted similar proposals, and it allows accommodation platform operators an exemption from returning the GST if the underlying seller is GST registered.

The New Zealand rules only allow this where large accommodation providers list more than 2,000 nights of accommodation a year through an electronic marketplace and enter into an opt-out agreement. The Canadian approach should be favoured rather than adding complexity to GST compliance for the accommodation sector. This would ensure currently compliant GST-registered accommodation providers are not disadvantaged by the proposals.

If an accommodation provider cannot opt out of the rules, then they will also be forced into making costly system and process changes to ensure that GST is accounted for correctly. These changes would be required as providers will be receiving income where the GST output tax is required to be returned by the digital platform and income (from bookings via other channels) where they will still need to account for GST. Source and General Ledger systems will need to be updated. The time and cost of implementing such changes is expected to be significant, particularly when there is no gain from these providers as they are currently compliant with their GST obligations. *(Corporate Taxpayers Group)*

The proposed marketplace rules would require the marketplace operator, instead of the seller, to collect and return GST on supplies made by the seller. Where the seller is already registered for GST, they should be able to opt out of the marketplace rules. This would allow

them to continue returning GST themselves and avoid the complexity and compliance costs of the proposals. This could be achieved by amending clause 129 and allowing any GST-registered supplier to enter into an opt-out agreement with a relevant electronic marketplace. *(New Zealand Law Society)*

Comment

The ability to enter into opt-out agreements is intended to minimise the compliance costs for large commercial enterprises that have established accounting systems and practices in place for compliance with their GST obligations. Officials note it is not intended that these taxpayers would need to adjust how they account for GST on supplies of accommodation they make through electronic marketplaces.

Officials do not support the submitters' recommendation that all GST-registered underlying suppliers should be able to continue accounting for their own GST. This is because this introduces additional complexity to the rules that would increase compliance costs for operators of electronic marketplaces and reduce the efficiency (and increase compliance risks) associated with GST collection.

For those with significant operations, officials have recommended that taxpayers with sales that exceed or are expected to exceed \$500,000 in any 12-month period would be able to unilaterally opt out of the rules by notifying the marketplace operator that they would remain responsible for their own GST obligations. See discussion in ["Issue: Unilateral opt-outs"](#) above.

Recommendation

That the submissions be declined.

FLAT-RATE CREDIT SCHEME

Clauses 103(3) and (8), 109, 116(3), (16), (22), (25) to (27), 130 and 183(1)

Issue: Support for the proposal

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Mike and Lynette Woods)

Support for the proposed flat-rate credit scheme.

This seems an appropriate low-compliance cost model for underlying suppliers. *(Accountants and Tax Agents Institute of New Zealand)*

Recommendation

That the submission be noted.

Issue: Support for proposal that marketplace operators not liable for tax shortfalls

Submission

(Chartered Accountants Australia and New Zealand)

Support for proposed amendments that ensure marketplace operators are not liable for tax shortfalls where they have taken an input tax deduction for the flat-rate credit that is later found to be incorrect (because the underlying supplier was registered for GST).

Recommendation

That the submission noted.

Issue: Support for information to be provided by underlying suppliers

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed amendments that require underlying suppliers to provide their name, tax file number, and GST registration status to the operators of electronic marketplaces that they operate on and to update this information as soon as practicable in the event of changes.

Recommendation

That the submission be noted.

Issue: Support for disclosure of a person's GST registration status

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed amendment to allow the Commissioner to disclose a person's GST registration status to marketplace operators and require them to act on this information as soon as practicable.

Recommendation

That the submission be noted.

Issue: Technical feasibility

Submission

(Booking.com)

The proposed flat-rate credit scheme is technically infeasible.

Comment

The flat-rate credit scheme would enable marketplace operators to claim input tax deductions as part of their GST return filing process to reduce the amount of output tax a marketplace operator would have to pay to Inland Revenue. These deductions would be used to fund the payment of the flat-rate credit to unregistered underlying suppliers.

Officials acknowledge that the proposed flat-rate credit would require operators of electronic marketplaces to account for GST in New Zealand differently to how they do currently. Marketplace operators are generally unable to claim input tax deductions under the current rules for remote services, and officials note that Inland Revenue would need to make adjustments in its systems to allow the flat-rate credit to be claimed as an input tax deduction by marketplace operators.

Recommendation

That the submission be noted.

Issue: Sector analysis and publication of the flat-rate credit

Submission

(Chartered Accountants Australia and New Zealand)

The level of the flat-rate credit should be based on sector analysis. The analysis should be published.

Comment

The purpose of the flat-rate credit is to recognise that where GST is charged on services supplied, the supplier should be entitled to recover GST on the costs associated with supplying the services. The ordinary way for taxpayers to recover GST on the costs incurred in making supplies is for the supplier to claim deductions for input tax in their GST returns.

The Bill proposes that all supplies of “listed services” made through electronic marketplaces would be subject to GST, regardless of whether the person supplying the services (that is, the accommodation host or the driver) is registered for GST. The proposed flat-rate credit scheme is intended to compensate sellers for the average amount of GST they would be able to claim as an input tax deduction in their GST returns if they were registered for GST.

The proposed flat-rate credit is 8.5 percent of the value of the services supplied through the electronic marketplace. This percentage was determined with reference to GST return information by GST-registered accommodation hosts and taxi drivers. Certain adjustments were made to exclude GST-registered hosts and drivers that had greater expenses than deductions.

Officials note that the proposed flat-rate credit has therefore been based on sector analysis. The flat-rate credit will be monitored over time to ensure it remains an accurate representation of the average amount of GST that sellers could recover as input tax in the event they were registered for GST themselves.

Officials also note that the flat-rate credit may not be appropriate for all sellers. Sellers may therefore register for GST to claim input tax deductions associated with their actual costs if they prefer. This is permitted under existing law. Officials note that, as of March 2022, approximately 40 percent of GST registrants are below the \$60,000 GST registration threshold.

The submitter recommends that the analysis that led to the rate of the flat-rate credit be published. Officials will explore this option and will consider publishing the material in the *Tax Information Bulletin* published after enactment of the Bill that explains the changes.

Recommendation

That the submission be noted.

Issue: Flat-rate credit and commissions

Submission

(Deloitte)

Officials should confirm whether the proposed flat-rate credit accounts for commissions charged by marketplace operators to underlying suppliers. Currently, commissions charged by marketplace operators are:

- zero-rated or non-taxable when the services to which the commission relates are provided to underlying suppliers that are registered for GST, and
- subject to GST at 15% when the services to which the commission relates are provided to underlying suppliers that are not registered for GST.

Comment

The proposed flat-rate credit was determined by analysing the expense-to-sales ratios included in GST returns for GST-registered accommodation hosts and taxi drivers. The flat-rate credit recognises the GST incurred on the average costs incurred by these taxpayers. As GST returns do not require taxpayers to provide a description of expenses for which they have claimed a deduction, it is not possible to identify whether commissions have been accounted for in the flat-rate credit calculation. Officials note that to the extent holiday homeowners and taxi drivers have paid GST on commissions they have been charged, the GST component of those commissions will be reflected in the proposed flat-rate credit percentage.

Officials also note that voluntary GST registration is available for underlying suppliers that choose to claim a deduction for the actual GST component of their expenses.

Recommendation

That the submission be noted.

Issue: Flat-rate credit could incentivise GST registration

Submission

(Airbnb)

Hosts not registered for GST would be penalised for spending more on maintenance and other deductible goods as the input credit proposed is static whereas GST-registered hosts can claim back the actual GST spent on those services.

This may incentivise more unregistered hosts to become registered, which could have significant tax implications if a host sells the property in which they have been providing accommodation. This is likely an unintended consequence of the Bill, but it highlights the potential issues of pushing more people into the GST net and the need for the Government to clearly communicate the changes to those affected.

Comment

The flat-rate credit was determined with reference to the average amount of GST input tax claimed by hosts that are currently registered for GST. Under existing law, a person below the registration threshold can still register for GST if they prefer to claim GST on their actual expenditure. The Bill does not propose to change this.

Inland Revenue has published guidance on the implications of registering for GST as a provider of rental accommodation. Taxpayers are also encouraged to seek advice on the implications of GST registration for their circumstances.

Officials note that the Bill also proposes amendments to the apportionment and adjustment rules for GST that would address the submitter's concerns around hosts' homes being brought within the GST base. Under these proposals, a property that is not principally used for providing taxable accommodation, and for which no input tax was claimed, can be sold without any corresponding GST liability.

Recommendation

That the submission be noted.

Issue: Income tax implications

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Deloitte)

The legislation should clarify the income tax treatment of the flat-rate credit from the perspective of marketplace operators and underlying suppliers. *(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)*

The proposed rules do not explain the income tax treatment of the flat-rate credit. Guidance should be provided on whether the flat-rate credit gives rise to taxable income for income tax purposes, and whether income tax deductions are to be taken on a GST-inclusive or GST-exclusive basis. *(Deloitte)*

Comment

The purpose of the flat-rate credit is to compensate underlying suppliers for the average amount of GST that they would be able to recover as input tax if they were registered for GST. It therefore follows that the income tax treatment of the flat-rate credit should follow the income tax treatment of input tax. The Income Tax Act 2007 contains rules that provide for the income tax treatment of input tax in sections CX 1 and DB 2. These rules provide that:

- input tax payable by the Commissioner of Inland Revenue to a GST-registered person is treated as excluded income (and is therefore not taxable income), and
- GST-registered persons are not able to claim income tax deductions on a GST-inclusive basis, as the GST component of these deductions would have been accounted for as input tax.

Officials do not consider there to be a policy basis to change this income tax treatment of the flat-rate credit. Officials do recommend, however, that amendments are made to the Income Tax Act 2007 to confirm that the income tax treatment of the flat-rate credit is the same as for input tax more generally. This would mean that underlying suppliers that receive the flat-rate credit would not:

- include the flat-rate credit as income in their income tax returns (and this means they would not pay income tax on the flat-rate credit), or
- claim income tax deductions for expenses on a GST-inclusive basis.

For recipients of the flat-rate credit, this could require them to apportion their income tax deductions between those that relate to supplies made through electronic marketplaces and those that relate to supplies made by other means. Officials would prepare guidance to explain how the rules would apply in practice as a matter of course.

Recommendation

That the submission be accepted.

Issue: Ability to net off commissions and the flat-rate credit

Submission

(Deloitte)

Guidance should be provided that underlying suppliers and marketplace operators cannot net off commissions and the flat-rate credit.

Comment

The value of the flat-rate credit is set by proposed section 20(3N) of the Goods and Services Tax Act 1985. The Bill proposes the flat-rate credit to be 8.5 percent of the value of the listed services supplied. For determining the flat-rate credit, the value of listed services is not reduced by the amount of commissions or fees charged by the marketplace operator to the underlying supplier, and there is no special valuation rule proposed in the GST Act that would achieve this outcome. This could be addressed in technical guidance that explains the changes.

Recommendation

That the submission be accepted.

Issue: When more than one marketplace operator is involved

Submission

(PwC)

It should be clarified which platform operator has the relevant obligations for administering

the proposed flat-rate credit scheme when more than one marketplace operator is involved and also how this should work in practice.

Comment

The Bill amends existing priority rules (in section 60C(3) of the Goods and Services Tax Act 1985) that determine which marketplace operator is the supplier of services supplied through an electronic marketplace. Those priority rules provide that it is the first marketplace operator that authorises the charge or receives consideration for the supply of services supplied through the electronic marketplace that is treated as the supplier.

Under the proposed amendments, the rules would provide that it is the first marketplace operator that must take a deduction of input tax for the flat-rate credit. This is because it is this marketplace operator that is treated as the supplier of listed services.

Officials note that, as currently drafted in the Bill, this could result in a marketplace operator charging GST on a supply of listed services to another marketplace operator in circumstances where it is the second marketplace operator that ultimately makes the supply of listed services to the recipient. This would increase the complexity of the proposals for marketplace operators by requiring the first marketplace operator to return output tax on a supply of listed services to the second marketplace operator, with the second marketplace operator then being required to claim an input tax deduction for this supply. To address this, officials recommend the introduction of a new zero-rating provision that would ensure a supply of listed services between marketplace operators is zero-rated. In this situation, it would be the first marketplace operator that would have to take a deduction of input tax for the flat-rate credit even though the supply of listed services to the recipient is being made by another marketplace operator.

Recommendation

That the submission be accepted.

Issue: Entitlement for employees

Submission

(PwC)

Further consideration should be given to how the flat-rate credit scheme would apply across other legal arrangements, including employment contracts, in light of recent decisions made by the Employment Court of New Zealand.

Comment

The purpose of the flat-rate credit is to compensate the underlying supplier of listed services for the average amount of GST they would be able to recover as input tax if they were registered for GST. It is therefore inappropriate that the flat-rate credit be available to a person who is an employee because employees are unable to register for GST and therefore cannot recover input tax on their expenses.

Officials note that, under the proposals in the Bill, a business that employs staff or sub-contracts with others to provide transportation services would likely be charging GST on these supplies on a business-to-consumer basis. In such circumstances, the business, as an employer, would account for GST on its supplies and would claim GST on its expenses. It would not claim the flat-rate credit because the supply of services is not made through an electronic marketplace.

Recommendation

That the submission be noted.

Issue: Interaction with the OECD's information reporting rules

Submission

(Deloitte)

Guidance should be provided on whether the flat-rate credit is reported under the Organisation for Economic Co-operation and Development's (OECD's) digital platform reporting rules if it is considered an amount of income to the underlying supplier.

Comment

Officials have recommended that the Bill be amended to confirm that the flat-rate credit is treated in the same way as input tax for income tax purposes (see discussion in "[Issue: Income tax implications](#)" above). This would mean that the flat-rate credit would be treated as excluded income of the person. Inland Revenue would provide guidance on how, and whether, the flat-rate credit would be reported under the OECD reporting rules following further consideration of the OECD's XML schema.

Recommendation

That the submission be noted.

Issue: Purpose of proposed section 60H(3) of the GST Act

Submission

(Corporate Taxpayers Group, Deloitte)

The purpose of proposed section 60H(3) of the Goods and Services Tax Act 1985 (GST Act) is unclear.

A marketplace operator may over-deduct the flat-rate credit as input tax, but this would not result in a deficiency of output tax.

Comment

The purpose of proposed section 60H(3) of the GST Act is to provide protection to operators of electronic marketplaces that take their tax positions based on information provided to them by underlying suppliers. If an electronic marketplace operator were to take an input tax deduction in its GST return for the flat-rate credit on behalf of an underlying supplier that purported to be eligible for it, the electronic marketplace operator should not be liable for penalties or interest if it is later discovered the underlying supplier was not entitled to the flat-rate credit.

Officials agree that an over-deduction of input tax for the flat-rate credit would not result in a deficiency of output tax and recommend that proposed section 60H(3) be amended to refer to a "deficiency of tax".

Recommendation

That the submission be accepted.

Issue: Interaction between the flat-rate credit and the adjustments rules

Submission

(Deloitte)

Clear rules are needed for underlying suppliers that may become registered for GST. This includes an explanation of what the flat-rate credit is intended to represent, and whether it includes a proxy for GST on the capital cost of a house or vehicle. If it does, guidance should be provided on what GST an underlying supplier that becomes registered for GST would be able to claim for assets being used in their taxable activity.

Guidance should also be provided on whether an adjustment is required for the period that the assets have been used by the underlying supplier making supplies through the electronic marketplace and receiving the flat-rate credit.

Comment

The flat-rate credit represents the average amount of GST that an underlying supplier supplying listed services would be able to recover as input tax if they were registered for GST. The rate was based on an analysis of GST returns by those supplying taxi driving services and holiday home accommodation. It was not possible to exclude GST associated with capital expenditure in determining the rate because GST returns do not distinguish between different kinds of expenditure. Therefore, in determining the rate, taxpayers with expenses greater than sales were ignored (as it was assumed these taxpayers would have claimed input tax deductions for capital assets, such as land).

If an underlying supplier that has claimed the flat-rate credit subsequently becomes registered for GST, they would be able to claim input tax under ordinary GST rules. This applies notwithstanding earlier claims of the flat-rate credit. Adjustments would be required

for the period that the assets were used in making supplies through an electronic marketplace. This is because, from the underlying supplier's perspective, this would be considered to be non-taxable use.

Officials note that the Bill proposes amendments to the wash-up rules for a permanent change in use to enable the rules to be applied at the end of the adjustment period in which the change of use occurred. This means an underlying supplier who registers for GST can make an adjustment at their next balance date to claim an input tax deduction for GST that reflects their new permanent percentage of taxable use (for example, if 100 percent taxable use, the person can claim a full input tax deduction at their next balance date).

Recommendation

That the submission be noted.

Issue: Definition of "flat-rate credit"

Submission

(Deloitte)

The definition of "flat-rate credit" in section 2 of the Goods and Services Tax Act 1985 (GST Act) is unclear and hard to read.

The definition should refer to proposed section 20(3N) where the 8.5 percent value is mentioned. The flat-rate credit legislation is dispersed over several sections (proposed sections 20(3)(de), 20(3JD) and 20(3N)). It could more logically be dealt with in a single section.

Comment

The provisions related to the flat-rate credit in the Bill are intended to serve different purposes:

- Section 2 contains all defined terms for the GST Act and includes a reference to the "flat-rate credit" as a defined term.
- Proposed section 8C(4) signposts the relevant flat-rate credit provisions for marketplace operators and provides an overview of the GST rules for "listed services".
- Proposed section 20(3)(de) enables the deduction of input tax for the flat-rate credit for marketplace operators and requires it to be passed on to underlying suppliers that have not notified the marketplace operator that they are registered for GST.
- Proposed section 20(3JD) requires GST-registered persons that receive the flat-rate credit to account for the flat-rate credit as output tax (as GST-registered persons are not eligible for the flat-rate credit).
- Proposed section 20(3N) prescribes the value of the flat-rate credit at 8.5 percent of the value of the supply of the listed services.

Officials do not agree that these provisions should be merged into a single section as they all

serve a different purpose.

Recommendation

That the submission be declined.

Issue: Availability based on certain contractual arrangements in the food and beverage delivery sector

Submission

(DoorDash Technologies New Zealand)

Proceeding on the basis that the “listed services” in proposed section 8C(2)(b) are not intended to include a beverage and food delivery or ride-sharing service that a person may contractually supply to a platform operator, then that person would, unfairly, not benefit from the flat-rate credit scheme, as it would be the platform operator who makes a taxable supply of the beverage and food delivery or ride-sharing service to the end customer.

The platform operator should be able to claim (and pass on) that flat-rate credit by reference to the value of the deliverer’s or driver’s supplies to the platform operator, despite its contractual model not falling within proposed section 8C.

Comment

The purpose of the flat-rate credit is to compensate underlying suppliers that, because of the proposals in this Bill, would be subject to GST on the services they supply to their customers through an electronic marketplace.

In circumstances where a person contracts with a customer to provide delivered food and beverages to their customer, and that person relies on labour they source from deliverers to help them with this, GST is being collected on the entire value of the supply under existing law. This means that, in the context of the proposals in the Bill, based on the contractual model noted by the submitter, there is no “underlying supplier” for the flat-rate credit to be available to.

Therefore, officials do not consider it appropriate to broaden the flat-rate credit scheme to be available to subcontractors or labour hired by organisations that enter contractual relationships with their customers for the delivery of food and beverages as opposed to facilitating a supply of food and beverage delivery. This would introduce additional complexity to the rules and broaden the intended scope of the flat-rate credit beyond what was intended.

Recommendation

That the submission be declined.

CONSEQUENTIAL AMENDMENTS

Issue: Support for proposals

Submission

(Chartered Accountants Australia and New Zealand)

Support for the consequential amendments to the Goods and Services Tax Act 1985 to ensure the proposed extension of the existing rules for electronic marketplaces to supplies of listed services work as intended.

Recommendation

That the submission be noted.

Issue: Support for quarterly returns and payments

Submission

(Chartered Accountants Australia and New Zealand)

Support for proposal that non-resident marketplace operators should be able to continue filing GST returns and paying GST to Inland Revenue on a quarterly basis, consistent with current marketplace rules.

Recommendation

That the submission be noted.

OTHER ISSUES

Issue: Analysis of costs and benefits

Submission

(BusinessNZ)

Inland Revenue should provide an analysis of costs and benefits of the proposals to ensure there is a clear understanding of the likely net effect of the platform economy changes proposed in the Bill on the New Zealand economy.

Comment

Decisions to proceed with changes to tax policy are ultimately made by Ministers and the Government and are not made by Inland Revenue. Officials prepare Regulatory Impact Statements (RISs) to identify the relevant trade-offs in decision making for Cabinet. This included two RISs on the proposals included in the Bill on the platform economy. Both RISs note there are uncertainties with the compliance costs associated with the changes and it was not practical to determine the value of these costs to weigh them up against the anticipated monetary and non-monetary benefits of the proposed changes.

Officials note that the Government consulted on the proposed changes in the Bill in a March 2022 discussion document – *The role of digital platforms in the taxation of the gig and sharing economy*. In preparing the RISs and advice to Ministers, officials considered feedback provided in submissions.

Recommendation

That the submission be declined.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Cross-border workers

CROSS-BORDER WORKERS REFORM

Clauses 2(29) and (32), 16 to 18, 25, 26, 28, 86, 89 to 94, 98(5) and (11), 142 to 145, 164, 169, 170, 181(1), (2) and (3), and 182

Issue: General support for the proposals

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Cantin Consulting, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, EY, Financial Services Council NZ, KPMG, PwC)

Submitters welcome reform to the tax settings applying to cross-border workers and their employers and payers of non-resident contractors.

Recommendation

That the submission be noted.

Issue: Simplification of IRD number processes required

Submission

(Cantin Consulting, EY, KPMG)

Difficulties in obtaining an IRD number are a barrier to compliance for cross-border employees and non-resident employers.

Currently, the rules for obtaining an IRD number are designed around physical presence and may be impossible to comply with where the employee or non-resident employer may be in New Zealand temporarily. The process should be simplified. *(EY)*

Delays in obtaining IRD numbers may prevent employees from being able to take advantage of the 60-day grace period. The process should be streamlined and confirmation provided that Inland Revenue's processes will allow the grace periods to be met in practice. *(Cantin Consulting, KPMG)*

Comment

Officials acknowledge the concerns raised by the submitters. However, the administration of IRD numbers is driven by operational practice and anti-money laundering laws, rather than tax legislation. Cross-border employees are a narrow subset of the persons and entities who require a IRD number. Changes to the requirements would be better addressed via operational change or as part of wider reforms.

Submitters' concerns regarding the 60-day grace period are discussed under the heading "[Issue: 60-day grace period](#)" below.

Recommendation

That the submission be noted.

Clauses 2(29) and (32)

Issue: Commencement date of proposals

Submission

(PwC)

All the proposed changes should have a consistent application date of 1 April 2023.

Comment

Officials disagree. The difference in the application dates is driven by the issues they seek to address. It is appropriate for the proposals addressing PAYE, fringe benefit tax and employer's superannuation contribution tax integrity measures to apply from 1 April 2023 as a matter of priority. The later application date for other proposals allows time for the development of systems and guidance by Inland Revenue for employers and tax advisors.

Recommendation

That the submission be declined.

FLEXIBLE PAYE, FBT AND ESCT ARRANGEMENTS

Clauses 16 and 17

Issue: Timing of derivation of income

Submission

(Corporate Taxpayers Group, Deloitte, KPMG)

Submitters sought several changes to the shadow payroll rule (which provides that where an employee works in New Zealand but remains on the employer's payroll system in a country or territory outside New Zealand, the income is treated as derived 20 days after payment) as follows:

- The rule should be made optional to enable non-resident employers to report and pay in the correct period where possible. *(Deloitte)*
- The income should be treated as derived after 10 days, similar to those taxpayers meeting their own PAYE obligations under IR 56 arrangements who have 10 working days to file their employment information. This would enable reporting in the period the employee was paid. *(Corporate Taxpayers Group)*
- Alignment should be with the payment date rather than the reporting date. *(KPMG)*

Comment

Ordinarily, employment information must be filed two working days after the day on which an employer makes a PAYE payment to an employee. The shadow payroll rule is a concession designed to ease this strict timing requirement so that non-resident employers have time to comply with New Zealand's employment income tax rules.

For employment income reporting purposes, the payment date is the key driver for employer information returns. Officials acknowledge that the shadow payroll rule results in a misalignment between the actual payment date and the date income is recognised for New Zealand tax purposes.

This misalignment was raised in consultation on the possible cross-border workers reforms. However, officials decided not to proceed with the change proposed in the Officials' Issues Paper to deal with the misalignment as changing the rule would have significant system impacts for all employers. For this same reason, officials do not consider any other changes should be made to the rule. A change for a proportionally small group of employers and employees cannot be prioritised.

Recommendation

That the submissions be declined.

Clause 17

Issue: Support for definition of a “cross-border employee”

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed definition of a “cross-border employee”.

Recommendation

That the submission be noted.

Clause 18

Issue: 60-day grace period

Submission

(Cantin Consulting, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, KPMG, PwC)

Submitters generally supported the introduction of a grace period to enable employers to meet their New Zealand employment-related tax obligations.

Some submitters sought changes to the proposed rule, as follows:

- a. The grace period should also be available to employees where they must manage their own employment tax obligations. *(Corporate Taxpayers Group)*
- b. It should be clarified that the grace period applies to:
 - New Zealand tax resident employees who work abroad, and
 - situations where the intention is that the employee’s New Zealand tax residence would cease but due to subsequent events this does not occur. *(Corporate Taxpayers Group, Deloitte)*
- c. The grace period should apply explicitly to employee share schemes. *(Corporate Taxpayers Group)*
- d. The treatment of “trailing bonuses” should be clarified, and an alternative approach (similar to the “former employee” procedure that currently exists for employee share scheme income) could be adopted. *(KPMG)*
- e. The receipt of an extra pay should not trigger a grace period. *(EY)*
- f. The grace period is not sufficient as difficulty in obtaining an IRD number could impact the ability to report within the proposed grace period. *(Cantin Consulting, EY, KPMG)*. Further the Committee should confirm that Inland Revenue’s processes will allow the grace periods to be met in practice by employers and employees. *(Cantin Consulting)*
- g. There should be a longer grace period:

- The period should be 120 days. (*Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group*)
 - Inland Revenue should have the discretion to allow an extended period if there are circumstances that prevent the employer from meeting the 60-day grace period once a breach has been identified. (*Deloitte*)
 - The proposed section should be relaxed so that the grace period allows for instances where an employer plans not to breach a threshold but understands it may be breached. (*Corporate Taxpayers Group*)
- h. A mechanism to recognise the income in the correct tax year should be developed. (*KPMG*)
- i. The income should be able to be returned at the annualised tax rate for the employee, or a payroll adjustment should be able to be made later in the year or via a bespoke PAYE arrangement. (*KPMG*)

Comment

Officials welcome the general support for the grace period. The grace period acknowledges that cross-border employees and their employers are not in the same compliance circumstances as other employer and employees. It is therefore appropriate to relax the strict application of the PAYE, fringe benefit tax and employer superannuation contribution tax rules to enable overseas employers to comply more easily with New Zealand employment-related tax obligations.

In the main, the proposals in this reform are aimed at cross-border employment arrangements where the employer(s) are managing and discharging the employment-related tax obligations. The proposals recognise the different compliance circumstances of employers of cross-border employees and aim to reduce the cost of meeting or correcting those obligations.

The intention of the grace period is to allow additional time where the ordinary timeframe for compliance is unable to be met. It is not generally intended to apply to regularly paid items of remuneration, such as salary and wages. Employers are expected to manage their tax obligations, including planning for regular events, such as the payment of annual bonuses, to ensure they meet New Zealand's tax rules.

Broadly, the purpose of the grace period is to enable an employer to meet or correct a tax obligation where:

- the tax obligation was not reasonably foreseeable (for example, a project is extended so an exemption ceases to apply), or
 - the employer was unable to comply with the ordinary timeframe due to delays in collating and processing remuneration information for New Zealand tax purposes.
- a. Officials agree that the grace period should also apply where an employee manages their own tax affairs under IR 56 arrangements. The grace period should also be available where another person undertakes employment-related tax obligations on the

employer's behalf; for example, where employees' taxes are withheld, paid or reported through the New Zealand payroll of an associated entity.

- b. Officials agree that the grace period should be available to employers of cross-border employees who work abroad but remain tax resident in New Zealand.

The grace period should apply in the following situations:

- New Zealand tax resident employees work abroad but it is not possible to meet the strict timing requirement of New Zealand's employment-related tax rules.
- The intention is that the employee's New Zealand tax residency will cease but, due to subsequent events, this does not occur.

Clarifying that the grace period will apply in these circumstances better aligns the proposed rules with the policy intent.

- c. Officials agree that the grace period should apply to employee share scheme income where the employer has elected to withhold and pay tax and the ordinary timeframe for compliance is unable to be met.
- d. Officials also agree that the grace period should apply to trailing bonuses where the ordinary timeframe for compliance is unable to be met.
- e. Officials note the term "extra pay" is defined in section RD 7 of the Income Tax Act 2007 and includes both trailing bonuses and employee share income. However, we recommend that the drafting is clarified to confirm that the payment of an "extra pay" does not of itself trigger a grace period.
- f. Officials intend to provide guidance covering how the rules will work with Inland Revenue's processes.
- g. Officials do not support increasing the grace period beyond 60 days, nor do we support a further relaxation of the grace period. The grace period is concessionary, and we intend that it should only be available in limited circumstances. Beyond the 60-day period, an employer may make a voluntary disclosure to meet or correct their tax obligations.
- h. The intention is that catch up payments will be processed in a single lump sum at the point of payment. Backdating of payments for an employee requires the entire payroll to be rerun and will affect each employee on that payroll. This is not desirable. This constraint means that it will not be possible to recognise income in the tax year it is received if the grace period straddles two income years.
- i. It is also not possible within existing systems for income to be returned at the annualised tax rate for the individual employee.

Recommendation

- a. - e. That the submissions be accepted.
- f. That the submission be noted.
- g. - i. That the submissions be declined.

Clause 18

Issue: Guidance sought for operation of 60-day grace period

Submission

(Corporate Taxpayers Group, Deloitte, KPMG, PwC)

Submitters seek guidance on the following:

- How the grace period would work in practice, including over income years, and how to adjust income in correct income years without a voluntary disclosure.
- How the grace period would work with existing rules for shadow payrolls or employee share scheme income.
- What steps would constitute “reasonable measures”.
- When a voluntary disclosure is required.

Comment

Officials agree that guidance on how the grace period will work in practice and what “reasonable measures” means is appropriate. Inland Revenue intends for this guidance to be developed and released before the grace period comes into effect on 1 April 2024.

Recommendation

That the submission be accepted.

Clause 86

Issue: Support for ability to apply for a PAYE arrangement

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG)

Support for the proposal to allow the Commissioner of Inland Revenue to agree with an employer of cross-border employees that an annual payment of tax for PAYE income payments may be made in special circumstances.

Recommendation

That the submission be noted.

Clause 86

Issue: Oppose annual payment basis for PAYE arrangements

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

Opposition to the proposal allowing the Commissioner of Inland Revenue to agree with an employer of cross-border employees to pay PAYE annually in special circumstances. This should be restricted to biannual payments (every six months) to limit the risk of overseas employers defaulting on their obligations and being non-compliant.

Comment

Officials think that an annual PAYE arrangement is an acceptable relaxation of the ordinary employment-related tax rules in special circumstances. The onus will be on the employer to engage with Inland Revenue to seek the arrangement and agree its terms. We do not think that employers who proactively seek to engage with Inland Revenue pose a material risk to the tax base.

Recommendation

That the submission be declined.

Clause 86

Issue: Guidance on the meaning of “special circumstances”

Submission

(Corporate Taxpayers Group, Deloitte, KPMG, PwC)

Inland Revenue should issue guidance clarifying the circumstances in which an annual PAYE arrangement would be considered.

Comment

As stated in the Commentary on the Bill, officials intend that guidance clarifying the circumstances that will qualify for an annual PAYE arrangement will be developed. Inland Revenue intends for this guidance to be developed and released before the proposed new rule comes into force on 1 April 2024.

Recommendation

That the submission be accepted.

Issue: Annual PAYE arrangements should be available to tax equalised employees

Submission

(Corporate Taxpayers Group, Deloitte, EY, KPMG)

Annual PAYE arrangements should be made available to employees who are tax equalised. Tax equalisation is an agreement between the employer and employee that the employer will bear and pay the tax cost on all or part of the employee's income.

Comment

The proposed legislation that would allow an employer to enter into an annual PAYE arrangement is broadly expressed. As such, arrangements for tax equalised employees would be permitted by the proposed new rule. Tax equalisation is a complex area and tax equalisation policies differ between businesses. Inland Revenue will consider whether tax equalised employees should be included as a class of employees in "special circumstances" as an operational matter.

Recommendation

That the submission be noted.

Issue: Relationship between annual PAYE arrangements and payday filing should be clarified

Submission

(Corporate Taxpayers Group)

It should be clarified whether, if an annual PAYE arrangement is in place, reporting of employment income would also be annual or if payday reporting of employment information would be required.

Comment

Officials do not intend for income subject to annual PAYE arrangements to be reported under standard payday filing rules. The rules should be clarified to reflect the policy intention.

Recommendation

That the submission be accepted.

Clause 91

Issue: Repeal of the PAYE bond

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Support for repeal of the PAYE bond provision.

Recommendation

That the submission be noted.

PAYE, FBT AND ESCT INTEGRITY MEASURES

Clauses 16, 17, 93, 94, 98(5), 142, 164, 169 and 181(1)

Issue: Safe-harbour arrangements for non-resident employers

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, PwC)

Submitters generally welcomed the proposal to include a safe harbour for employment-related tax obligations.

Some submitters also sought the following changes to the safe harbour:

- a. A non-resident employer who incorrectly determines that they do not have New Zealand PAYE, fringe benefit tax (FBT) and employer superannuation contribution tax (ESCT) obligations should also qualify for the safe harbour where they choose to register for the relevant tax types. To this end, the safe harbour rules should have a timeframe under which the tax payments need to be made to ensure there is an incentive for the payment of tax. *(Corporate Taxpayers Group)*
- b. The requirement that the employer must communicate to the employee that they must meet their own New Zealand tax obligations directly should be removed. *(Chartered Accountants Australia and New Zealand, KPMG)*
- c. The test should be a bright-line test *(Corporate Taxpayers Group)* or, if met, the employer should not be considered to have a sufficient presence in New Zealand. *(Chartered Accountants Australia and New Zealand)*
- d. The employee criterion should be increased from two or fewer employees present in New Zealand to five or fewer such employees. *(Chartered Accountants Australia and New Zealand, KPMG)*
- e. The monetary criterion threshold should be lowered to \$200,000. *(PwC)*
- f. The safe harbour should only provide for the situation where the company has sufficient knowledge of New Zealand law to meet the obligation. *(KPMG)*
- g. The safe harbour should provide confirmation that the non-resident employer has no requirement to report or withhold employment-related taxes if they meet the safe harbour criteria. *(Corporate Taxpayers Group, Deloitte)*

Comment

The purpose of the safe harbour is to protect a non-resident employer from the penalties and interest consequences of incorrectly concluding that they do not have New Zealand employment-related tax obligations. The safe harbour is intended to supplement the sufficient presence test rather than replace it. A non-resident employer could have a

sufficient presence in New Zealand even if it has only one employee present in New Zealand.

A sufficient presence will arise in the circumstances outlined in Operational Statement 21/04 *Non-resident employers' obligations to deduct PAYE, FBT and ESCT in cross-border employment situations*. These include carrying on a business in New Zealand or having a physical business presence, a permanent establishment or an address for service in New Zealand. Officials anticipate that the safe harbour would mostly apply where the employee of a non-resident employer has made a personal choice to work in New Zealand and their employment activities have no necessary connection to New Zealand.

- a. A non-resident employer who has concluded they do not have any New Zealand employment-related tax obligations may nevertheless voluntarily register and discharge the New Zealand employment-related tax obligations or make another arrangement for those obligations to be met, either through a local associated company or payroll or professional services provider. Officials agree that a non-resident employer who chooses to register for New Zealand employment-related taxes, or an associated entity that takes on those obligations, should benefit from the safe harbour.

Officials agree that providing a timeframe for compliance is desirable and recommend that this change be accepted.

- b. Officials agree that the requirements for alternative arrangements for the tax to be made or to communicate the employee notification requirement may be difficult to meet in practice. We understand that an employer may not be aware of an employee's presence in New Zealand or understand New Zealand's employment-related tax obligations in advance of the employee's presence in New Zealand, particularly where the employee is working in New Zealand through private choice. Although we think clear communication regarding responsibility for tax is best practice, we agree that this requirement should be removed from the Bill.
- c. Officials do not agree that the safe harbour should become a bright-line test or a general exclusion from employment-related tax obligations. As noted above, a sufficient presence can arise where there is only one employee in New Zealand. The purpose of the sufficient presence test is to mitigate the consequences in cases where the employer has incorrectly concluded that they did not need to withhold, report or pay employment-related taxes. A penalties and interest safe harbour is preferred and is intended to maintain the integrity of the tax base.
- d. Given that officials view the safe harbour as a limited protection for non-resident employers, we do not think that raising the employee criterion is appropriate. Officials also note that the expansion of the number of employees could result in more employees undertaking their own PAYE, FBT and ESCT obligations. These taxes are more efficiently complied with where the employer has the obligation, as is the

position for domestic employers. By way of comparison, we note that 18% of New Zealand businesses have five or fewer employees³.

- e. While we can see an argument for lowering the monetary threshold, officials think that the \$500,000 of gross annual taxes criterion represents a balance between permitting a degree of flexibility and maintaining the integrity of the tax system.
- f. Officials disagree that the safe harbour should be restricted to the situation where the non-resident employer has sufficient knowledge of New Zealand law. The reform is intended to apply to employers who intend or agree that the employee should work in New Zealand. Even where the employee has exercised a personal choice to work in New Zealand, the employer should take steps to confirm the extent of its New Zealand tax obligations. The safe harbour will provide protection from an incorrect conclusion in relation to those obligations and, if necessary, the grace period may enable a catch-up payment of underpaid taxes without a voluntary disclosure.
- g. Officials agree that where an employer meets the safe harbour conditions, it follows that they are not required to report or withhold employment-related taxes. The legislation should be clarified to confirm the policy intent.

Recommendation

- a. - b. That the submissions be accepted.
- c. - f. That the submissions be declined.
- g. That the submission be accepted.

Issue: Payroll subsidies should be reinstated

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

Cross-border employees already register as "IR56 Taxpayers" and are responsible for reporting and paying their own PAYE. Complying with the relevant PAYE, fringe benefit tax (FBT) and employer superannuation contribution tax (ESCT) obligations is challenging, and the Government should consider reinstatement of payroll subsidies to help employees manage these responsibilities.

Comment

The IR 56 is an administrative tool used by workers who are required to pay their own taxes via PAYE on their wages or salary but who are not self-employed. This includes private domestic workers, such as home help and gardeners, as well as cross-border employees. Currently, the IR 56 encompasses the payment of PAYE and ESCT from the relevant workers.

³ Ministry of Business, Innovation & Employment: Small Business Factsheet 2021
<https://www.mbie.govt.nz/assets/small-business-factsheet-2021.pdf>

FBT would be a new obligation under the IR 56 that is only imposed on cross-border employees using this tool.

Officials do not support the reintroduction of payroll subsidies. We do not provide them for other taxpayers, and we do not support making an exception for cross-border employees.

Recommendation

That the submission be declined.

Issue: Transfer of FBT and ESCT obligations to an employee

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, KPMG, PwC)

Submitters do not support the proposal to transfer fringe benefit tax (FBT) and employer superannuation contribution tax (ESCT) obligations to an employee where their employer does not have a PAYE obligation.

If the proposal were to proceed, further changes to the rule would be necessary. *(Chartered Accountants Australia and New Zealand, EY)*

Employees of non-resident employers should be treated the same as employees of New Zealand employers, but it is inappropriate to shift tax deduction obligations (particularly FBT) to employees. *(KPMG)*

If the proposal were to proceed, non-cash benefits should be included as employment income and subjected to the PAYE system. *(Corporate Taxpayers Group, Deloitte, KPMG)*

It should be clarified that the transfer of tax obligations should not apply to New Zealand residents performing services outside New Zealand. *(KPMG)*

In addition, submitters raised the following concerns about the proposed rule:

- Ordinarily, these taxes are calculated and paid by employers. *(Corporate Taxpayers Group)*
- The proposed rule requires the employee to step into the shoes of the employer. *(Deloitte)*
- The proposed rule is unworkable. *(EY)*
- The FBT rates are higher than the equivalent rates for PAYE. The maximum rate for FBT is 63.93%, whereas for PAYE it is 39%. *(Corporate Taxpayers Group, Deloitte)*
- Where an employee works in New Zealand due to personal choice, the employer will not assist the employee with this tax cost, meaning the employee will bear the cost. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG)*
- Imposition of FBT may disincentivise remote work arrangements in New Zealand. *(Deloitte)*

- With respect to ESCT obligations, the employee may not have knowledge of the contributions made on their behalf, particularly if they were made to a defined benefit plan. (*Corporate Taxpayers Group*)
- The transfer of the FBT obligation to an employee creates a bias towards providing remuneration in cash, and this is inconsistent with the overall policy of the FBT regime. (*Deloitte*)
- It may not be possible for employees to comply with the rules in the required timeframes for reporting and payment. (*Corporate Taxpayers Group, Deloitte, KPMG*)
- It is unclear how the rules would interact with the rules for motor vehicles, as motor vehicle use is measured on a quarterly or annual basis. (*Deloitte*)
- How would the change interact with Working for Families tax credits, student loans, child support and KiwiSaver? (*KPMG*)

Comment

Officials acknowledge the concerns raised by submitters. However, under New Zealand's tax settings, all elements of remuneration are subject to equivalent tax. Where an employer does not have a sufficient presence in New Zealand, the employer is not currently required to pay FBT and ESCT. This means that cross-border employees are subject to less tax on their total employment income than New Zealand-based employees of an employer with a New Zealand presence. This outcome gives rise to fairness issues and a tax integrity concern and should be addressed.

The IR 56 is an administrative tool that is used by workers who are required to pay their own taxes (PAYE) on their wages or salary but are not self-employed. Therefore, it is the appropriate mechanism for cross-border employees whose employer does not have a substantial presence in New Zealand. In 2017–18, approximately 4,800 embassy and remote workers used the IR 56 to manage their own PAYE. These proposals do not affect New Zealand resident employees who work entirely outside New Zealand for a non-resident employer.

Officials acknowledge that full taxation of non-cash benefits at FBT rates will impose a high tax burden. Domestic employers can obtain tax relief for the cost of FBT by deducting that cost from their income. From both a compliance and an administrative perspective, the simplest way to achieve the equivalent treatment for an employee who pays tax on non-cash benefits is to capture those benefits in the employee's employment income and subject it to PAYE via the IR 56 mechanism. The employee would be taxed at the employee's highest marginal PAYE rate; that is, at rates up to 39%. There is a tax gap of approximately 7 percentage points for 39% taxpayers employed by a company under this method. However, officials consider this a better outcome than the alternative, which results in disproportionate overtaxation. Existing mechanisms enable adjustments to be made for Working for Families and Child Support purposes where relevant.

Employer contributions to a foreign superannuation scheme can be included in the existing ESCT function of the IR 56 and subjected to ESCT. ESCT enables the contribution to be excluded income for certain purposes, such as entitlement to Working for Families. Under existing rules, an employer and employee may, in some circumstances, opt out of ESCT and

choose taxation under PAYE instead. This option will apply to remote employees as it enables employers and employees to agree the appropriate treatment for their circumstances.

Officials recognise that, in some cases, the imposition of FBT and ESCT may factor into the decision to undertake remote work from New Zealand. Nevertheless, the rule is required to support fairness between employees of New Zealand employers and non-resident employers and maintain the tax base. It is not appropriate to apply different treatments to elements of remuneration depending on whether the employer is sufficiently present in New Zealand.

The proposed measure is intended to clarify who has the final liability for FBT or ESCT if it is not met by an employer. Officials accept that some employers may not choose to assist an employee, particularly where the move to New Zealand is due to the employee's personal choice. However, an employer who does not wish the employee to assume the compliance burden or tax cost may voluntarily register as an employer for New Zealand employment-related tax purposes or make alternative arrangements to support the employee.

Officials acknowledge that employer contributions to foreign superannuation schemes can be a valuable element of an employee's total remuneration and that the employee may need to ask the employer to confirm the amount contributed each income year. However, a meaningful de minimis that applies to employer contributions to foreign superannuation schemes is not possible. A meaningful de minimis would create a significant gap between the treatment of non-resident employers (who do not have a sufficient presence in New Zealand) and their employees, and New Zealand employers and employees.

Officials intend that guidance will be published to clarify how the taxable benefits and employer superannuation contributions to foreign schemes should be captured and reported under IR 56 arrangements.

Recommendation

That the submissions be declined.

Issue: Employee compliance with FBT and ESCT obligations

(Corporate Taxpayers Group, Deloitte)

Under the proposal to transfer fringe benefit tax and employer superannuation contribution tax obligations to an employee where their employer does not have a PAYE obligation, the employee will bear a high compliance burden and may struggle to obtain the information necessary to calculate the tax due. The tax was designed to be borne by employers.

Comment

Officials agree that the proposal will impose a compliance burden on the employee and that, in some cases, information may be difficult to obtain.

Point of difference

Officials propose that a taxable benefit de minimis of \$2,500 per income year be introduced

for remote employees who directly manage their New Zealand employment-related tax obligations. The de minimis would mean that an employee would not have to report or pay tax on non-cash benefits if their total taxable benefits per income year was \$2,500 or less. This proposed remote worker de minimis would recognise that, in these circumstances, the employee would bear the tax cost and compliance burden. Where fringe benefits are provided in excess of this de minimis amount, the benefits would be taxed in accordance with the ordinary rules for non-cash benefits. Officials note that a de minimis of \$1,200 already applies to unclassified benefits under current law.

Recommendation

That the submission be accepted, subject to officials' comments.

Clauses 17, 93, 94, 142 and 181

Issue: Drafting changes required

Submission

(Deloitte)

As the legislation is currently drafted, it is not clear that the employee must calculate the fringe benefit tax that would have been payable by the employer and then add that calculated amount to the overall amount due by the employee. There is also no mechanism to collect the tax from the employee as there does not appear to be a provision that treats this as income of the employee. The draft legislation should be amended to mitigate these issues and avoid confusion.

Comment

Officials agree.

Recommendation

That the submission be accepted.

Clauses 164 and 169

Issue: Minor drafting amendments required to safe harbour provision

Submission

(Corporate Taxpayers Group)

The wording of proposed new sections 120B(bc) and 141ED(1B) should be redrafted, as a non-resident employer wanting to rely on the safe harbour will not have paid any employment-related taxes in New Zealand. Further, proposed new section 141ED(1B) is sufficient, and therefore section 141ED(3)(c) is not required and should be deleted.

Comment

Officials agree that a non-resident employer who wishes to rely on the safe harbour will not have paid any employment-related taxes in New Zealand and that proposed new section 141ED(3)(c) is unnecessary. The draft legislation should be amended in line with the submitter's suggestions.

Recommendation

That the submission be accepted.

Clauses 16, 17, 93, 94, 98(5), 142, 164, 169 and 181(1)

Issue: Post implementation review recommended

Submission

(Matter raised by officials)

When interpreting legislation, there is a presumption that legislation expressed in general terms has a territorial limitation. Work undertaken by the Tax Counsel Office (TCO) found that New Zealand's employment-related tax rules for withholding, paying and reporting employment-related taxes were subject to that limitation. In practice, however, both the territorial approach and the universal (extra-territorial) approach were being applied to the rules. This resulted in an inconsistent treatment.

TCO's finding was operationalised in Operational Statement 21/04 *Non-resident employers' obligations to deduct PAYE, FBT and ESCT in cross-border employment situations*, which states that the PAYE rules are intended to apply to New Zealand residents or matters over which New Zealand has jurisdiction. This has been interpreted by the courts as meaning that a non-resident may make themselves subject to New Zealand law (including the PAYE rules) by having a sufficient presence in New Zealand. The nature and extent of the required presence may vary depending on the facts in each case.

As employer-paid taxes, fringe benefit tax (FBT) and employer superannuation contribution tax (ESCT) could not apply if a non-resident employer did not have a sufficient presence in New Zealand. This meant that the taxation applied to an employee's remuneration package could differ depending on the tax residence and presence of their employer. This is not an acceptable outcome as it gives rise to fairness and integrity concerns. The integrity measures proposed in this Bill aim to remedy the FBT and ESCT position, while still retaining a degree of flexibility that allows for remote working arrangements, particularly as future working patterns are unclear.

Officials are aware of concerns with the clarity and application of the sufficient presence test and the potential for the proposed FBT and ESCT integrity measure to impose a high compliance burden on the employee. We recommend that a post-implementation review is undertaken in two to five years. If the rules are not working as intended, cause continued practical difficulties or unintended consequences, or give rise to abuse, then consultation with a view to a legislative remedy would be appropriate.

Recommendation

That the submission be accepted.

Issue: Late filing and payment penalties should not apply when safe harbour available

Submission

(Matter raised by officials)

The proposed safe harbour is intended to protect an employer from penalties and interest when they incorrectly conclude that they do not have New Zealand employment-related tax obligations. As currently drafted, the safe harbour does not protect the employer from late filing and payment penalties. The draft legislation should be amended to ensure these penalties do not apply where the employer falls within the conditions of the safe harbour. This change would align the legislation with the policy intent.

Recommendation

That the submission be accepted.

NRCT REFORMS

Clauses 90, 92, 143, 144, 145, 170, 182

Issue: Support for NRCT reforms

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Financial Services Council NZ, Mayne Wetherell)

General support for the overall direction of the reform.

Recommendation

That the submission be noted.

Issue: NRCT reforms do not support efficient recovery processes for overpaid NRCT

Submission

(EY)

The NRCT rules predominantly result in over-withholding and the proposals do not enable simple and timely return of overpaid NRCT. This should be a priority for the reforms.

Comment

Officials acknowledge the concern raised by the submitter. The overall direction of the proposals is to reduce the number of situations in which over-withholding results from a strict application of the rules and to better enable systems and processes that support the administration of the tax. Some of these changes will be operational rather than legislative. Officials agree that further consultation is required with respect to some proposals (see ["Issue: Adoption of a "single payer" view of thresholds"](#) and ["Issue: Oppose introduction of reporting requirement"](#) below).

Recommendation

That the submission be noted.

FLEXIBLE NRCT PAYMENT ARRANGEMENTS

Clause 145

Issue: 60-day grace period for NRCT payments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

- a. Submitters generally support the introduction of a grace period for NRCT payments.
- b. The period should be increased to 120 days. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)*
- c. The grace period should start from the date the taxpayer becomes aware of the breach, or there should be an ability to agree with Inland Revenue to extend the grace period for circumstances outside the control or knowledge of the taxpayer. *(Corporate Taxpayers Group)*
- d. Guidance should be released about what constitutes the “reasonable measures” payers must take to be eligible for the grace period. *(Corporate Taxpayers Group)*
- e. It was noted that the application date was driven by Inland Revenue system constraints. *(KPMG)*

Comment

- a. Officials welcome the general support for the grace period, which is intended to work in a similar way to the grace period for employers of cross-border employees.
- b. Officials’ view is that the grace period is concessionary and that it should only be available in limited circumstances. As such, officials do not intend to increase the grace period beyond 60 days.
- c. Officials do not agree that the grace period should only start when the payer becomes aware of the need to meet or correct a tax obligation, as this may be after the time when the breach of a withholding threshold or exemption occurred. Whether the grace period should be available to payers in particular cases where the payer lacked knowledge or control is a matter for Inland Revenue’s operational discretion. Where the grace period is not available, the payer may make a voluntary disclosure to meet or correct their tax obligations.
- d. The grace period acknowledges that payers and non-resident contractors are not in the same compliance circumstances as domestic payers and contractors. It is therefore appropriate to relax the strict application of the PAYE rules, which provide for the collection of tax from non-resident contractors, to enable payers to comply with New Zealand tax rules more easily.

Payers are expected to manage their tax obligations. The grace period is intended to recognise that, due to the complexity of cross-border arrangements, payers may not

be able to comply with the strict application of the NRCT rules, despite their best efforts to do so. "Reasonable measures" are important in this landscape as they are indicative that the payer has a system or process for discharging its tax obligations, even if from time to time errors, mistakes or failures occur. A payer who does not take reasonable measures to discharge its obligations should not be able to benefit from the grace period and should be required to comply with the strict rules.

Officials agree that providing guidance on how the grace period will work in practice and what "reasonable measures" means is appropriate. Inland Revenue intends this guidance to be developed and released before the grace period comes into effect on 1 April 2024.

- e. Officials' view is that a delayed introduction for the grace period allows time for the development of systems and guidance and provides businesses with time to adapt.

Recommendation

- a. That the submission be noted.
- b. That the submission be declined.
- c. That the submission be declined.
- d. That the submission be accepted.
- e. That the submission be noted.

Clause 170

Issue: Nominated taxpayer approach

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

- a. The submitters support the principle of allowing a nominated taxpayer to meet a non-resident contractor's New Zealand tax obligations and provide a compliance history to obtain an extension.
- b. The nominated person should not be made jointly and severally liable for the tax obligations of the non-resident contractor. *(Chartered Accountants Australia and New Zealand)*
- c. The proposed wording will limit the ability to rely on the compliance history to the nominated taxpayer approach. This should also be open to situations where an associated non-resident taxpayer has a good compliance history. *(Corporate Taxpayers Group)*

Comment

- a. Officials acknowledge the submitters' support of the proposal.

- b. While officials acknowledge that joint and several liability could deter some businesses and contractors from making use of this ability, officials do not recommend removal of the joint and several liability condition. Whether to make use of the ability is a commercial decision. To administer the rules and permit reliance on the good compliance history of another taxpayer, Inland Revenue must be able to have recourse for any tax due or owed. Joint and several liability provides certainty that any tax owing will be paid and is a necessary protection for the integrity of the tax base.
- c. Officials agree that where a non-resident contractor is associated with another non-resident contractor, they should be able to use the compliance history of the associated contractor to obtain a certificate of exemption.

Recommendation

- a. That the submission be noted.
- b. That the submission be declined.
- c. That the submission be accepted.

Issue: Nominated taxpayer approach drafting clarification

Submission

(Matter raised by officials)

The nominated taxpayer approach is intended to enable non-resident contractors to comply with their New Zealand tax obligations more easily. As currently drafted, the proposed provision is too narrow to achieve the policy intent as it restricts the ability to nominate to employment-related tax obligations, including schedular payments. Under the existing nominated person provision, the person is required to specify the relevant tax types or social policy entitlements and obligations that will determine the scope of the nomination. The proposed provision should be amended to remove the restriction and allow the person to specify.

Recommendation

That the submission be accepted.

SCHEDULAR PAYMENTS TO NON-RESIDENT CONTRACTORS – WITHHOLDING THRESHOLDS

Clause 90

Issue: Adoption of a “single payer” view of thresholds

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Financial Services Council NZ, Mayne Wetherell)

Submitters support the proposal to adopt a “single payer” view, but some submitters also raised several concerns:

- The current monetary threshold is too low. *(PwC)*
- The monetary threshold should be increased to \$25,000. *(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)*
- The monetary threshold should be increased to at least \$50,000. *(Corporate Taxpayers Group)*
- Weekends and holidays should be excluded from the 92-day test. Alternatively, the wording of proposed section RD 8(5) should be clarified, or guidance provided, to avoid confusion about which days count toward the 92 days. *(Corporate Taxpayers Group)*

Comment

Officials are aware of the concerns raised about the nature and extent of the proposed NRCT reporting requirement (see [“Issue: Oppose introduction of reporting requirement”](#) below). The “single payer” view was based on the provision of information to Inland Revenue that would better enable Inland Revenue to monitor and enforce the regime. Officials’ view is that progress on this issue is tied to a wider reform of NRCT, particularly NRCT reporting, and this requires further consideration and consultation. We have recommended that the NRCT reporting requirements, and the proposed changes to the “single payer view”, be removed from this Bill and reintroduced in a later tax Bill following further consideration.

Recommendation

That the submissions be noted.

REPORTING REQUIREMENT FOR PAYERS OF NRCT

Clauses 143 and 182

Issue: Oppose introduction of reporting requirement

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, Financial Services Council NZ, KPMG, Mayne Wetherell, Olivershaw Limited, PwC)

Submitters oppose the introduction of a reporting requirement for payers of NRCT.

Submitters raised several concerns with the proposal, including:

- The purpose of the information requirements is not clear, and they would be extensive and do not accord with the stated aim of supporting the "single payer" view. *(Deloitte, Mayne Wetherell)*
- The information requirements would be onerous, impractical and increase compliance costs. *(Corporate Taxpayers Group, Financial Services Council NZ, KPMG, Mayne Wetherell)*
- The information requirements are out of balance with the purpose of supporting the "single payer" view or the cost of compliance. *(Chartered Accountants Australia and New Zealand, EY, PwC)*
- The information requirements are too broad and would capture payments that are exempt from tax. *(Financial Services Council NZ, Mayne Wetherell, Olivershaw Limited, PwC)*
- The work involved in reporting would likely have a high manual component and would involve systems changes, which would increase the compliance cost. *(Financial Services Council NZ, Olivershaw Limited)*

Submitters considered that if the proposal were to proceed:

- It should not proceed in its current form. *(Mayne Wetherell)*
- Further consultation should be undertaken. *(Deloitte, EY, Mayne Wetherell)*
- The frequency of reporting should be reduced. *(Corporate Taxpayers Group, Deloitte, Financial Services Council NZ, KPMG)*
- The amount of information required should be reduced. *(Corporate Taxpayers Group, Deloitte, PwC)*
- These requirements should not be included in legislation. *(Corporate Taxpayers Group, Olivershaw Limited)*
- The requirements should provide flexibility to allow for circumstances where information is not available or is impracticable to obtain. *(EY)*

In addition, submitters offered comments on the drafting of the provisions. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, PwC)*

Comment

NRCT is administered under the PAYE rules. However, by its nature, it is more complex than employment-related PAYE, as NRCT applies to the performance of services, and the supply of personal property or services by other persons. The purpose of this regime was to enhance the integrity of the New Zealand tax base and reduce “flight risk”: non-resident contractors who depart New Zealand having completed their contractual obligations but without discharging any associated tax obligations. Inland Revenue has limited visibility of the regime, which reduces the effectiveness of the tax administration. As such, there is merit in requiring reporting from payers of NRCT as it could enable Inland Revenue to police the rules more effectively.

However, officials understand that the current proposal would increase compliance costs and is not well targeted. We acknowledge that the requirements proposed in the Bill are broad. Consultation with submitters identified several practical difficulties, including issues concerning the apportionment of payments and the timing of reporting. Officials formed the view that taxpayers could not comply with the rules without significant system changes. We agree that further consultation and consideration of the proposal is required. Accordingly, we recommend removing the proposal from the Bill for further work.

Recommendation

That the submission be accepted.

EXEMPTIONS FOR WITHHOLDING NRCT

Clause 144

Issue: Enabling NRCT exemptions to have retroactive effect

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Financial Services Council NZ)

- a. Submitters support the proposal to enable exemptions from withholding NRCT to have retroactive effect.
- b. The retroactive period should not be limited to 92 days.

Comment

- a. Officials acknowledge the support for the proposal.
- b. Officials acknowledge that where a non-resident contractor has sought, and obtained, an exemption from withholding, Inland Revenue is satisfied there is little or no risk to the tax base. Accordingly, we think that some period of retroactive effect is sensible. Officials are concerned that further expanding the retroactive period would reduce the incentive to apply for an exemption or conflate the exemption and tax return functions. Officials think that 92 days is sufficient to enable a contractor to obtain an exemption that covers the relevant contract payments on a timely basis.

Recommendation

- a. That the submission be noted.
- b. That the submission be declined.

Issue: Non-residents registered for GST should be exempt from NRCT withholding

Submission

(Corporate Taxpayers Group, Olivershaw Limited)

Any non-resident registered for New Zealand GST should be exempt from NRCT. This is on the basis that payers might not realise the contractor is non-resident and that the non-residents are likely to be fully compliant with their New Zealand tax obligations.

Comment

Officials disagree. In our view, it is open to a GST-registered non-resident contractor to obtain an exemption under normal processes. Exemptions can be obtained based on a good compliance history. GST registration is only part of that picture. Further, GST registration is

not indicative of tax residence or presence in New Zealand and the reason for registration may be to reclaim input tax. As such, GST registration does not necessarily signify the kind of connection with the New Zealand tax system that would reduce the integrity risks that NRCT seeks to address.

Recommendation

That the submission be declined.

Issue: Repeal of the NRCT bond

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Submitters support the repeal of the NRCT bond.

Recommendation

That the submission be noted.

EMPLOYER CONTRIBUTIONS TO FOREIGN SUPERANNUATION SCHEMES

Clauses 25, 26, 89, 181(2) and (3)

Issue: Ability to tax under PAYE rather than FBT

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, PwC)

- a. Submitters support the ability to tax employer contributions to foreign superannuation schemes under PAYE rather than fringe benefit tax (FBT).
- b. The change should be clearly communicated to ensure that contributions are correctly accounted for by employers. *(Chartered Accountants Australia and New Zealand)*
- c. In line with the overall policy of allowing employers of cross-border employees greater flexibility, the change should be made optional. *(Corporate Taxpayers Group, Deloitte, KPMG)*
- d. The deduction obligation should remain with the employer where possible. *(KPMG)*
- e. Submitters noted that the employee would bear the tax cost of PAYE tax treatment, unless the contribution is grossed up for tax. *(Chartered Accountants Australia and New Zealand, KPMG, PwC)* Guidance should be published to ensure employers understand that unless the contribution is grossed up for tax the employee's take home pay will be reduced. *(Chartered Accountants Australia and New Zealand)*

Comment

- a. Officials acknowledge the support for the proposal.
- b. Officials agree that guidance is appropriate and intend that it will be made available before the change comes into effect.
- c. Officials also agree that employers should have the option of remaining taxed under the FBT regime on their employer contributions to foreign superannuation schemes if this is most appropriate for them and their employees.
- d. The proposal is intended to enable greater flexibility in how the tax obligation is met. The ability to tax employer contributions to foreign superannuation schemes was sought by taxpayers who wanted a lower compliance option for accounting for the tax. Employers may choose the most appropriate option for their circumstances.
- e. Officials acknowledge the concern expressed about the potential impact of the proposal on employees. We are of the view that employer contributions to a foreign superannuation scheme should be subject to employer superannuation contribution tax (ESCT) in the first instance. ESCT is an employer-paid tax and means that employees will not bear the tax cost. Further, it enables the contribution to be excluded income

for certain purposes, such as entitlement to Working for Families. Under existing rules, an employer and employee may, in some circumstances, opt out of ESCT and choose taxation under PAYE instead.

Recommendation

- a. That the submission be noted.
- b. That the submission be accepted.
- c. That the submission be accepted.
- d. That the submission be noted.
- e. That the submission be noted.

FBT OBLIGATIONS AND “TRAILING PAYMENTS”

Clause 28

Issue: Support for the proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Support for the remedial change to clarify the circumstances in which a fringe benefit tax liability could arise after an employee has ceased to live or work in New Zealand.

Recommendation

That the submission be noted.

CLARIFYING THE STATUS OF NON-RESIDENT ENTERTAINERS

Clause 98(11)

Issue: Support for the proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The submitters support the proposed clarification.

Recommendation

That the submission be noted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Dual resident companies

DUAL RESIDENT COMPANIES – LOSS GROUPING, CONSOLIDATION, AND IMPUTATION CREDIT RULES

Clauses 63, 64, 77, 78, 79, 81, 83, 98(2) and (9)

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

Submitters support the proposed amendments.

The proposed amendments will also be welcomed by New Zealand companies who have become dual resident because of changes to Australia's company tax residency rules. The proposals will alleviate the adverse consequences and provide certainty. *(Chartered Accountants Australia and New Zealand)*

Recommendation

That the submission be noted.

Issue: Proposed ICA rules should be extended beyond Australia

Submission

(KPMG)

The ability to retain imputation credit account (ICA) company status for a dual resident New Zealand company should not be limited solely to companies that become Australian tax resident. There is no justifiable policy reason for limiting the retention of ICA company status to when a company tie-breaks its residence to Australia.

Comment

Currently, Australian resident companies can elect to maintain an ICA (known as an Australian ICA company). However, if this election is not made in time, it may forfeit any accumulated imputation credits at the point of becoming an Australian ICA company.

The proposed amendments would enable a New Zealand resident company to automatically become an Australian ICA company at the point it becomes a dual resident company with Australia (that is, without having to make an election) and would prevent forfeiture of any accumulated imputation credits. This is particularly important if the company has inadvertently become Australian tax resident and has not made an election to be an Australian ICA company.

Only New Zealand and Australian resident companies can maintain an ICA. Expanding the proposed amendments beyond Australian ICA companies would represent a significant change to the overall imputation credit regime and would require substantial further policy analysis. Further work on this matter would require prioritising and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Dual resident companies that are look-through companies

Submission

(New Zealand Law Society)

The Bill proposes reforms to the income tax treatment of dual resident companies that are affected by changes to the interpretation of Australia's corporate tax residence rules. However, these changes do not extend to look-through companies. Consideration should be given to amending the residence qualification criteria in the definition of "look-through company".

Comment

The existing eligibility criteria for the look-through company regime excludes companies that are resident in another jurisdiction under a double tax agreement. The current interpretation of Australia's corporate residence rules by the Australian Tax Office means certain New Zealand resident look-through companies may inadvertently become dual resident with Australia and, consequently, no longer eligible for the look-through company regime.

The previous Australian Government announced that it intended to introduce retrospective legislation to effectively return to the original interpretation of the Australian corporate tax residence rules. Therefore, this issue will be resolved if, as expected, Australia enacts legislation with retrospective effect to revert to the prior corporate tax residence interpretation. If Australia does not enact retrospective legislation, officials will reconsider the residence qualification criteria for several rules, including those for look-through companies.

Recommendation

That the submission be declined.

Issue: Additional guidance on hybrid mismatch rules

Submission

(KPMG)

Inland Revenue guidance on the application of the hybrid mismatch rules would be helpful, particularly as those rules will apply to loss offsets between group companies and structures involving tax consolidated groups.

Comment

Comprehensive guidance was provided by Inland Revenue in 2019 on the application of the then newly legislated hybrid and branch mismatch rules.⁴ This included guidance that addressed double deduction outcomes for dual resident companies (known as the dual resident payer rule). Given the scope of the current proposed amendments and the level of information already published, it is unclear whether more published guidance would be beneficial.

If taxpayers are concerned about their particular circumstances, these can be raised with the technical areas of Inland Revenue or certainty can be obtained by seeking a private ruling from Inland Revenue.

Recommendation

That the submission be declined.

Issue: Prioritisation of modernisation of New Zealand's corporate tax residence rules

Submission

(KPMG, PwC)

New Zealand's corporate tax residence rules have not kept pace with changes in modern day commercial, environmental and governance practices and a broader project should be undertaken as a matter of priority.

For example, foreign resident directors of New Zealand companies are currently required to physically attend board meetings in New Zealand to minimise the risk of a company being dual resident. This results in additional compliance costs.

Comment

The concerns raised by submitters reflect some of the challenges that arise where a company is dual resident and its residence tie-breaks to another country under a double tax agreement. The tie-breaker test in New Zealand's double tax agreements generally reflects

⁴ See *Tax Information Bulletin* Vol 31, No 3, April 2019.

the Organisation for Economic Co-operation and Development (OECD) model tax convention and related commentary. This test places significant importance on the physical location from where a company is effectively managed when determining a company's tax residence.

A global approach to corporate tax residence rules has several benefits. Companies that operate in multiple jurisdictions can benefit from a stable and relatively consistent application of rules, which lowers compliance costs. Countries also benefit by having consistent and robust tax residence rules that minimise opportunities for companies to attempt to take advantage of mismatches between different jurisdictions.

Consequently, amending New Zealand's corporate tax residence rules effectively would require change at a global level, which would then need to be incorporated into double tax agreements. Any change in approach needs to be led by the OECD, to which New Zealand would actively contribute.

Recommendation

That the submission be declined.

DUAL RESIDENT COMPANIES – INTEGRITY ISSUES WITH DOMESTIC DIVIDEND EXEMPTION

Clauses 10, 22, 85, 95 to 97, 98(7) and (8), 139(2) and 147

Issue: General support for the proposed amendments

Submission

(Corporate Taxpayers Group)

General support for the measures as introduced to help protect the integrity of the New Zealand tax base where taxpayers have sought to extract profits out of New Zealand without a withholding tax.

Recommendation

That the submission be noted.

Clauses 22 and 85

Issue: The two-year deferral period

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG)

The following submissions were made regarding the two-year deferral period:

- The two-year period proposed is too restrictive. *(Corporate Taxpayer's Group)*
- The two-year period should be extended. The proposed two-year period may not allow sufficient time to identify and remedy inadvertent and unintended DTA residence changes. As an alternative, the rules could allow for the two-year period to be extended at the Commissioner's discretion. *(KPMG)*
- The requirement that a recipient of a dividend will cease being a DTA non-resident company two years from the date on which it derived the dividend should be two years from the date of being determined to be a DTA non-resident by a competent authority. This addresses the situation where there has been an inadvertent change of residence that is either not discovered or unable to be rectified within the required two-year period from the date of the payment of the dividend. The determination of DTA non-resident status by competent authorities provides the prompt to the taxpayer to either rectify its residence or accept the NRWT cost. *(Chartered Accountants Australia and New Zealand, Deloitte)*
- If a two-year period is to apply, then it should apply from the date of assessment of the NRWT. This would mean that, once the NRWT liability is assessed, the taxpayer is given

a period to either accept that NRWT cost or rectify their residence status. (*Corporate Taxpayers Group*)

Comment

Officials disagree. The two-year period in the proposed rules is to provide sufficient time for a company to work through the administrative processes to confirm its tax residence. Changing the period to commence only after receipt of a competent authority residence determination would significantly defer the time between when the dividend is paid and an NRWT liability is imposed. This could give rise to new integrity concerns.

Officials note that the competent authority residence determination would be obtained by a different entity to the dividend payer. While the dividend payer and recipient would be in the same wholly-owned group of companies at the time of payment, it is not clear that the dividend payer would be informed of the residence determination. This is particularly true if the two companies are no longer commonly owned.

Without undertaking an analysis of the residence of the dividend recipient, taxpayers are likely to apply the rules as if the dividend recipient is a New Zealand DTA resident, and they would therefore not withhold any NRWT. Any NRWT assessment would likely arise in situations where there is a subsequent review or audit of the taxpayer group in a future period. If this occurs, it could be several years after the dividend was paid. To apply the two-year period from this later date would create unnecessary complexity and not address the integrity concerns identified.

Recommendation

That the submissions be declined.

Clauses 22, 85 and 95

Issue: NRWT liability when a DTA non-resident has on-paid the dividend

Submission

(*Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte*)

The proposed rules will apply in situations where a DTA non-resident on-pays a dividend. NRWT should only apply to the extent the dividend has been on-paid and New Zealand has lost its taxing rights. Dividends should continue to qualify for the domestic dividend exemption when the on-paid dividend has been imputed or subject to NRWT.

Comment

Officials agree that the integrity risk reflects the inability to collect NRWT on dividends paid overseas by a DTA non-resident. This approach is reflected in the proposals, which contain several exclusions to the proposed changes. Where a fully imputed dividend is paid offshore by a New Zealand resident company, New Zealand would generally not obtain the benefit of

NRWT. In this case, it would not be appropriate for NRWT to be imposed on the dividend paid to the DTA non-resident company to the extent it has on-paid a fully imputed dividend during the two-year NRWT deferral period (as the paying company's status as a DTA non-resident does not reduce the tax New Zealand would otherwise have collected on the dividend). Thus, officials agree that NRWT should not be imposed to the extent any dividend on-paid by the DTA non-resident company within the two-year deferral period is fully imputed.

Point of difference

However, a different approach should apply to situations where the DTA non-resident company has on-paid the dividend and withheld NRWT. This is on the basis that the DTA non-resident company can subsequently request that the Commissioner correct its NRWT return and obtain a refund of any NRWT incorrectly withheld. This may mean that the integrity risk has not been addressed. Therefore, officials consider such situations should stay within the scope of the proposed changes.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Proposal should be simplified

Submission

(EY)

The current proposals are too complex and should be simplified.

A simpler approach would be to provide a blanket two-year concessionary period from when a company first becomes a DTA non-resident company. Any dividends paid to it by a company in the same wholly-owned group during this two-year period would continue to qualify for the domestic dividend exemption. A company would only be able to rely on the two-year concessionary period once. After the two-year concessionary period, companies should be required to withhold NRWT unless one of the exclusions to the proposed changes apply.

Comment

Officials disagree. Providing a blanket two-year exemption from the proposed changes would create tax planning opportunities and significantly undermine the integrity benefits of these changes.

The submitter's proposal would also introduce uncertainty, as it may be unclear when the two-year period commences (that is, when a company becomes DTA non-resident).

Recommendation

That the submission be declined.

Issue: Retrospective competent authority approval should be available

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Taxpayers that pay a dividend to a company that is later determined to be DTA non-resident should be able to make a retrospective application to the competent authority for an exemption from NRWT under the relevant DTA.

Comment

The process for obtaining competent authority approval that a dividend is exempt under the relevant DTA is a prospective one. Retrospective applications are not currently accepted, and officials do not believe this should be changed.

However, if taxpayers are concerned that the dividend recipient may be DTA non-resident, they would be entitled to make a prospective application to the competent authority in anticipation of that dividend.

Recommendation

That the submission be declined.

Clause 84

Issue: Retrospective imputation credits attachment to paid dividends

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

Retrospective imputation credit attachment to paid dividends should be available provided imputation credits were available in the imputation year that the dividend was paid.

Comment

Officials agree. There is precedent for allowing retrospective imputation credit attachment to dividends in a small number of situations. Given that it may not be considered necessary to attach imputation credits until such time as it is known that the dividend recipient is DTA non-resident, officials consider it would be appropriate to allow retrospective imputation credit attachment in this case.

Recommendation

That the submission be accepted.

Issue: Guidance is required

Submission

(Corporate Taxpayers Group)

Guidance should be issued on how payers of dividends should navigate their own withholding tax obligations when paying to shareholders who are New Zealand incorporated companies.

Guidance should also be provided on how a taxpayer can correct their tax return where they have incorrectly returned RWT or incorrect imputation credits where NRWT should have been withheld instead.

Comment

Officials will provide guidance on the operation of the rules as part of a *Tax Information Bulletin* published following enactment of the proposed changes. It is noted that Inland Revenue already has information available to taxpayers on the process to amend incorrect returns.⁵

Recommendation

That the submission be accepted.

Issue: Administrative and compliance costs

Submission

(PwC)

Further consideration should be given to mitigating the administrative and compliance costs of the proposed amendments. The proposed integrity measures may result in significant compliance costs for affected companies, and additional administration costs for Inland Revenue and overseas jurisdictions' revenue authorities. This includes New Zealand companies needing to confirm their tax residence by way of a competent authority determination before paying a material dividend.

Comment

Officials disagree. The proposed changes include several exclusions to prevent their application to situations that do not involve an identified integrity risk. These exclusions limit the situations where companies will need to seek confirmation of the dividend recipient's tax residence. In addition, in "[Issue: Exclusion for dividends paid to Australia/New Zealand dual resident companies](#)" below, officials propose an additional exclusion that would apply where the dividend recipient is dual resident in Australia and New Zealand. This would apply to

⁵ See <https://www.ird.govt.nz/updates/news-folder/amending-returns>.

most cases involving dual resident companies and should further reduce the compliance and administration costs of the proposed changes.

Recommendation

That the submission be declined.

Clause 22

Issue: Exclusion for dividends paid to Australia/New Zealand dual resident companies

Submission

(Matter raised by officials)

The reason for the proposed changes to the domestic dividend exemption is to address identified integrity risks around NRWT and DTA non-resident companies. In the case of companies that are dual resident in Australia and New Zealand, the ability for New Zealand to impose NRWT on any on-paid dividend by a DTA non-resident company is preserved under the Australia/New Zealand DTA. Therefore, dividends paid to a DTA non-resident company that is resident in Australia are unlikely to give rise to an integrity risk of the kind that the proposed changes seek to address.

For this reason, officials recommend that an additional exclusion should be added to the proposed changes to exclude dividends paid to companies that are dual resident in Australia and New Zealand. Given that the majority of potentially in-scope dual resident companies are resident in Australia, this exclusion would significantly reduce the potential application of the proposed changes (while maintaining the integrity benefits), resulting in significantly lower compliance and administration costs.

Recommendation

That the submission be accepted.

Clause 85

Issue: Payment date requirements

Submission

(Matter raised by officials)

A dividend paid to a DTA non-resident company is proposed to arise two years after the date on which the dividend is actually paid. Proposed section RA 6(5) of the Income Tax Act 2007 modifies the payment date requirement for certain provisions where a dividend is paid to a DTA non-resident.

Proposed section RA 6(5) should also refer to section RA 15 (which provides for the date for

payment of NRWT) and sections OB 9 and OB 30 (dealing with the credit and debit dates respectively to an imputation credit account (ICA) for imputation credits attached to dividends).

These changes would ensure that NRWT is only payable following the DRCD deferral date and not when the dividend is actually paid, as well as ensure that credits and debits to a company's ICA occur on the DRCD deferral date.

Recommendation

That the submission be accepted.

DUAL RESIDENT COMPANIES – INTEGRITY ISSUES WITH CORPORATE MIGRATION RULES

Clauses 11, 13, 15, 47, 60 to 62, 84, 87, 98(19), 146 and 148

Issue: Qualified support for proposals

Submission

(Corporate Taxpayers Group, Deloitte)

Submitter supports these proposals where they protect the integrity of the New Zealand tax base. However, the submitter does not support the proposals applying where a taxpayer has not sought to extract profits out of New Zealand. *(Corporate Taxpayers Group)*

The submitter recognises the situation that officials are seeking to address with these proposals and appreciates the acknowledgement to date of the need for taxpayers to be able to rectify a situation where they inadvertently become DTA non-resident as opposed to planning to take advantage of the DTA relief available. However, the proposals as introduced in the Bill are still far too broad in their application. *(Deloitte)*

Comment

Officials welcome the support to address the identified risks and note the concerns about the rules applying too broadly. Officials note the recommendations to accept several submissions in the issues discussed below to reduce the potential overreach of the rules.

Recommendation

That the submission be noted.

Issue: Opposition to the proposed amendments

Submission

(EY, Olivershaw Limited)

The proposal should not proceed. The proposed rules will result in outcomes that are unreasonably punitive and potentially go beyond what was intended. If the proposal proceeds, then further amendments are needed to improve the proposal.

Comment

Officials consider that the proposed changes are required to address clear integrity risks. However, as noted in the discussion of other issues below, improvements can be made to the proposed changes to limit their application to inadvertent tax residence changes and reduce compliance and administration costs.

Recommendation

That the submission be declined.

Clause 62

Issue: Application of the proposed rules should be limited

Submission

(EY)

The proposed rules should only apply in the event a tie-broken company loses New Zealand domestic tax residency.

If a time limitation to account for difficulties accessing historical information is required, additional record-keeping requirements should be introduced for tie-broken companies instead. Alternatively, any time limit should be set at seven years, consistent with current record-keeping requirements.

Comment

The submitter's recommended change would simply replicate the scope of the existing corporate migration rules. This would not remedy the integrity risks with the existing rules that the proposed changes seek to address.

Recommendation

That the submission be declined.

Clause 62

Issue: Triggering events for application of the rules should be amended

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, KPMG)

The fact a company derives income that is eligible for DTA relief should not trigger the corporate migration rules.

A deemed migration should not occur until the taxpayer has taken a position that it is a DTA non-resident company and availed itself of relief under a DTA. The primary determination should be the tax returns filed by the taxpayer. If the competent authorities later determine those returns are incorrect and the DTA residence is different from the position taken, that later determination should be the trigger point. (Chartered Accountants Australia and New Zealand)

The deemed migration (and associated tax and NRWT liability) should be triggered either when the taxpayer avails itself of relief under a DTA as a DTA non-resident company, or two years after a competent authority has determined the taxpayer is a DTA non-resident company. (*Corporate Taxpayers Group*)

Comment

The proposed changes include several events that trigger the application of the corporate migration rules. These have been designed to prevent leakage from the tax base. Following engagement with stakeholders and in discussion with the Finance and Expenditure Committee's independent advisor, officials acknowledge the concerns that the application of the corporate migration rules would have a significant impact on taxpayers. A better balance could be achieved to prevent the corporate migration rules from applying where taxpayers have continued to apply the tax rules in the belief they are not DTA non-resident.

There is unlikely to be any reduction in the New Zealand tax base where a company does not actually claim relief from New Zealand taxation based on being DTA non-resident. This is particularly true for companies where it is believed they are New Zealand tax resident under a DTA.

The submissions recommend that the proposed changes be amended so that the corporate migration rules would only have practical effect on the earlier of:

- a company claiming tax relief under a DTA on the basis it is DTA non-resident, or
- two years following the company receiving a competent authority determination that it is tax resident in another jurisdiction, but only if the company has not changed its residence back to New Zealand under the relevant DTA during that two-year period.

This approach focusses on cases involving actual manipulation of tax residence and would not apply to companies that inadvertently become DTA non-resident. Officials agree that it has the benefit of significantly reducing the risk of overreach of the proposed changes and would reduce compliance and administration costs.

To ensure the tax base is protected in these two events, it is proposed that the tax liability will still be triggered immediately before the DTA migration (as otherwise New Zealand would lose its ability to tax the company). However, any income arising from the rules would be allocated to the income year in which the triggering event occurs.

Recommendation

That the submission be accepted.

Clause 62

Issue: Change tax residence rules or provide a two-year grace period

Submission

(Olivershaw Limited)

The tax resident status should be changed to be based purely on whether the company is incorporated in New Zealand (as is the case in the United States) and therefore the deemed migration cannot occur. Alternatively, the rules should provide a two-year grace period from when the company or revenue authority treats the company as being a non-resident.

Comment

The current corporate migration rules apply when a New Zealand company ceases being resident under the domestic tax residence test. These rules already apply in situations where a New Zealand incorporated company migrates its incorporation to another country, assuming none of the other domestic tax residence criteria apply to that company. However, the change proposed by the submitter would not address the integrity risks that the proposed changes to the corporate migration rules seek to address. This is the risk of the company remaining New Zealand resident under our domestic law but becoming a non-resident under a relevant DTA, with the effect that New Zealand loses most of its taxing rights over that company.

A two-year grace period would provide opportunities for companies to derive untaxed-revenue and extract amounts from New Zealand with no income tax consequences. This would also not address the integrity risks identified.

Recommendation

That the submission be declined.

Clause 84

Issue: Retrospective attachment of imputation credits

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

A taxpayer should be able to retrospectively impute the deemed dividend arising on the migration to the extent imputation credits exist at the time of the migration.

Some submitters noted that retrospective imputation credit attachment should be available, based on the proposed changes in the Bill to section OB 62 of the Income Tax Act 2007.

(Chartered Accountants Australia and New Zealand, Deloitte)

Comment

The current corporate migration rules allow for the retrospective attachment of imputation credits to dividends that arise from the application of the rules. Officials agree this should be extended to the proposed changes to the corporate migration rules, and this is currently reflected in the proposed changes in the Bill to section OB 62.

Recommendation

That the submission be noted.

Issue: Retrospective competent authority approval

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

Any tax resulting from the deemed migration should be the same as if an actual migration occurs. A taxpayer should be able to apply for retrospective competent authority approval that a dividend qualifies for relief from New Zealand taxation under a DTA.

Comment

As noted in [“Issue: Retrospective competent authority approval should be available”](#) above, the process for obtaining competent authority approval that a dividend is exempt under the relevant DTA is a prospective one. Retrospective applications are not currently accepted, and officials do not believe this should change for the proposed changes.

However, the recommended changes to the triggering events for application of the corporate migration rules to DTA non-resident companies (see [“Issue: Triggering events for application of the rules should be amended”](#) above) will greatly reduce the situations where the rules apply to companies that migrate inadvertently.

Recommendation

That the submission be declined.

Clause 62

Issue: Company moves from DTA non-resident to DTA New Zealand resident

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The focus should solely be on amounts distributed while the company is DTA non-resident until that company returns to the New Zealand tax base. The deemed migration should therefore be based on the balance sheet at the time of migration adjusted for any net

assets/value at that date that remain on the balance sheet and have not been paid out as a dividend before New Zealand DTA residence is restored.

If New Zealand DTA residence is restored, the balance sheet remains in the New Zealand tax base to the extent it has not been distributed. As such, there should not be a need to restrict the ability to restore New Zealand DTA residence simply because the company derived non-New Zealand sourced profits that are subject to treaty relief while it was DTA non-resident.

There should also be a deemed disposal only of any assets that are not connected to a New Zealand permanent establishment at the date the company becomes DTA non-resident. To the extent that the assets disposed of are connected to a New Zealand permanent establishment, the assets should be rolled over into the tax base for the New Zealand permanent establishment of the DTA non-resident.

Comment

The recommended change by officials to the triggering events for application of the corporate migration rules to DTA non-resident companies (see [“Issue: Triggering events for application of the rules should be amended”](#) above) should significantly reduce the number of instances where a DTA non-resident company migrates back to New Zealand because of the corporate migration rules. This is because the rules will only have an impact if a deliberate decision has been made for a company to be a DTA non-resident company. In this case, it is unlikely that a company would want to shift its residence back to New Zealand under a DTA.

Officials also note that the current corporate migration rules do not provide special treatment for migrated companies that subsequently become New Zealand resident again.

Recommendation

That the submission be declined.

Clause 62

Issue: New Zealand resident companies that DTA tie-break to Australia

Submission

(KPMG)

While understanding the rationale for applying the corporate migration rules as an integrity measure, these rules should not apply where a company becomes DTA resident in Australia.

This is because of the ongoing uncertainty about the status of the proposed Australian law change to reset its domestic law corporate tax residence settings to the *pre-Bayswater* position.

Once enacted, the Australian law change is likely to result in what would currently be a dual resident company scenario (including one that could tie-break to Australia) no longer being

so, in which case the application of the corporate migration rules would cause overtaxation.

Comment

Officials disagree. We consider integrity risks remain if the corporate migration rules do not apply to scenarios involving companies that are dual resident in Australia and New Zealand, particularly with foreign-sourced income that could be relieved from taxation under the Australia/New Zealand DTA. The recommended changes by officials to the triggering events for application of the corporate migration rules to DTA non-resident companies (see [“Issue: Triggering events for application of the rules should be amended”](#) above) should significantly reduce the risk that the corporate migration rules will overtax companies.

Recommendation

That the submission be declined.

Clause 83

Issue: ICA changes should be extended to other jurisdictions

Submission

(KPMG)

Except for a company whose residence tie-breaks to Australia, and assuming the imputation credit account (ICA) proposal proceeds, imputation credits will be lost immediately where a company becomes DTA non-resident. As such, it appears possible that any dividend paid by a company (other than an Australian ICA company) while it is DTA non-resident is likely to be unimputed. This is a further reason to consider an extension of the ICA proposal to allow companies tie-breaking to jurisdictions other than Australia to retain their ICA balances.

Comment

Officials disagree. Any deemed dividend that would arise from the proposed changes would be treated as arising immediately before the company became DTA non-resident, which is immediately before a company would potentially lose its ICA balance. This means that imputation credits should be available for any deemed dividend arising from application of the rules.

As noted in [“Issue: Proposed ICA rules should be extended beyond Australia”](#) above, extending the ICA rules to companies that are resident in jurisdictions other than Australia and New Zealand is outside the scope of the proposed changes. Further work on this matter would require prioritising and resourcing as part of the Government’s tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Modernisation of New Zealand's corporate tax residence rules

Submission

(KPMG, PwC)

New Zealand's domestic corporate tax residence rules (as interpreted in the Commissioner's interpretation statement *IS 16/03 Tax residence*) have not kept pace with changes in the commercial and environmental context and should be reconsidered as a matter of priority. We appreciate, however, that this is likely to be beyond the scope of the current Bill. *(KPMG)*

A broader project should be undertaken to revisit the corporate tax residence rules as the rules do not align with modern day governance practices. In particular, modernising the rules to make better use of technological developments, particularly post COVID-19 and with the current concerns around the climate and environment issues, poses no specific risk to the integrity of the tax system. *(PwC)*

Comment

A broader review of New Zealand's corporate tax residence rules would require significant resources to be committed and is outside the scope of the current proposed changes. Such a review may also not provide any material benefit to dual resident scenarios, as the tie-breaker tests are part of existing DTAs and are not frequently, or easily, changed. A better approach would ultimately be for these issues to be considered at the OECD, which sets the model treaty most of our DTAs are based on.

Recommendation

That the submission be declined.

Issue: Guidance required on when a company is no longer New Zealand tax resident

Submission

(KPMG)

The changes generally require that taxpayers establish a date on which a company is no longer resident in NZ, either under domestic law or a DTA. In practice, determining a specific date is likely to be difficult and potentially arbitrary.

Inland Revenue should issue guidance on this aspect.

Comment

Inland Revenue has previously published an interpretation statement that provides guidance

on determining tax residence.⁶ Officials will consider if additional guidance is required.

Recommendation

That the submission be noted.

Issue: Administrative and compliance costs

Submission

(PwC)

Further consideration should be given to mitigating the administrative and compliance costs of the proposals.

Further, given the material tax liability that may arise if the corporate migration rules are triggered, annual confirmation that New Zealand tax residence has been maintained may be required for financial reporting purposes (to provide evidence that a material tax liability does not exist in relation to corporate tax residence). In light of this, the New Zealand tax consequences of dual residence and being tie-broken to the overseas jurisdiction could be significant.

Therefore, the proposed integrity measures may result in significant compliance costs for affected companies and additional administration costs for Inland Revenue and overseas jurisdictions' revenue authorities.

Comment

The recommended change by officials to the triggering events for application of the corporate migration rules to DTA non-resident companies (see ["Issue: Triggering events for application of the rules should be amended"](#) above) will significantly reduce the situations where the corporate migration rules could apply to DTA non-resident companies. If the recommendation is accepted, companies will only trigger the corporate migration rules where they deliberately choose to be DTA non-resident. This will have a beneficial impact on potential compliance and administration costs.

Recommendation

That the submission be noted.

⁶ See *IS 16/03 Tax residence* published in *Tax Information Bulletin* Vol 28, No 10 (October 2016): 36.

Issue: Clarify which shareholders deemed distribution made to

Submission

(Matter raised by officials)

The legislation should be clarified to confirm that the deemed distribution at the time the corporate migration rules apply is to the shareholders of the company immediately before becoming DTA non-resident. The lack of clarity arises because of the difference between when the dividend is treated as arising and when the income is allocated (that is, to a later period).

Recommendation

That the submission be accepted.

Issue: Update administrative provisions

Submission

(Matter raised by officials)

Due to differences in the timing of when dividend income is allocated under proposed section FL 3 compared to the current dividend rules, some of the existing administrative requirements are not currently workable. This is because the current administrative requirements would apply following the deemed payment of a dividend (that is, immediately before the company becoming DTA non-resident), rather than after the time the dividend income is allocated to shareholders under proposed section FL 3.

The relevant administrative requirements (that is, filing a non-resident withholding tax return, providing investment income information to the Commissioner, providing a shareholder dividend statement to shareholders, etc) in the Income Tax Act 2007 and Tax Administration Act 1994 should be amended so that they only apply at an appropriate interval after the relevant dividend income is allocated to shareholders under proposed section FL 3.

Recommendation

That the submission be accepted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

GST apportionment

GST APPORTIONMENT AND ADJUSTMENT RULES

Clauses 103(5) to (7), 105(5) to (8), (13) and (14), 113, 116(4), (6), (9) to (15), (17), (21), (23), (24), (27) to (29), 117 to 124, 136 and 156

Issue: Support for proposals

Submission

The following submissions of support for the various proposed changes to the GST apportionment and adjustment rules were received:

Submission	Submitter	Clause
General support for proposals		
Support the proposed changes to the GST apportionment and adjustment rules, which should reduce compliance costs for what is a complex area of law.	<i>Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited</i>	
Support the proposed amendments to the GST apportionment rules.	<i>Chartered Accountants Australia and New Zealand</i>	
Supports officials' intentions to reduce the complexity and compliance costs of the complex GST apportionment and adjustment rules.	<i>Deloitte</i>	
Support proposals to simplify apportionment rules. Many of the proposals strike a balance between accuracy and cost, which is welcome.	<i>EY</i>	
Supports the intention to reduce complexity and compliance costs in relation to GST apportionment and change-in-use adjustments.	<i>Financial Services Council NZ</i>	
Principal purpose test for goods and services acquired for \$10,000 or less		
Generally supportive of changes to introduce a principal purpose test for assets under \$10,000.	<i>Corporate Taxpayers Group</i>	116(9)
Support proposed amendment that will deny input tax deductions for goods or services acquired for \$10,000 or less where they are not acquired for the principal purpose of making taxable supplies. This should minimise compliance costs.	<i>Chartered Accountants Australia and New Zealand</i>	116(9)
Support the proposed introduction of new rules to allow a registered person to claim a full input tax deduction for a supply of goods and services acquired for \$10,000 or less	<i>Chartered Accountants Australia and New Zealand</i>	116(9)

Submission	Submitter	Clause
for the principal purpose of making taxable supplies as it should minimise compliance costs.		
Treating the sale of assets with mainly private or exempt use as an exempt supply		
The change to the rule to exclude a predominantly private asset from a taxable activity is a real simplification that will benefit the smallest New Zealand businesses.	<i>Chartered Accountants Australia and New Zealand</i>	113
Originally, GST was relatively simple to apply for mixed-use assets. If the asset was primarily used in the taxable activity, its sale was subject to GST. The original position should be restored for assets not primarily used in a taxable activity. This proposal achieves this.	<i>Cantin Consulting</i>	113
Welcome the proposed changes that allow taxpayers to elect to treat the supply of certain goods, mainly with private or exempt use, as an exempt supply.	<i>nsaTax Limited</i>	113
Support the measure to allow sale of certain goods not acquired for principal purpose of making taxable supplies to be exempt supply for a retrospective fix to GST apportionment on houses and similar assets.	<i>Jim Gordon Tax Limited</i>	113
Support proposals to treat certain principally non-taxable assets as exempt. Many taxpayers would logically believe that if they do not claim GST deductions for an asset, even if it has a minor taxable use, it should not be taxed on sale – and this proposal is intended to facilitate that outcome.	<i>PwC</i>	113
Support proposed retrospective application of the new exempt supply rule to taxable supplies made on or after 1 April 2011.	<i>Chartered Accountants Australia and New Zealand, Jim Gordon Tax Limited</i>	113
Support proposal that when a person has returned output tax for a taxable supply and an assessment has already been made before 30 August 2022, the supply of those goods will remain a taxable supply.	<i>Chartered Accountants Australia and New Zealand</i>	113
Support proposed transitional rule that would allow a registered person who acquired goods before 1 April 2023 and previously claimed an input tax deduction or acquired them as zero-rated supplies to elect before 1 April 2025 and return the GST previously claimed or nominal GST component as output tax so the goods can qualify as an exempt supply when subsequently sold.	<i>Chartered Accountants Australia and New Zealand</i>	136

Submission	Submitter	Clause
Support proposal to allow registered persons who acquire goods as a zero-rated supply to return output tax equal to the full nominal GST amount, so the goods can qualify as an exempt supply when later sold.	<i>Chartered Accountants Australia and New Zealand</i>	116(12)
Support proposal to amend section 5(15) so it applies to a supply of real property that includes goods that a registered person has elected to treat as an exempt supply so that the exempt supply of the goods will be treated as a separate supply.	<i>Chartered Accountants Australia and New Zealand</i>	105(5) and (6)
Deeming the sale to be a taxable supply when a person has previously claimed taxable use		
Support proposal to deem disposal to be a taxable supply when a person has previously claimed taxable use of the good or service as it will provide certainty.	<i>Chartered Accountants Australia and New Zealand</i>	105(7)
Agree with proposed anti-avoidance rule that where a one-off wash up adjustment is performed in contemplation of the sale of goods or services or the cessation of GST registration, the subsequent disposal or deemed disposal will be treated as a taxable supply made in the course or furtherance of a taxable activity. This aligns with an existing rule regarding deregistration.	<i>Chartered Accountants Australia and New Zealand</i>	105(7)
Agreeing an alternative apportionment method with Inland Revenue		
Support proposal that registered persons who have agreed an alternative apportionment method with Inland Revenue will continue to apply that method rather than new principal purpose test.	<i>Chartered Accountants Australia and New Zealand, Financial Services Council NZ</i>	116(9)
Support proposal to remove the requirement that an alternative apportionment method "have regard to the tenor of" the default apportionment rules and formula.	<i>Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY</i>	116(10) and (11)
Repeal of mixed-use asset rules		
Support proposal to repeal mixed-use asset rules. These rules are overly complex, and the reforms proposed in the Bill are likely to remove the need for these special rules.	<i>Chartered Accountants Australia and New Zealand, Deloitte</i>	117

Submission	Submitter	Clause
Simplifying adjustment rules		
Support proposal that registered persons will not have to monitor actual taxable use and make adjustments at the end of their adjustment period for any goods to which the proposed new exempt rules apply as this will minimise compliance costs.	<i>Chartered Accountants Australia and New Zealand</i>	118
Support proposal to reduce the number of adjustment periods as this will minimise compliance costs, particularly for land.	<i>Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group</i>	118
Changes to the wash-up rule for a permanent change in use		
Support proposal to allow the wash-up calculation to be applied at the end of the adjustment period in which the permanent change in use occurred rather than over consecutive adjustment periods.	<i>Chartered Accountants Australia and New Zealand</i>	122
Support clarifying that a registered person should only measure their "percentage actual use" from the date the wash-up calculation was performed rather than the date they acquired the asset.	<i>Chartered Accountants Australia and New Zealand</i>	122
Support the proposal to allow the wash-up calculation to be used for any permanent change in use, rather than just a change to fully taxable or fully non-taxable use.	<i>Chartered Accountants Australia and New Zealand</i>	122
Support amendment to definition of "actual deduction" so it correctly accounts for land acquired as a zero-rated supply.	<i>Chartered Accountants Australia and New Zealand</i>	122

Recommendation

That the submissions be noted.

Issue: Further work should be done to review and simplify the GST apportionment rules

Submission

(EY, PwC)

The rules will continue to be complex to apply. Officials should keep this project on the work programme with a view to a more comprehensive re-write of the apportionment rules. (EY)

Inland Revenue should undertake a wider first-principles review of the GST apportionment and adjustment rules, including consideration of the output tax position for assets subject to apportionment and whether the adjustment rules should return to the previous principal purpose approach. (PwC)

Training and guidance are needed to support the adoption of these proposals and to realise the compliance cost savings. (EY)

Comment

Officials note that the proposed reforms in the current Bill are intended to greatly reduce the number of goods and services for which registered persons need to apportion GST and to reduce the number of adjustment periods for those assets that remain subject to apportionment. We accept that the apportionment rules remain complex and would benefit from further consultation with key users to identify other ways to make the rules simpler and easier to apply.

Further policy work on the apportionment rules would need to be considered alongside other Government priorities for the tax and social policy work programme.

Guidance on the operation of the new rules will be provided in a *Tax Information Bulletin* and updated Inland Revenue webpages that will be published after enactment of the Bill.

Recommendation

That the submissions be noted.

Clause 116(9)

Issue: Principal purpose test for goods and services acquired for \$10,000 or less should be optional

Submission

(Corporate Taxpayers Group, Deloitte, Financial Services Council NZ, PwC)

The principal purpose test for low-value assets should be optional. Taxpayers should be able to continue to apportion low-value assets. If taxpayers are not able to do this, taxpayers with both high-value and low-value assets will need to have a hybrid process for the old and new rules, which will be complex and increase compliance costs. *(Corporate Taxpayers Group, Deloitte, PwC)*

For larger businesses (for example, by reference to a turnover threshold) the principal purpose test should be optional. *(Corporate Taxpayers Group, PwC)*

For suppliers who have not yet agreed apportionment methodologies, the proposed changes may have an adverse impact for assets under \$10,000. It will be important that flexibility is provided to taxpayers who have not yet agreed an apportionment methodology to ensure they can do so to reduce any materially adverse impacts the proposed changes might otherwise have. *(Financial Services Council NZ)*

Comment

Officials agree that allowing the principal purpose test to be optional for all registered persons could reduce compliance costs as it would mean businesses would not need to apply a different method for goods or services depending on whether they were acquired for \$10,000 or less.

Point of difference

However, making the rules optional for each purchase would create incentives to cherry-pick. For some low-value goods or services acquired for a principal purpose that did not involve making taxable supplies (such as exempt supplies or supplies for private use), the registered person could still claim a deduction based on their percentage taxable use (for example, up to 50 percent), rather than no deduction. For other low-value inputs with less than 100 percent taxable use, the registered person could apply the new principal purpose test to claim a full input tax deduction.

To address this risk, officials propose that the registered person (or GST group if relevant) would need to “opt out” of applying the principal purpose test for all the goods or services they acquire for \$10,000 or less for a minimum 24-month period.

Recommendation

That the submission be accepted, subject to officials’ comments.

Clause 116(9)

Issue: \$10,000 threshold should be higher

Submission

(Baucher Consulting Limited)

The proposed threshold of \$10,000 for goods and services acquired for the principal purpose of making taxable supplies is too low and should be increased to the higher threshold of \$15,000. The threshold in section 21(2)(b) of the Goods and Services Tax Act 1985 should also be increased to \$15,000. These proposed higher thresholds should ease compliance costs.

Comment

Officials considered different levels of threshold when we consulted on the proposals. As a result of earlier submissions, the proposed threshold was increased from \$5,000 to \$10,000 (excluding GST, or \$11,500 including GST). We consider a \$10,000 threshold is appropriate as it would include nearly all small business purchases that may have incidental private use, such as computers, smartphones and work tools.

With a \$15,000 (or higher) threshold, it becomes likely that many vehicles would become subject to the proposed rule. This could create a perverse incentive to purchase older, low-valued vehicles. This is because GST would not be imposed on the private use of such vehicles, provided they were principally used to make taxable supplies, whereas newer, high-

value vehicles would remain subject to the current GST apportionment rules. Furthermore, these taxpayers would still need to monitor their private use of such vehicles for income tax purposes, so the potential compliance cost savings would be low.

Recommendation

That the submission be declined.

Clause 116(9)

Issue: Small businesses should be deemed to automatically meet principal purpose test

Submission

(KPMG)

To reduce compliance costs, a prescriptive rule should be introduced to deem the principal purpose test to be met for small taxpayers. For example, taxpayers with turnover under \$500,000 in the last financial year whose exempt supplies were less than 50 percent of their total supplies.

Comment

Officials consider the principal purpose test should be easy for small businesses to apply as it simply requires them to consider if the goods or services were purchased for a principal purpose of making taxable supplies at the time they were acquired.

The proposal to allow it to be automatically met for taxpayers with under \$500,000 of turnover and less than 50 percent exempt supplies would create a generous concession for small businesses to claim more input tax deductions than their larger competitors. This would create a competitive advantage for smaller businesses, particularly in industries that make many exempt supplies, such as insurance, financial services and retirement villages. It would also lead to a big increase in compliance costs once a business grew to exceed the proposed \$500,000 threshold.

Recommendation

That the submission be declined.

Clauses 116(9) to (11)

Issue: Industry association agreed methods

Submission

(KPMG)

Businesses should be able to apply the principal purpose test for goods and services acquired for \$10,000 or less regardless of whether they are members of an industry

association that has agreed an alternative apportionment method with Inland Revenue.

Comment

Officials agree that businesses that are members of an industry association that has agreed an alternative apportionment method with Inland Revenue should be able to choose whether to apply that alternative method or the general rules, which include the proposed principal purpose test for goods and services acquired for \$10,000 or less.

Recommendation

That the submission be accepted.

Clause 116(9)

Issue: Clarify that direct attribution still applies before apportionment

Submission

(PwC)

Clarification is required (either through guidance or amending the draft legislation) to ensure the current approach of directly attributing expenses to making taxable or exempt supplies before applying apportionment is preserved for purchases of \$10,000 or less.

Comment

Officials agree that it would be useful to clarify that registered persons should directly attribute acquired goods or services to making taxable supplies or exempt supplies or private use first. Therefore, if the expenses directly relate to a good or service only used to make taxable supplies, a full input tax deduction may be claimed. Equally, if the expenses directly relate to making exempt supplies or private use, no input tax deduction may be claimed. Apportionment would only be applied to expenses, such as overheads, that cannot be directly attributed to taxable or non-taxable use. Officials will ensure guidance is included in a *Tax Information Bulletin* released following enactment of the Bill.

Recommendation

That the submission be accepted.

Clause 113

Issue: Exempt supply should be a non-taxable supply

Submission

(Chartered Accountants Australia and New Zealand)

An election by a person to treat the supply of goods not acquired or used for the principal

purpose of making taxable supplies as an exempt supply should be reconsidered. The supply should be treated as a non-taxable supply. The supply of goods acquired for a private purpose is considered a non-taxable supply. Treating such goods as an exempt supply does not make sense and could create apportionment issues for the supplier.

Comment

Officials agree that deeming the disposal of the goods to be a non-taxable supply would be more intuitive and could prevent some unintended complexity.

Recommendation

That the submission be accepted.

Clause 113

Issue: How to elect that the supply is exempt

(Deloitte)

Submission

Proposed new section 14(4) needs to specifically state how an election is made. Our preference is that this election should be done by making an election in the taxpayer's return by not including the goods.

Comment

Officials agree that the election should be made by the registered person taking the position of not including the sale of the goods in their GST return.

Point of difference

However, we consider the current legislation already achieves this outcome. Inland Revenue will provide guidance on this issue in the *Tax Information Bulletin* released after the enactment of the Bill.

Recommendation

That the submission be accepted, subject to officials' comments.

Clause 113

Issue: Requirement that no input tax deductions claimed

Submission

(Chartered Accountants Australia and New Zealand)

The requirement that no input tax deductions have been claimed should be removed. The test for whether a supply is taxable should revert to whether the supply is in the course of a taxable activity and not whether input tax has been claimed. The ability to claim some input

tax on items not primarily acquired for a taxable activity is because this meets the primary objective of GST – to be a value-added tax. Allowing such deductions means the value added by the registered person is what the registered person returns as GST to Inland Revenue. The supply of such items, as not part of the taxable activity, should not be taxable.

Comment

Officials consider that if a registered person has claimed an input tax deduction for acquiring a good or service because they use it to make taxable supplies, then the subsequent disposal (sale) of that good or service should be a taxable supply.

Removing the proposed requirement would mean GST would not apply to the sale of capital assets that were partly (rather than principally) used to make taxable supplies. This would not correctly account for the value added by the person's use of the asset to make taxable supplies.

Recommendation

That the submission be declined.

Clause 113

Issue: Ability to claim input tax on capital assets

Submission

(KPMG)

It is not always clear what is a "substantial improvement" as opposed to repairs and maintenance. A more objective threshold should be introduced to allow registered persons to claim GST input tax on capital assets, regardless of whether it was operating costs or a capital improvement. For example, these deductions could be capped based on the percentage of the current Capital Value assessed by the Local Authority for rating purposes.

Comment

The proposed requirement in the Bill is that the registered person cannot have previously claimed an input tax deduction for the goods being disposed of.

Taxpayers will need to consider whether a spending item is for a different good or service (such as an operating cost like insurance or local authority rates) or would instead be capitalised into the value of the good (such as becoming part of the building). Officials note that this same exercise is already required for income tax purposes. For example, if a cost is for something that forms part of a building, it is treated as a building for income tax depreciation purposes. To meet the proposed requirement to allow it to be an exempt supply for GST purposes when sold, the taxpayer would also need to have not deducted the cost for that building component as input tax.

Therefore, allowing a maximum amount of GST input tax deductions would not reduce overall tax compliance costs for most taxpayers. However, it may encourage some taxpayers to claim up to the maximum level of deductions for goods that would then not be subject to

GST when sold. This would undermine the policy intent and would have a fiscal cost for the Government.

Recommendation

That the submission be declined.

Clause 113

Issue: Application of exempt supply rule to a holiday home owned by a trust

Submission

(nsaTax Limited)

Ownership of holiday homes is seldom in an individual's name, with it being more common for ownership to be in a trust. A trust would not qualify for the proposed exempt supply rule due to the deemed supply for use by associated persons of the trust, which in turn means there will never be any "private use". The same would apply to holiday home ownership in a partnership or look-through company.

Consideration should be given to address this by switching off the "deemed supply at market value" rule so GST would only be payable for use of the holiday home by unassociated third parties.

Comment

The Goods and Services Tax Act 1985 deems all supplies made to associated persons to be at market value. This rule is necessary to prevent avoidance, as otherwise the GST system could be used by a registered person to develop and sell an asset to an associated person for less than its market value.

The submitter considers this rule creates overreach when a trustee of a trust provides holiday home accommodation services to close relatives. Similar issues arise for partnerships, look-through companies and individuals that supply short-stay accommodation services to close relatives.

The submitter's suggested amendment would represent a significant and potentially complex policy change. It would require developing a new definition of associated supplies of accommodation services and would need to apply retrospectively to apply to existing holiday homes. A range of other policy options to address this issue could also be considered. For these reasons, we recommend that officials do further analysis on this issue and consider if it should be added to the tax and social policy work programme.

Recommendation

That the submission be declined.

Clause 113

Issue: Retrospective application

Submission

(New Zealand Law Society)

Clause 113 should apply to persons who have correctly applied the current law and accounted for GST on the disposal of a good that had minor taxable use before 30 August 2022.

Comment

In cases where a registered person has returned output tax on goods they sold or disposed of before 30 August 2022 (the date the Bill was introduced), the Bill proposes the supply of those goods would remain a taxable supply. In such cases, the fact that GST applied to the sale of the goods was clear at the time the goods were sold and the supplier and purchaser would have agreed a price that took this into account and correctly accounted for GST.

Making such goods an exempt supply after the date the Bill is enacted would require the supplier and the purchaser to adjust the amount of consideration that was previously charged and change their GST positions. This could impose compliance costs on thousands of completed contracts and would have a fiscal cost for the Government in refunding GST that was correctly assessed under the previous law.

Recommendation

That the submission be declined.

Clause 113

Issue: Guidance on supplies made between introduction and enactment

Submission

(New Zealand Law Society)

Inland Revenue should issue guidance as soon as possible regarding the position registered persons should take in respect of contracts to supply goods entered before the Bill is enacted.

Comment

The Commentary on the Bill, published in September 2022, included guidance on this point. This noted that for goods a registered person sells or disposes of between 30 August 2022 and 1 April 2023 that would qualify as exempt supplies under the proposed new section, the registered person would be able to amend their GST position once the Bill was enacted to make the relevant disposal an exempt supply.

Recommendation

That the submission be noted.

Clause 136

Issue: Transitional rule end date

Submission

(Deloitte)

The period to make the election under the proposed new section should be significantly longer than 1 April 2025. Potentially, there should be no end date. It is likely that most GST-registered persons who may benefit from making such an election are unlikely to do so during the two-year transitional period contained in the Bill.

Alternatively, taxpayers should be able to enter an instalment arrangement to repay the GST owed, or at least to agree to repay the GST previously claimed at the time of the property sale, without the taxpayer being caught by section 5(16). In many cases, the assets in question are likely to be a GST-registered person's largest single investment asset.

While acknowledging this issue is not in the current Bill, the submitter considers the period for an earlier "non-profit bodies" transitional rule should be reopened.

Comment

It is necessary to provide a two-year period as otherwise registered persons would effectively be able to use the GST system to obtain an interest-free loan for many years to the extent that they acquire a good to make taxable supplies, so long as that good was not used principally to make taxable supplies.

For similar reasons, officials do not support reopening the earlier transitional rule for non-profit bodies as that would provide a further ability to obtain an interest-free loan for asset purchases. However, we note that, along with other eligible registered persons, non-profit bodies would be able to use the transitional rule proposed in the Bill that expires on 1 April 2025, so long as they meet the requirements of the proposed rule.

Recommendation

That the submissions be declined.

Clause 105(7)

Issue: Deeming disposal of an asset to be a taxable supply

Submission

(PwC)

Further consideration should be given to when a deemed disposal will fall within the

proposed new deemed supply rule and to the valuation of the relevant asset.

The Bill proposes to deem certain disposals of assets to be made in the course of a taxable activity. One of the criteria is a deemed disposal of the relevant asset. However, it is unclear in what situations there will be a deemed disposal that will fall within the proposed rules. For example, in circumstances where the taxpayer does not have a taxable activity, section 5(3) will not apply as there is no current taxable activity. It is also unclear what the value of the deemed supply under the proposed clause should be, particularly whether it should be at market value or the original cost.

Comment

Officials agree it could be made clearer that if a registered person ceases to be a registered person (for example, because they cease, or never began, carrying on a taxable activity), the proposed deeming rule should apply to the relevant assets to deem them to be disposed of at market value immediately before the time the person ceases to be a registered person.

Recommendation

That the submission be accepted.

Clause 105(7)

Issue: Deeming disposal to be a taxable supply should have a time limit

Submission

(KPMG)

A time limit should be introduced to limit the scope of the new deeming rule to assets for which an input tax deduction was claimed in the last seven years. A seven-year time limit references the general record-keeping requirements for business records.

Comment

Officials consider a time limit would undermine the purpose of the proposed rule, which is to ensure that persons who claim a taxable use for an asset on acquisition are required to account for GST on disposal (if they haven't already accounted for GST through a change to non-taxable use or from ceasing their taxable activity).

It would also create a perverse incentive to retain assets that would otherwise be sold earlier, which would be inefficient. Finally, it would be unfair as it would provide better GST outcomes for registered persons who disposed of their assets after the time limit had expired compared to those that disposed of them earlier. This would be likely to favour wealthier and better-advised taxpayers who could afford to wait out the time limit.

Recommendation

That the submission be declined.

Issue: Definition of actual use

Submission

(Deloitte)

The definition of “actual use” needs to be re-looked at in the context of multi-year development projects. The current rules do not deal with a taxpayer who initially acquires land for build-to-rent but then decides halfway through the development to sell some, or all, of the properties once they are constructed. Provided there is sufficient evidence of the change of intention, a GST change of use should be able to apply halfway through the development. This is preferable to waiting until construction is completed and the properties sold, which could be some years later.

Comment

Officials note that the Bill proposes amendments to the wash-up rule in section 21FB to allow it to be used at the end of the current adjustment period for any permanent change to a particular fixed percentage use. For example, if the registered person’s use of a particular good or service permanently changed to 80 percent or 100 percent taxable use, and they expected this percentage to remain stable for the foreseeable future, they would be able to perform the wash-up calculation at their next balance date.

We consider these amendments to the wash-up rule should allow the rule to apply to the scenario described in the submission.

Recommendation

That the submission be noted.

Clauses 116(10) and (11)

Issue: Inland Revenue approved alternative apportionment methods

Submission

(Deloitte)

Registered persons should be able to adopt a fair and reasonable method that Inland Revenue has published (provided it is appropriate for the registered person’s situation) without needing to contact Inland Revenue.

Comment

Officials agree that the Commissioner should be able to publish certain methods considered acceptable to use and the circumstances in which they can be used. This could reduce compliance costs for registered persons as they would not have to develop and agree their own method with the Commissioner.

Recommendation

That the submission be accepted.

Clauses 116(10) and (11)

Issue: Deemed acceptance of taxpayer's apportionment method

Submission

(Deloitte)

There should be an administratively efficient process whereby a taxpayer "registers" an apportionment methodology with the Commissioner and there is deemed acceptance (with Inland Revenue having the data if they need to ask questions later).

Comment

Officials do not agree that methods logged with the Commissioner should have deemed acceptance. Inland Revenue's experience with agreeing methods is that it is often necessary to adjust parts of the proposed method or to ask for further information to ensure it provides fair and reasonable outcomes. Deemed acceptance would mean such review and improvements would be less likely to occur in practice, which could increase the risk of issues or disputes.

Recommendation

That the submission be declined.

Clause 117

Issue: Proposed repeal of mixed-use asset rules

Submission

(KPMG)

To reduce compliance costs, taxpayers should be given the option to continue using the apportionment method under the mixed-use asset rules by deeming such a method to be a "fair and reasonable" method.

Comment

Officials agree.

Point of difference

However, rather than adding a new provision to the Goods and Services Tax Act 1985, this could be achieved by adopting the approach discussed in ["Issue: Inland Revenue approved alternative apportionment methods"](#) above, where the Commissioner of Inland Revenue

would be able to publish certain methods considered acceptable to use and the circumstances in which they can be used.

Recommendation

That the submission be accepted, subject to officials' comments.

Clause 156

Issue: Information disclosure for registered persons acquiring land, pleasurecraft and aircraft

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, PwC)

- a. The proposed information disclosure requirements should not proceed as they would be a significant shift away from current GST policy settings, would impose compliance costs and the rationale for the requirements is unclear. *(PwC)*
- b. The method of disclosure needs to be simple to comply with. We note many GST-registered persons will currently be providing additional documentation to support significant GST input tax claims and expedite their GST refund. *(Chartered Accountants Australia and New Zealand)*
- c. Submitter is generally supportive of the proposed disclosure requirements for high-value assets. However, any prescribed disclosure requirements should involve a sufficient consultation period, and the requirements should not impose an overly burdensome or time-consuming cost of compliance. *(Corporate Taxpayers Group)*
- d. Detailed consideration should be given to these rules before they are implemented to ensure they are not significantly increasing compliance costs and that the data to be obtained by Inland Revenue cannot already be obtained from other sources, particularly in relation to land. *(Deloitte)*
- e. Submitters support the Commissioner having the ability to exempt classes of people from section 61B and suggest that this exemption be used for low-risk taxpayers. *(Corporate Taxpayers Group, Deloitte)*. Submitter would like to work with officials to ensure the exemption is sufficient to capture the variety of low-risk taxpayers. *(Corporate Taxpayers Group)*
- f. If the proposals do proceed, a high de minimis threshold should be introduced (for example, assets valued at \$1m or more) to target high-risk assets. *(PwC)*

Comment

- a. The proposed information disclosure requirement is intended to assist Inland Revenue to better monitor and promote compliance by registered persons who have previously claimed large input tax deductions (or acquired zero-rated land) but no longer appear to be proceeding with, or carrying on, a taxable activity (for example, they have been continuously filing GST returns with no or low sales).

Because many GST-registered persons have nil or low sales, it is not viable for Inland Revenue to identify which of these persons may have GST to pay on valuable assets that they previously acquired to make taxable supplies, such as land. Obtaining information on these purchases and the date they are acquired will allow Inland Revenue to identify and promote compliance among these registered persons.

Compliance costs will be reduced by identifying classes of taxpayer or assets that will be exempt from the disclosure because they are low risk.

- b.– f. As mentioned in the Commentary on the Bill, before implementing an information disclosure requirement, Inland Revenue would work with GST practitioners and software developers to test the proposed design (including the specific information that would be disclosed, the timing and format of the disclosure and which groups or assets should be exempt as they represent a low risk) to ensure it is well-targeted and practical.

This will include considering what information can be obtained from other sources and which classes of taxpayer or assets should be exempt from the disclosure because they are low risk.

The proposed legislation provides flexibility for Inland Revenue to work with stakeholders to design and adjust the specific requirements and exemptions to achieve this.

Recommendation

- a. That the submission be declined.
- b.– f. That the submissions be noted.

Clause 156

Issue: Definition of “pleasurecraft”

Submission

(Deloitte)

The definition of “pleasurecraft” in the proposed new section 61B refers to the meaning set out in section 2 of the Maritime Transport Act 1994. This definition should be changed as it will not work well with the proposed changes and arguably would not capture many vessels.

Under the Maritime Transport Act 1994 definition, a ship cannot be a pleasurecraft if it is offered or used for hire or reward. However, disclosure will only be required under section 61B if a pleasurecraft is acquired with the intention of making taxable supplies. It is difficult to see a situation where a ship could be acquired with the intention of making taxable supplies that would not involve the intention of using it for hire or reward (other than potentially if on-sale of the vessel was the intention).

Comment

Officials agree that “pleasurecraft” is not the appropriate term as it excludes vessels that are

available for hire.

We recommend replacing “pleasurecraft” with “ship” and defining the latter term as it is defined in the Maritime Transport Act 1994. Under that Act, “ship” means “every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

(a) a barge, lighter, or other like vessel:

(b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:

(c) a submarine or other submersible.”

Recommendation

That the submission be accepted.

Clauses 105, 117, 118 and 122

Issue: Minor drafting clarifications

Submission

(Deloitte, New Zealand Law Society)

Submitters suggested the following minor drafting clarifications should be made:

- The opening words of section 5(15) of the Goods and Services Tax Act 1985 (GST Act) start with “When either of the following...” which infers a list of two items. The reference to “either” should be changed to “any” as there will now be more than two paragraphs. *(Deloitte)*
- The proposed new section 5(16)(c) is a fundamental change and should explicitly not apply if proposed new section 14(4) or section 91 applies. The submitter suggests adding a new section 5(16D) that would state section 5(16) does not apply if an election has been made under section 14(4). If this is not done, there is a potential conflict between the operation of sections 5(16)(c) and 14(4). *(Deloitte)*
- Proposed new section 14(4) should refer to a supply “by way of sale”, for example, “A registered person may elect that a supply of goods by way of sale is exempt from tax if...”. This reflects the fact the provision is not intended to apply to renting out the good. *(Deloitte)*
- Proposed new section 14(4) should include a reference to section 91 if that section applies as these two sections are closely linked but are quite far apart in the legislation. *(Deloitte)*
- It is not clear on the wording of proposed new section 14(4)(a) whether a person who has accounted for GST when the good is sold and claimed an input tax credit by way of section 21F adjustment under the current law will be entitled to elect that the supply of the good was an exempt supply once proposed section 14(4) is enacted. Proposed section 14(4)(a) should be amended to clarify that it refers only to a deduction claimed

under section 20(3) before the good is sold. (*New Zealand Law Society*)

- A registered person can only elect to apply proposed new section 14(4) “to the supply” at the time they are supplying the good and only if the criteria of the section are satisfied at that time. As the ability to make an election under the section depends upon the registered person’s use of the good and whether GST has been claimed up until the time of sale, the registered person cannot elect to apply section 14(4) “to the supply” at the end of each adjustment period (as there has been no supply). (*New Zealand Law Society*)
- The proposed amendments in clause 118 of the Bill, which apply where the supply of the good is an exempt supply under proposed new section 91 of the GST Act, do not actually include a reference to proposed new section 91. Clause 118 should be amended to address this issue. (*New Zealand Law Society*)
- The policy intent of proposed new section 21FB is to allow a person to make the adjustment at the end of their current adjustment period. However, the proposed new section 21FB still provides for the adjustment to be “for the adjustment period following the period in which the change occurred”, which is the wording in the GST Act as currently enacted. Proposed new section 21FB(2) should be amended to delete the words “following the period” so that it provides for the adjustment to be made for the adjustment period in which the change of use occurred. (*New Zealand Law Society*)

Comment

Submitters have identified some minor issues where they consider the drafting of relevant provisions or how they interact with other rules could be improved. Officials will work with drafters on the best way to address these issues.

Recommendation

That the submissions be accepted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Other policy items

GST STATUS OF LEGISLATIVE CHARGES

Clauses 105(1), (3) and (11), 133, 135, and 137

Issue: Support for the proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

General support for the proposal.

Recommendation

That the submission be noted.

Issue: List of all legislative charges

Submission

(Deloitte)

A comprehensive list of all legislative charges should be in place before July 2026. Without a comprehensive list of current legislative charges, levies, and taxes, it is unclear how many charges this proposal would affect and whether GST should automatically apply to all of them.

Comment

The proposal in the Bill is intended to address the uncertainty that can arise in determining the GST implications of legislative charges, including fees and levies, where it may not always be clear that they are consideration for the supply of goods or services.

The proposal would treat any legislative charge, including a fee or a levy, as consideration for a supply of goods or services. The Bill includes exceptions for legislative charges that are, or are in the nature of, fines, penalties, interest, and general taxes (such as income tax and GST itself). These exceptions recognise that these amounts are not paid for goods and services. These exceptions would be automatic and, under the proposals in the Bill, would apply to any of these legislative charges from 1 July 2023, which is the proposed effective date of these changes.

The Bill also proposes a schedule of non-taxable legislative charges. This recognises there may be further legislative charges that should not be subject to GST. The Bill proposes this schedule could be updated by an Order in Council on the recommendation of the Minister of Revenue until 2026. The schedule could also be amended over time through future legislation.

The proposed schedule, and three-year transitional period, was considered preferable to collating a list of all legislative charges and determining the GST treatment of each charge individually. Officials do not consider identifying the GST treatment of all legislative charges

would change the analysis that led to this proposal. Furthermore, it would delay the proposal, and this would perpetuate the current inequities, uncertainty, and technical issues associated with GST not applying equally to legislative charges that are, in substance, for the same kinds of services.

The proposal is premised on one of the fundamental principles of New Zealand's GST system, which is that it should apply equally to the broadest possible range of goods and services supplied in New Zealand. This includes goods and services supplied by the government sector and not-for-profit bodies, which provide public goods, research, membership support, and other similar services.

The proposal would not apply immediately to all legislative charges. A transitional period of three years is proposed. Officials would continue to work with the Treasury and the Parliamentary Counsel Office to communicate the changes to government agencies with administrative responsibility for legislative charges that may be affected by the proposal. Officials note that, under the proposal, GST would apply to charges that come into effect after 1 July 2023.

The prescribed amounts of legislative charges are generally set in primary legislation (such as Acts) or secondary legislation (such as Orders in Council). This means there are processes in place that need to be followed by government agencies with administrative responsibility for legislative charges. The effect of the changes proposed in the Bill on the GST treatment of legislative charges can be communicated as part of the processes associated with updating legislative charges. Combined with the proposed three-year transitional period, this should provide affected government agencies (and Ministers) with sufficient time and opportunity to ensure that the GST implications of newly developed (or renewed) legislative charges have been considered and understood. The outcome of the proposal should ensure that a more consistent approach to GST and legislative charges emerges over time, and the proposed schedule of non-taxable legislative charges provides an opportunity for GST not to apply to legislative charges if needed.

Recommendation

That the submission be declined.

Issue: Definition of “general tax”

Submission

(Corporate Taxpayers Group, Deloitte)

Inland Revenue should confirm that approved issuer levy is a “general tax” for the purposes of the definition in proposed section 5(6EE).

In addition, the reference to “tax law” should clearly reference the definition of “tax law” in the Tax Administration Act 1994.

Comment

The Bill proposes to define a “general tax” for these purposes as “a charge in the nature of a

tax imposed by a tax law where the revenue is not earmarked in legislation for a particular purpose or function". General tax is not regarded as being closely correlated with the supply of any particular goods or services. Instead, the government relies on general taxation to fund various government objectives and purposes.

Approved issuer levy (AIL) is paid under the Stamp and Cheque Duties Act 1971, which is a tax law administered by Inland Revenue. AIL is not earmarked in legislation for a particular function or purpose, and the revenue collected from the AIL instead contributes to general taxation. Therefore, officials agree with the submitter's analysis that AIL is a general tax for the purposes of the proposed rule for legislative charges, and it should not be treated as consideration for the supply of any goods or services. No additional amendments are required to achieve this outcome.

"Tax law" is defined in the Tax Administration Act 1994 and broadly refers to legislation, including regulations, administered by Inland Revenue. Officials agree that this definition of "tax law" should apply in the context of the definition of "general tax".

Recommendation

That the submissions be accepted.

Issue: Clarification of a "charge in the nature of a tax"

Submission

(Corporate Taxpayers Group)

The exemption for a "charge in the nature of a tax imposed by a tax law where the revenue is not earmarked in legislation for a particular purpose or function" should be clarified. If an amount is collected by a statutory entity (that is, it is not retained by the body collecting the levy and is no way hypothecated by the Crown) and the amount is remitted directly to the Crown, will this be "in the nature of a tax"?

Comment

Officials note the request for clarification and provide the following response.

For the purposes of the proposed amendments, the Bill defines "general tax" in proposed section 5(6EE). To be "general tax" under the proposed definition in the Bill, the following requirements must be met:

- there must be a charge (that is, a pecuniary expense or cost) and that charge must be set out in legislation
- the charge itself must be in the nature of a tax imposed by a tax law, and
- the revenue from the charge must not be earmarked in legislation for a particular function or purpose.

This means that an amount that is earmarked in legislation for a particular function or purpose, or an amount that is payable under a law other than a tax law, would not be treated as a general tax for the purposes of the definition.

In the submitter's scenario, a statutory entity is responsible for collecting a charge, and the purpose or function of the charge is not specified in the enabling legislation. In addition, the revenue from the charge is not earmarked for a particular function or purpose. At first glance, therefore, the charge appears to have the characteristics of a "general tax". However, whether it would qualify as a "general tax" under the definition proposed in the Bill would depend on whether it was "imposed by a tax law". Officials note that if it was not imposed by a tax law, and therefore did not satisfy the definition of "general tax", if it was inappropriate for GST to apply to the charge, it could still be excluded from GST by being included on the proposed schedule of non-taxable legislative charges.

Recommendation

That the submission be noted.

Issue: Inclusion on the proposed schedule of non-taxable legislative charges

Submission

(Building Research Association of New Zealand Incorporated)

The levy the submitter administers should be included in the proposed schedule of non-taxable charges.

The levy collected by the submitter is used for promoting and conducting research and other scientific work in connection with the building construction industry. It can also be used for other functions, including maintenance of a library, publications, provision of advice and dissemination of information, and investment in capital assets to support research.

The submitter has a binding ruling from Inland Revenue, which expires in June 2028, that confirms GST does not apply to the levy the submitter collects. If GST was applied to the levy, this would increase the cost of the levy and the cost of building in New Zealand.

Comment

New Zealand has a broad-based GST system, which means GST applies to the broadest possible range of goods and services supplied in New Zealand. This keeps the tax simple, fair, and efficient. When GST was introduced in 1985, a deliberate decision was made that the activities of the public sector and the not-for-profit sector would be included within the GST base. The effect of this is that government entities and the not-for-profit sector are accounting for GST on many services they provide to the public, and they are also able to claim GST on the costs associated with providing those services.

Officials understand that, historically, Inland Revenue has provided favourable binding rulings to some taxpayers confirming they do not have to charge GST on the services they provide. These rulings are based on legal analysis that suggests there is an insufficient connection between the consideration provided (for example, the payment of a levy) and the supply of any goods or services to which GST would apply. This legal analysis has led to specific amendments being made to the Goods and Services Tax Act 1985 over time to align

GST outcomes for specifically named legislative charges with the longstanding policy objective of GST applying to the broadest possible range of goods and services supplied in New Zealand.

In practice, the BRANZ levy is collected by local councils as part of an application for a building consent. The legal incidence of the levy sits with the builder. Officials understand that the levy can be paid by the landowner (who may or may not be a GST-registered person) or it can be paid by an agent of the landowner, such as a builder or an architect (who will generally be registered for GST).

GST is effectively collected on the levy when it is on-charged by a GST-registered builder or architect. However, it is not collected when it is paid directly by the landowner. This highlights one of the problems with the current law.

Officials note that other legislative charges payable in the building and construction sector for similar services are subject to GST. This includes the building levy that is collected by the Ministry of Business, Innovation and Employment and used to support investment and development in the building sector.

For these reasons, officials do not consider it appropriate that the BRANZ levy be included on the proposed schedule of non-taxable legislative charges. There does not appear to be a principled basis on which the BRANZ levy should not be subject to GST when other levies that are similar in nature are subject to GST. The levy is a revenue source for BRANZ that enables it to provide services. Further, officials note that other industry bodies providing services of a similar nature are currently charging GST on their levies. To include the BRANZ levy on the proposed schedule of non-taxable legislative charges would provide BRANZ with a concession that is not available for others.

The submitter suggested the current GST treatment of their levy should be grandparented to align with the expiry of their current binding ruling in 2028. However, this suggests that binding rulings can be used as a mechanism to provide protection against future legislative changes, which is not the intent of the binding rulings regime. The purpose of the binding rulings regime is to provide taxpayers with certainty about the Commissioner's interpretation of the taxation laws applying to an arrangement. A binding ruling may not apply in circumstances where the taxation laws on which the binding ruling is based are changed. The binding rulings regime is not intended to provide taxpayers with protection against the effect of future changes to the law.

Officials also note that the proposal contained in the Bill would not apply immediately. It is proposed to apply by the earlier of:

- a change to the regulations that set the amount of the legislative charge, provided this is on or after 1 July 2023, or
- 1 July 2026.

On this basis, the BRANZ levy would not become subject to GST until 1 July 2026 unless the levy was renewed after 1 July 2023 but before 1 July 2026.

Recommendation

That the submission be declined.

Issue: Including exempt charges in the schedule of non-taxable legislative charges

Submission

(Deloitte)

The submitter queries whether all charges that are exempt from GST need to be included on the proposed schedule of non-taxable legislative charges.

Comment

The proposed schedule of non-taxable charges is not intended to include a list of all legislative charges that are consideration for a supply of goods and services that would be exempt under the Goods and Services Tax Act 1985 (GST Act). Examples of exempt supplies include financial services and residential accommodation. Under the proposed rules, a legislative charge that is treated as consideration for a supply of goods and services may still be exempt under section 14 of the GST Act (which relates to the GST treatment of exempt supplies). Similarly, the zero-rating provisions in sections 11 and 11A of the GST Act may apply to treat a supply of goods and services as being zero-rated where the legislative charge is treated as consideration for a supply of goods and services that would be zero-rated.

The proposed schedule of non-taxable legislative charges is intended to mirror the approach taken for government grants and subsidies. For government grants and subsidies, the Goods and Services Tax (Grants and Subsidies) Order 1992 contains a schedule that lists all government grants and subsidies that are non-taxable when received by GST-registered persons. That Order does not list government grants and subsidies that are exempt from GST. The same approach is intended to apply for the proposed schedule of non-taxable legislative charges. Legislative charges could be added to the schedule if it were considered appropriate that specific legislative charges, or classes of legislative charges, should not be subject to GST.

Recommendation

That the submission be noted.

Issue: Request for guidance on transitional implications

Submission

(Building and Research Association of New Zealand Incorporated, Corporate Taxpayers Group, Deloitte)

Inland Revenue should publish guidance on the transitional implications of the proposal. This includes the effect of section 78 of the Goods and Services Tax Act 1985, which deals with how changes to the imposition of GST are given effect.

Comment

Officials agree and will ensure guidance on the effect of the proposal on legislative charges that are not currently expressed as being subject to GST is included in a *Tax Information Bulletin* released following enactment of the Bill.

The Bill proposes that if a legislative charge comes into force after 1 July 2023, the proposed rule for legislative charges would apply immediately. For other legislative charges, the proposed rule would apply from 1 July 2026. Inland Revenue would publish guidance on the effect of section 78 of the Goods and Services Tax Act 1985 on a range of different scenarios.

Recommendation

That the submission be accepted.

Issue: Businesses bearing the cost of GST

Submission

(Cantin Consulting)

If a government levy attracts GST, the GST should only be a cost to consumers or to businesses that are not registered for GST. Those not registered for GST include those that are not required to register because they are below the registration threshold or those that only make exempt supplies. It is this limited range of businesses that can be expected to have an additional cost from this proposal.

Comment

Officials note the submitter's observation that this proposal could result in increased costs for those that pay legislative charges and are not registered for GST. Officials note these increased costs would only occur to the extent that a legislative charge that is not currently subject to GST becomes subject to GST under the proposed rules.

Generally, when a person is registered for GST and they pay GST on a legislative charge, they will be able to recover GST on the legislative charge as an input tax deduction. This does not apply to the extent that the legislative charge is incurred in making exempt supplies (such as financial services or residential accommodation) or where the person paying the legislative charge is not registered for GST.

Recommendation

That the submission be noted.

Issue: Rule for the GST treatment of rebates of the regional fuel tax should be retained

Submission

(Matter raised by officials)

The special rule in section 5(6BB)(b) of the Goods and Services Tax Act 1985, which applies to rebates of the regional fuel tax (RFT) paid to GST-registered persons, should be retained as this is not a legislative charge.

The Bill proposes to repeal existing special rules that apply to particular legislative charges. This is because these rules would be superseded by the proposed new general rules for legislative charges.

However, as currently drafted, the Bill also proposes to repeal the special rule that applies to rebates of the RFT. These rebates are not legislative charges. This rule should therefore be retained.

Recommendation

That the submission be accepted.

BUILD-TO-RENT EXCLUSION FROM INTEREST LIMITATION

Clauses 98(3) and 100

Issue: General support for proposal

Submission

(A Renting Company, Corporate Taxpayers Group, Crockers Property Group, Deloitte, Fletcher Building Limited, Kiwi Property Group Limited, MDH Property Limited, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand, PwC, Real Estate Institute of New Zealand, Resident Properties Limited)

Support for the proposal.

Recommendation

That the submission be noted.

Issue: General opposition

Submission

(Auckland Property Investors Association Incorporated, Dany Rassam, David Lus, EY, Ian Engelbrecht, Joy Radford, New Zealand Property Investors' Federation Inc, Simone O'Meara)

Submitters opposed the policy on the following bases:

- It creates further distortion in the market. *(David Lus)*
- It is unfair to give a tax incentive to large wealthy investors but not to small-scale developers and landlords. This reduces the fairness and efficiency of the tax system. *(Auckland Property Investors Association Incorporated, Dany Rassam, Ian Engelbrecht, Joy Radford, Simone O'Meara, New Zealand Property Investors' Federation Inc, Simone O'Meara)*
- It is too complex and will create compliance issues and put additional resource pressure on Inland Revenue. *(Auckland Property Investors Association Incorporated, EY)*
- It will not achieve the Government's stated housing objectives. *(EY, New Zealand Property Investors' Federation Inc)*
- Tax policy should not drive housing objectives. *(EY)*
- New build rentals are not required to increase housing supply. *(New Zealand Property Investors' Federation Inc)*

Comment

Excluding build-to-rent developments can increase the delivery of high quality, professionally managed rental supply at scale and at more reasonable price points that low-

and moderate-income households can afford. The development of build-to-rent housing aligns with several housing objectives, including improving rental supply, quality, affordability and security of tenure.

Recommendation

That the submissions be noted.

Issue: Exclusion should be broader

Submission

(Auckland Property Investors Association Incorporated, Dany Rassam, Ian Engelbrecht, Joy Radford, New Zealand Property Investors' Federation Inc, Osaki Gergely Residential Investments Ltd, Sandor Gergely, Simone O'Meara)

Submitters believe the build-to-rent exclusion should apply to:

- Anyone increasing housing supply. *(Auckland Property Investors Association Incorporated, Dany Rassam, Ian Engelbrecht, Joy Radford, New Zealand Property Investors' Federation Inc, Simone O'Meara)*
- Anyone who provides long-term rental accommodation, regardless of size or entity structure. *(Osaki Gergely Residential Investment Ltd, Sandor Gergely)*
- Any landlord that provides 10-year tenancies and personalisation policies. *(Auckland Property Investors Association Incorporated, New Zealand Property Investors' Federation Inc)*
- New builds (instead of new builds only having a 20-year exemption). *(Auckland Property Investors Association Incorporated)*

Comment

Officials disagree. The proposal is intended to encourage the development of new housing supply at scale. Small-scale investors who contribute to new housing supply will still benefit from the 20-year new build exemption from interest limitation and the five-year new build bright-line test. Investment in build-to-rent can achieve stable, but low, returns. Investors therefore require long-term certainty regarding the ability to borrow adequate capital to fund the development on an ongoing basis over the life of the investment.

Recommendation

That the submission be declined.

Issue: Support for configuration of development

Submission

(Fletcher Building Limited, Kiwi Property Group Limited, Resident Properties Limited)

Support for the proposal allowing dwellings to be held in one or more titles, to be on adjoining parcels of land and to include commercial or non-build-to-rent dwellings in the same development.

Recommendation

That the submission be noted.

Issue: Support for the 20-dwelling requirement

Submission

(Fletcher Building Limited, Kiwi Property Group Limited, New Zealand Superannuation Fund, Resident Properties Limited)

Support for the proposal requiring build-to-rent developments to have a minimum of 20 build-to-rent units in a single development.

Recommendation

That the submission be noted.

Issue: Opposition to 20-dwelling requirement

Submission

(Bruce Davidson, Joy Radford, New Ground Capital Limited, Oxygen Property Management, Real Estate Institute of New Zealand, Vivien Han)

Submitters opposed the requirement that a development must have a minimum of 20 build-to-rent units in a single development and suggested:

- There should be no minimum number of units required in a development to qualify for the exclusion, provided the property is a genuine build-to-rent *(Oxygen Property Management, Vivien Han)*
- The exclusion should apply to any multi-unit dwellings. *(Bruce Davidson)*
- The minimum number of units should be three *(Joy Radford)* or ten. *(Real Estate Institute of New Zealand)*
- The requirement should apply to the number of units owned by a particular person or entity rather than in a particular development. *(New Ground Capital Limited)*

Comment

Officials disagree. The proposal is intended to encourage the development of new housing supply at scale.

The 20-unit minimum requirement was chosen to reflect international standards for build-to-rent, but with the New Zealand context in mind. For example, build-to-rent developments in

the United States, United Kingdom and Australia generally comprise 50–100+ units. However, a lower minimum of 20 units in this case ensures build-to-rent development is viable in the New Zealand market, including in regions outside main urban centres. This minimum requirement also aligns with the Overseas Investment Act 2005, where 20 units is the minimum to be considered a large-scale development.

Small-scale investors who contribute to new housing supply can benefit from the 20-year new build exemption from interest limitation and the five-year new build bright-line test. The average length of ownership for small-scale investors is 7–8 years, whereas build-to-rent is characterised by long-term ownership, generally 50+ years in overseas markets.

Recommendation

That the submission be declined.

Issue: Large-scale developments should not be incentivised

Submission

(New Zealand Property Investors' Federation Inc)

Larger developments should not be incentivised as they are more likely to be high end, less affordable, and not provide the right type of property. They are more likely to provide one- and two-bedroom apartments when there is also a need for larger four+ bedroom housing.

Comment

Officials disagree. Build-to-rent offers a range of benefits, including delivering quality long-term rental supply at pace and scale, and in areas of high demand. It will primarily serve the general market as the development economics are tight and a minimum level of return on rents is required to ensure project viability. We expect there to be good demand for these kinds of homes.

It can enable affordable provision due to its long-term investment horizon, which is critical to providing new general and market affordable supply. Additionally, it can complement community affordable developments by bringing the scale needed to make the community affordable portion financially viable.⁷ Build-to-rent is not intended to deliver large numbers of rentals at a subsidised level; this can only be achieved through a rent subsidy programme provided by government.

While build-to-rent supply is likely to comprise one- and two-bedroom units, it is not limited to this and may also deliver larger three- and four-bedroom units where it is developmentally viable.

⁷ Community affordable rental housing is housing that is affordable for lower-income households that cannot afford a market rent, even for a modest home. It is usually delivered by community housing providers, iwi, Māori land trusts and non-profit entities, and it relies on local and central government subsidies and/or philanthropic funding.

Recommendation

That the submission be declined.

Issue: Support for the tenure requirement

Submission

(Crookers Property Group, Kiwi Property Group Limited)

Support for the proposal to require build-to-rent developments to offer all tenants the option of a 10-year tenancy contract, with the ability to terminate with 56 days' notice. The tenure security provided by build-to-rent is a crucial benefit of the model that is highly valued by residents.

Recommendation

That the submission be noted.

Issue: Opposition to the tenure requirement

Submission

(Bruce Davidson, Corporate Taxpayers Group, Fletcher Building Limited, KPMG, New Ground Capital Limited, Resident Properties Limited)

There should be no requirement to offer tenants a 10-year contract as build-to-rent, by its very nature, is already incentivised to provide long-term tenancies.

If the policy behind the build-to-rent exclusion is to make sure interest limitation does not negatively impact the supply of rental property, then the requirement to offer 10-year tenancy contracts is not necessary. *(Corporate Taxpayers Group)*

Initial investment will be discouraged because it will be difficult to sell down individual dwellings with such long leases. If the requirement remains, the tenancy should be terminable by the landlord with due notice. *(KPMG, New Ground Capital Limited, Resident Properties Limited)*

Comment

Officials disagree. The purpose of this exclusion is to enable build-to-rent developments to contribute to the delivery of new and quality rental housing and to generate better wellbeing outcomes for people who rent. The intent of the minimum tenure requirement is to give tenants increased tenure security, while maintaining their rights as tenants, and to ensure suitable levels of household flexibility and mobility.

In short, the Government is offering a benefit to providers and, in return, has put in place a requirement to benefit tenants by offering longer-term tenancies.

Recommendation

That the submission be declined.

Issue: Clarification of tenure requirement

Submission

(MDH Property Limited)

Clarification is required as to whether tenancy agreements of less than 10 years require a 56-day notice period. Tenancy agreements of less than 10 years should still be accompanied by a 56-day notice period.

Comment

Officials disagree. There is no requirement to offer a 56-day notice period if a tenancy agreement of less than 10 years is agreed to by the tenant. The notice period is intended to be proportionate to the length of the 10-year fixed term contract to provide security to tenants while allowing them to maintain flexibility.

Recommendation

That the submission be declined.

Issue: Ability for a landlord to terminate a tenancy

Submission

(Fletcher Building Limited, Kiwi Property Group Limited, KPMG, Property Council New Zealand, Real Estate Institute of New Zealand, Resident Properties Ltd)

There should be provisions for termination by the landlord similar to those permitted for a periodic tenancy, for instance, where there are rent arrears (section 55) or anti-social behaviour (section 55A). This is important to ensure landlords meet the requirement under section 45(1)(e) of the Residential Tenancies Act 1986 (RTA).

Comment

Officials disagree. Various alternatives for reducing a fixed-term tenancy exist under the RTA, for example, termination for non-payment of rent under section 55, or reduction of the term for severe hardship under section 66(1). These can be progressed via application to the Tenancy Tribunal. Officials do not consider any additional provisions are necessary.

Recommendation

That the submission be declined.

Issue: Ability to terminate tenancies when the exclusion no longer applies

Submission

(Fletcher Building Limited, Kiwi Property Group Limited, KPMG, Resident Properties Limited)

The landlord should have the ability to terminate the fixed-term tenancy with a reasonable notice period (for example, six months) if the dwelling no longer satisfies the “build-to-rent land” definition or if the “build-to-rent land” definition is repealed.

Comment

Officials disagree. The proposal requires that build-to-rent dwellings are used, or available for use, under the Residential Tenancies Act 1986 (RTA). If a dwelling no longer satisfies that definition for “build-to-rent land” or the “build-to-rent land” definition is repealed, the agreement between the tenant and landlord still stands, as provided for by the RTA. This ensures tenants retain their security of tenure even where the status of a development changes.

A fixed-term tenancy can be ended if there is hardship to the tenant or landlord. So, if a provider lost the exclusion and would face serious hardship in maintaining the tenancies, section 66(1) of the Residential Tenancies Act 1986 may be used.

Recommendation

That the submission be declined.

Issue: 56-day notice period

Submission

(A Renting Company, Fletcher Building Limited, KPMG, MDH Property Limited, New Ground Capital Limited, Real Estate Institute of New Zealand, Resident Properties Limited)

There should be a minimum tenure period where the tenant cannot break the tenancy even with 56 days’ notice, otherwise build-to-rent can be used as short-term accommodation.

The 56-day notice period could be misused. The tenure requirement should align with normal residential tenancy provisions. *(Resident Properties Limited)*

Comment

Officials disagree. The intent of the 56-day tenant termination notice condition is to ensure tenants’ rights are maintained and they are given suitable levels of household flexibility and mobility while in a fixed-term tenancy agreement. The 56-day period is double the tenant termination notice period for a periodic tenancy agreement, and officials consider it suitable when measured against the value of the 10-year minimum tenure requirement.

Including a stand-down period in which a tenant cannot terminate a tenancy would complicate the definition of build-to-rent land and lessen the rights of tenants in build-to-

rent tenancies.

Recommendation

That the submission be declined.

Issue: Personalisation policy requirement

Submission

(Corporate Taxpayers Group, Fletcher Building Limited, Kiwi Property Group Limited, KPMG, MDH Property Limited, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand, Real Estate Institute of New Zealand, Resident Properties Limited)

Submitters made the following submissions on the personalisation policy:

- a. More guidance on personalisation policies is required, particularly on the definition of 'without penalty' and whether 'make good' provisions are allowed.
- b. 'Make good' provisions should be expressly allowed.
- c. Not all buildings are appropriate for pets. It should be clarified whether this is a requirement of the personalisation policies. *(Fletcher Building Limited, MDH Property Limited)*
- d. The term 'without penalty' should be removed. *(Real Estate Institute of New Zealand)*
- e. The requirement for landlords to offer personalisation policies to all tenants will only lead to further confusion. These allowances are already afforded under the Residential Tenancies Act 1986 (RTA), so they are unnecessary. *(MDH Property Limited)*

Comment

The personalisation requirement provides that a build-to-rent provider must explicitly offer tenants, in accordance with sections 42, 42A and 42B of the RTA, the ability to personalise their dwellings. At the end of the tenancy, tenants will be required to 'make good' on any personalisations made during the tenancy, in accordance with section 42B(4) of the RTA.

The intention of this requirement is to make lifestyles issues, like pets and home-making, more transparent to prospective tenants, while acknowledging that not all types of tenant personalisations will be appropriate to every build-to-rent development. For example, some build-to-rent providers may wish to promote exclusion of pets as a point of difference to benefit some tenants.

This requirement may take the form of a build-to-rent provider producing a document – offered to all tenants with the build-to-rent development – that explicitly outlines how tenants can personalise their dwellings.

Officials recommend a wording change to the drafting in the Bill to clarify the intent of this requirement and reference the RTA. This requirement will also be clarified in guidance.

Officials also recommend removing the term 'without penalty' as this is already covered by

protections under the RTA.

Recommendation

- a. That the submission be noted.
- b. That the submission be noted.
- c. That the submission be noted.
- d. That the submission be accepted.
- e. That the submission be declined.

Issue: Tenant personalisation

Submission

(Kiwi Property Group Limited, MDH Property Limited, Real Estate Institute of New Zealand)

Tenant personalisation should be required to have written approval from the landlord *(MDH Property Limited, Real Estate Institute of New Zealand)* and be undertaken by a reputable tradesperson approved by the landlord. *(Kiwi Property Group Limited)*

Comment

Officials disagree. In accordance with sections 42, 42A and 42B of the Residential Tenancies Act 1986 (RTA), tenants already have the ability to personalise their dwellings. Sections 42, 42A and 42B set out when landlord consent is required, the conditions a landlord can place on consent, and what happens at the end of the tenancy. The personalisation policies are not intended to pre-authorise the personalisations featured in the policies, rather they are intended to make clear to tenants upfront what personalisations the build-to-rent provider is happy for the tenant to make. Unless pre-authorisation is contained in the tenancy agreement, as provided for under section 41(1)(a) of the RTA, the tenant is still required to seek permission from the landlord to make the personalisation. The personalisation policies do not preclude a tenant from seeking permission from the landlord to make other personalisations, which would be considered in accordance with the provisions of the RTA.

Generally, tenants are not required under the RTA to employ a tradesperson to undertake personalisations to the property. However, a landlord may, under section 42A(2), impose a condition on their consent that a tradesperson must be employed to carry out the work if it would be 'reasonable' to do so, for example, if it involves skilled work or is more than a 'minor change'. What constitutes 'reasonable' would depend on the circumstances, and any dispute over what is reasonable in the context could be tested in the Tenancy Tribunal.

There is no reason tenants in build-to-rent rentals should be subject to more onerous conditions than regular tenants. This requirement will be clarified in guidance.

Recommendation

That the submissions be declined.

Issue: Single ownership requirement

Submission

(Corporate Taxpayers Group, Fletcher Building Limited, Kiwi Property Group Limited, KPMG, New Zealand Superannuation Fund, Property Council New Zealand, Resident Properties Limited)

The requirement that a build-to-rent development be owned by the “same person” should be removed. The definition as it is currently structured does not take into account joint ownership structures, such as unincorporated joint ventures and limited partnerships.

(Corporate Taxpayers Group, Fletcher Building Limited, KPMG, New Zealand Superannuation Fund, Property Council New Zealand)

Alternatively, the term “same person” should be expanded to include the “same group of persons” to make sure that joint venture and limited partnership structures can qualify.

(Fletcher Building Limited, KPMG, Property Council New Zealand, Resident Properties Limited)

Comment

The single ownership requirement is intended to ensure that a build-to-rent development is in fact a single development that is owned and managed cohesively. The term “same person” is intended to cover limited partnerships and joint ventures. This will be clarified in guidance.

Recommendation

That the submission be declined.

Issue: Contiguous land requirement

Submission

(Chartered Accountants Australia and New Zealand, EY, Kiwi Property Group Limited, KPMG, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand, Resident Properties Limited)

The requirement for build-to-rent developments to have 20 dwellings on **contiguous land** should be removed, as it may have unintended consequences, particularly for properties that are unit titles. *(Chartered Accountants Australia and New Zealand, EY, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand, Resident Properties Limited)*

Support for the requirement, but further consideration should be given to the impact of unit titles. *(Kiwi Property Group Limited, KPMG)*

Comment

The term “contiguous land” refers to the land itself, rather than the dwellings on the land. Having unit title dwellings that are sold to owner-occupiers located between dwellings that are held as build-to-rent units in a single development would not bar that development from

qualifying as “build-to-rent land”. However, there may be an issue where the development spans multiple blocks that are not directly touching, for example, if there is a road between them. For this reason, officials recommend that the term “contiguous land” be removed, and the “build-to-rent land” definition instead refer to a single project-based definition to better reflect the policy intent.

Recommendation

That the submission be accepted.

Issue: Continuous use requirement

Submission

(EY, New Zealand Superannuation Fund, PwC, Real Estate Institute of New Zealand)

Submitters do not support the requirement that build-to-rent developments must continuously meet the requirements or that failing to meet the definition would mean the land can never in the future be considered build-to-rent land. The following submissions were made:

- a. The continuous use requirement should be removed. *(PwC)*
- b. The consequences of losing eligibility are too punitive and uncommercial; use of the land by one person should not taint all future use. *(EY, New Zealand Superannuation Fund, Real Estate Institute of New Zealand)*
- c. The rules should contain a more flexible approach that would, at the very least, allow landlords to remedy any temporary failures to meet requirements and that would separately allow future landlords to remedy the failures of prior landowners. *(EY, New Zealand Superannuation Fund)*
- d. There should be an ability to rectify an inadvertent breach within a certain timeframe (for example, three months from the end of the relevant year or from being advised there was a breach due to an administrative error). *(Chartered Accountants Australia and New Zealand, Fletcher Building Limited, Kiwi Property Group Limited, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand, PwC, Real Estate Institute of New Zealand, Resident Properties Limited)*
- e. A discretion should apply for unexpected circumstances that mean a provider fails to meet the requirements (for example, if a provider has to sell one or two properties and this brings them under 20 units), provided they later meet the requirements again. *(Real Estate Institute of New Zealand)*

Comment

The purpose of the exclusion is to encourage long-term dedicated rental supply at scale. The continuous use requirement ensures there is long-term rental supply that provides continuity for tenants and reflects the benefit of having an in-perpetuity exclusion from the interest limitation rules.

The certification process is under active consideration by officials, and as part of this, officials will consider the appropriateness of having a period in which build-to-rent providers can rectify an inadvertent breach.

Recommendation

- a. That the submission be declined.
- b. That the submission be declined.
- c. That the submission be noted.
- d. That the submission be noted.
- e. That the submission be noted.

Issue: 1 July 2023 requirement

Submission

(MDH Property Limited, PwC)

There should not be a date by which existing build-to-rent developments must meet the definition requirements:

- They should have until the end of their current fixed term tenancies to meet the requirements. *(MDH Property Limited)*
- The exclusion should be extended to any building constructed before 1 July 2023 that offers fixed-term tenancies of more than ten years to tenants after 1 July 2023. *(PwC)*
- Due to the short period between enactment and 1 July 2023, the Commissioner should have additional flexibility to accept late adoption/applications. *(EY)*

Comment

Officials disagree. Under the Residential Tenancies Act 1986, a landlord and tenant can agree to terminate a fixed-term tenancy. For this reason, landlords wishing to access the build-to-rent exclusion do not have to wait until their current fixed-term tenancies have ended to offer their current tenants a new 10-year contract. Officials therefore consider there is sufficient time for landlords of existing dwellings to meet the requirements of the build-to-rent definition by 1 July 2023.

Recommendation

That the submission be declined.

Issue: Professional management

Submission

(Oxygen Property Management, Real Estate Institute of New Zealand)

There should be an extra requirement for build-to-rent developments to be professionally managed by a licensed property manager.

Comment

It is expected that most build-to-rent developments will be professionally managed. However, officials do not believe that it should be a necessary extra requirement.

Recommendation

That the submission be declined.

Issue: Interaction with the new build exemption

Submission

(EY)

The build-to-rent exclusion is too onerous, and the new build exemption will be used instead. The build-to-rent exclusion and the new build exemption should not be mutually exclusive. If a development falls out of the build-to-rent exclusion, they should be able to access the new build exemption.

Comment

The build-to-rent exclusion and the new build exemption are not mutually exclusive. If a new build-to-rent development that has accessed the exclusion later fails to meet the requirements, it would then be able to access the new build exemption if it is within the 20-year period since the development was completed and had its code compliance certificate issued.

Recommendation

That the submission be noted.

Issue: Inconsistencies with the Residential Tenancies Act

Submission

(Auckland Property Investors Association Incorporation, Crockers Property Group, Property Council New Zealand, Real Estate Institute of New Zealand)

The following submissions on the inconsistencies between the build-to-rent exclusions in the Income Tax Act 2007 (ITA) and the Residential Tenancies Act 1986 (RTA) were made:

- Consequential amendments to the RTA will be required to give effect to the provisions in the Bill. (*Crockers Property Group*)
- Language in the Bill deviates from the language used in the RTA. (*Auckland Property Investors Association Incorporation*)
- Section 98(3)(a) definition of “build-to-rent land” states that it means “dwellings occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies”. However, it also states that the tenant may cancel the tenancy with 56 days’ notice. This tenant right should be expressly stated as overriding the RTA (because it conflicts with the RTA). (*Property Council New Zealand, Real Estate Institute of New Zealand*)

Comment

Officials agree. The RTA provides that a fixed-term tenancy “means a tenancy for a fixed term; but, except as provided in section 58(1), does not include such a tenancy that is terminable by notice.”⁸ The proposed definition of “build-to-rent land” to be inserted into section YA 1 of the ITA, which requires landlords to offer “a fixed-term tenancy of no less than 10 years” but with the tenancy terminable for tenants by 56 days’ notice, is therefore inconsistent with the RTA.

For this reason, officials recommend amending the RTA, via the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2), to clarify that build-to-rent tenants who accept a fixed-term tenancy offer of at least 10 years have the right to give 56 days’ notice to terminate and will still satisfy the definition of fixed-term tenancy.

Officials also agree that certain language in the Bill as introduced is inconsistent with language used in the RTA. The Bill currently refers to a tenancy being ‘cancelled’. However, the RTA refers to a tenancy being ‘terminated’. The Bill also refers to a ‘tenancy’ rather than using the RTA term of a ‘tenancy agreement’. Officials recommend that language consistent with the RTA be adopted in the definition of “build-to-rent land”.

Recommendation

That the submission be accepted.

Issue: Location of “build-to-rent land” definition

Submission

(*Corporate Taxpayers Group, EY*)

The definition of “build-to-rent land” should be included in the Residential Tenancies Act 1986 (RTA) rather than the Income Tax Act 2007 (ITA), as the ITA should not dictate terms of tenancies. Changes to residential tenancy laws in the future should not require the ITA to be

⁸ Section 58(1) relates to a mortgagee or other person becoming entitled to possession of the property.

amended.

Having the definition in the ITA could undermine the tenant's ability to enforce their rights.(EY)

Introducing external party approval into the ITA reduces the certainty a taxpayer has over the application of tax law. A taxpayer should be able to rely on the definitions included in the ITA, subject to challenge by only the Commissioner of Inland Revenue. (*Corporate Taxpayers Group*)

Comment

Officials disagree. The build-to-rent exclusion is an exclusion from the interest limitation rules, which are located in the ITA. Having the definition of "build-to-rent land" located in the ITA does not alter the rights of a tenant under the RTA.

A taxpayer will still have certainty over the application of the exclusion, regardless of the approval required from the Chief Executive responsible for the administration of the RTA. This is because the Chief Executive will be applying the definition located in the ITA.

Recommendation

That the submission be declined.

Issue: Certification process

Submission

(*Fletcher Building Limited, Kiwi Property Group Ltd, KPMG, Resident Property Limited*)

Provision should be made in the legislation to provide an annual certification process or confirmation so that build-to-rent providers do not find themselves in the position where they cannot provide certainty to a potential purchaser or financier that the land meets the definition of "build-to-rent land" due to a "one time only" notification process.

Comment

The certification process is still being developed by officials and further guidance will be provided.

Recommendation

That the submission be noted.

Issue: Self-certification

Submission

(*Property Council New Zealand*)

Responsibility for compliance checks of certified build-to-rent properties should be amended

to align with retirement villages and take a self-management approach supported by an audit function.

Comment

The certification process is still being developed by officials. However, as this is a new asset class being defined for the first time in New Zealand legislation, self-certification will likely not be an appropriate approach. The exclusion cannot apply to future owners once a development has ceased to apply at any given point. If there is no certification process, it would be more difficult to provide potential future owners with certainty on whether they can access the exclusion and deduct their interest expenses.

Recommendation

That the submission be noted.

Issue: Application of the exclusion to a property

Submission

(Deloitte)

For the requirement to seek approval for the exclusion from the Chief Executive of the Ministry of Housing and Urban Development, it should be made clear that the exclusion relates to the property, rather than the taxpayer. Therefore, if there is a change in ownership, the exclusion passes to the new owner (provided the build-to-rent terms are still satisfied).

Recommendation

That the submission be noted.

Issue: Apportionment for mixed-use developments

Submission

(New Zealand Superannuation Fund)

Clarification is required on whether community amenities are included in the “to the extent” test. This is because only interest relating to the portion of the development that meets the definition of “build-to-rent land” can be deducted.

Comment

The exclusion applies to a development “to the extent to which” it qualifies as build-to-rent land. This includes anything necessary for the enjoyment of the dwelling. Therefore, any amenities provided for the enjoyment of those in the build-to-rent dwellings will qualify to the extent to which they are available to those tenants. For example, if there are 20 build-to-rent units and 20 owner-occupied units that all use a shared amenity, 50 percent of the amenity would qualify for the exclusion.

Recommendation

That the submission be noted.

Issue: Responsible government body

Submission

(Fletcher Building Limited, Kiwi Property Group Ltd, KPMG, Property Council New Zealand, Resident Properties Limited)

The legislation needs to be clear regarding which government body will be responsible for monitoring and auditing compliance with the “build-to-rent land” definition.

Comment

The Bill, as introduced, sets out in proposed new schedule 15 that the Chief Executive of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development will provide notice to the Commissioner that the land meets the definition of “build-to-rent land”.

Point of difference

Officials, however, recommend that the legislation instead refer to the Chief Executive responsible for the administration of the Residential Tenancies Act 1986. This will ensure that the legislation will continue to function correctly if the Ministry of Housing and Urban Development changes its form or name.

Both Inland Revenue and Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development can monitor and audit compliance. However, the certification process is still being developed by officials and further guidance will be released upon enactment.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: Key worker housing

Submission

(New Ground Capital Limited, New Zealand Superannuation Fund)

The exclusion should cover key worker housing/employer head leases.

Comment

Officials disagree. Key worker accommodation provides long-term rental housing for members of workforces, for example, the New Zealand Defence Force or healthcare professionals. The scale of this type of housing is variable and objectives differ from build-to-rent.

Although build-to-rent provides long-term rental housing, akin to key worker

accommodation, it is a specific type of long-term rental housing with specific variables and associated outcomes. The Government has opted to support the development of this model because of its potential to deliver rental housing to the general market at pace and scale and to generate better wellbeing outcomes for people and whānau who rent.

Further work would be required to determine whether key worker housing should benefit from extended exclusion and what conditions would apply.

Owners of key worker accommodation that received a code compliance certificate on or after 27 March 2020 can claim the new build exemption.

Recommendation

That the submission be declined.

Issue: Education campaign

Submission

(EY)

The short period between enactment and 1 July 2023 means there needs to be a strong strategy for advertising the criteria.

Recommendation

That the submission be noted.

Issue: Other build-to-rent policy settings

Submission

(Corporate Taxpayers Group, Deloitte, New Ground Capital Limited, New Zealand Superannuation Fund, Property Council New Zealand)

Additional policy changes are required to incentivise the build-to-rent sector in New Zealand, including:

- reinstating depreciation deductions for build-to-rent assets *(Deloitte, New Ground Capital Limited, New Zealand Superannuation Fund)*
- amending the Overseas Investment Act 2005 to explicitly allow overseas investment in the build-to-rent sector *(New Ground Capital Limited, Property Council New Zealand)*, and
- excluding build-to-rent from the bright-line rules. *(Corporate Taxpayers Group)*

Comment

Further work on any of these matters would require prioritising and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Information-sharing provision

Submission

(Matter raised by officials)

A register of assets is required to be set up and maintained by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development to enable Inland Revenue to correctly apply the exemption to eligible taxpayers. Setting up and maintaining the register requires taxpayer information to be shared between Te Tūāpapa Kura Kāinga and Inland Revenue. This would include a reactive information share where Inland Revenue requests information from Te Tūāpapa Kura Kāinga for auditing purposes, as well as a proactive information share from Inland Revenue to inform Te Tūāpapa Kura Kāinga that an asset no longer meets the build-to-rent requirements and should be removed from the register. Information will only be shared if it is necessary for the administration of the build-to-rent exemption from interest limitation.

Officials recommend inserting a disclosure provision into the Tax Administration Act 1994 so that section 18, which protects the confidentiality of sensitive revenue information, does not prevent the Commissioner communicating information to Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development relating to eligibility for, or non-compliance with, the build-to-rent tax exemption requirements or the register held by the Ministry.

However, as noted in earlier items, the certification process is still being developed by officials.

Recommendation

That the submission be accepted.

Issue: Chief Executive is satisfied that the land meets the definition

Submission

(Matter raised by officials)

To clarify the responsibility of the Chief Executive responsible for the administration of the Residential Tenancies Act 1986, officials recommend updating the provision so that its application depends on the responsible agency being **satisfied** that the land meets the definition of “build-to-rent land”. This change reflects what would occur operationally in the context of assessing whether land meets the definition of “build-to-rent land”.

Recommendation

That the submission be accepted.

FRINGE BENEFIT TAX EXEMPTION FOR CERTAIN PUBLIC TRANSPORT FARES SUBSIDISED BY EMPLOYER

Clauses 23 and 27

Issue: Support for the proposal

Submission

(38 submitters – refer to Appendix Two for the full list)

Support for the proposal to exempt certain employer-provided public transport fares from fringe benefit tax.

However, the proposed exemption moves away from the general position that home to work travel is a private expense. *(PwC)*

Recommendation

That the submission be noted.

Issue: Full review of FBT

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand, Deloitte)

A policy project should be undertaken and prioritised to reform and modernise the FBT regime in line with the recommendations of the recent Inland Revenue stewardship review.

The FBT exemption for public transport should not proceed. Instead of this fragmentary approach around FBT and public transport, this option should be considered as part of a full review of FBT as part of Inland Revenue's future work policy programme. This is mainly because:

- The Government believes there may currently be a bias in the FBT rules regarding on-premises car parking towards less environmentally friendly modes of transport.
- The proposed FBT exemption may see little take-up as it does not seem administratively feasible, particularly for small employers.
- A piecemeal approach to sorting out FBT issues is not the best way forward for long-term tax policy development.
- A full review of FBT is long overdue, given the changing landscape of the workforce and work environment. *(BusinessNZ)*

Comment

Officials acknowledge the matter raised by submitters. As mentioned by the submitters,

Inland Revenue recently undertook a FBT review in 2021/22 as part of Inland Revenue's regulatory stewardship role. The review found that aspects of both the design and the administration of FBT can be improved and recommended commissioning a policy project with the aim of re-establishing the remuneration basis of the tax, modernising FBT and reducing compliance costs following the generic tax policy process. The scope of any future project is dependent on resources and is subject to other Government priorities.

As the scope and timing of any FBT review is unclear, we recommend proceeding with the proposed FBT exemption for public transport to address the currently existing bias in the FBT rules towards using a car to commute to work.

Recommendation

That the submission be declined.

Issue: Include on-demand services in the public transport exemption

Submission

(Bus and Coach Association New Zealand, Greater Wellington Regional Council, Greg Pollock)

On-demand services should be specifically included in this Bill. On-demand is a public transport service that you can book and pay for using an app. Patrons indicate through the app where they want to be picked up and dropped off. There is no set route or timetable, although the services do operate within a defined geographical area. Therefore, on-demand services do not necessarily fit within the current proposed exemption for public transport.

Comment

Officials understand that on-demand services are increasingly being offered by public transport providers in areas of lower demand, and standard public fares apply for the services. We agree with submitters that these services form part of the public transport network and recommend clarifying the wording of the proposed exemption so that it includes on-demand services where those services are part of a public transport provider's network and are subject to a public transport fare.

Recommendation

That the submission be accepted.

Issue: Future proof list of public transport options covered by exemption

Submission

(Campaign for Better Transport Incorporated, Greater Wellington Regional Council, Greg Pollock)

- a. Public transport services covered by the exemption should extend to other transport services, such as Public Transport On-Demand and AT Local, which is proposed to be included in the new Sustainable Public Transport Framework. *(Campaign for Better Transport Incorporated, Greater Wellington Regional Council)*
- b. Any changes to the definition of public transport resulting from the framework would be reflected in the definition of “public transport service” in the Land Transport Management Act 2003. The FBT exemption should therefore refer to the definition of “public transport service” in section 5 of the Land Transport Management Act 2003. *(Greater Wellington Regional Council)*
- c. The FBT exemption for public transport should include light rail and light metro in anticipation that these may be delivered in the next decade in New Zealand. *(Greg Pollock)*

Comment

- a. As discussed in [“Issue: Include on-demand services in the public transport exemption”](#) above, officials have recommended that on-demand services should be included within the scope of the proposed exemption. This would include Public Transport On-Demand in the new Sustainable Public Transport Framework.
- b. The Land Transport Management Act 2003 is very specific in its definition of “public transport service”, which is tailored to the purposes of that Act. Officials do not consider that the listed forms of public transport need to be so detailed for FBT purposes.

In practice the coverages are broadly similar, and we consider that the modifications that we are recommending to proposed section CX 19C are sufficient to accommodate future public transport developments.

- c. Officials agree that light rail and light metro should also be included within the scope of the exemption even though there are none in operation yet. We recommend modifying the list in proposed section CX 19C to refer to “rail vehicle”, so light rail and light metro would be covered by this broad category.

Recommendation

- a. That the submission be accepted.
- b. That the submission be declined.
- c. That the submission be accepted.

Issue: Include exempt services in the list of public transport services exempted from FBT

Submission

(Bus and Coach Association New Zealand, Greg Pollock)

Several services within the listed public transport services are exempt. For clarity, these should be explicitly included. Examples include the Waiheke Island ferry, but there are others around New Zealand. The current definition is likely to include them. *(Greg Pollock)*

It should be confirmed that exempt services will be eligible for the exemption. *(Bus and Coach Association New Zealand)*

Comment

“Exempt services” is a term specific to the Land Transport Management Act 2003. It refers to privately run, commercial public transport services that do not receive a subsidy from central or local government.

Officials consider it is unnecessary to specifically list exempt services in the FBT exemption. The proposed list of public transport services is wide enough to incorporate such services because part central or local government funding of the service is not a requirement to qualify for the FBT exemption. We note that one of the submitters acknowledges that the proposed list is likely to include them.

Recommendation

That the submission be declined.

Issue: Exempt Total Mobility scheme travel from FBT

Submission

(Greater Wellington Regional Council, Greg Pollock)

Consideration needs to be given as to whether the Total Mobility scheme should be included in the FBT exemption.

The Total Mobility scheme is a national scheme administered by regional councils that supports people who cannot use public transport to travel, whether all or some of the time. Including the scheme in the FBT exemption would provide equity.

Comment

While the original policy intent of the proposed exemption focused on environmental and neutrality concerns, including Total Mobility scheme users within the exemption would address equity concerns across employees.

The purpose of this scheme is to ensure those with an impairment that makes it difficult for them to use public transport have alternative transport options at a reasonable price. If employees who use public transport to commute to work can be subsidised by their

employer without FBT applying, then an employer subsidy for those who need to use alternative transport because of an impairment should also be exempt from FBT.

Total Mobility customers pay 50% of the cost of travel (for example, by shuttle with a wheelchair hoist) up to a regional cap and any additional cost that is over the regional cap. The regional council reimburses the transport operator directly for the remaining 50% of the cost. An employer may wish to subsidise some portion of the amount paid by the employee.

Officials therefore recommend that employer-provided fringe benefits mainly for the purposes of travel between home and work that are part funded by the Total Mobility scheme should be included in the proposed FBT exemption.

Recommendation

That the submission be accepted.

Issue: Extend the exemption to all public transport

Submission

(Bus and Coach Association New Zealand, Dan Roberts)

The exemption should be widened to include all public transport use – not just commuting for work purposes.

This would more closely resemble the widespread and unenforced usage of company vehicles for personal, non-work-related trips. *(Bus and Coach Association New Zealand)*

Comment

The proposed public transport exemption states that the benefit needs to be provided “mainly for the purposes of an employee travelling between their home and place of work”. This focus on “mainly” acknowledges that some other incidental private travel may also occur without attracting FBT.

Officials consider that limiting the exemption to the main purpose of between home and work travel best achieves the policy objective of improving neutrality in the FBT rules relative to car parking provided on the employer’s premises. Widening the proposed exemption would increase distortions and further reduce coherence and neutrality in the tax system.

Recommendation

That the submission be declined.

Issue: Equivalent income tax exemption for public transport fares

Submission

(Baucher Consulting Limited, Campaign for Better Transport Incorporated, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, KPMG, Public Transport Users Association, PwC)

There is no equivalent tax exemption when employers reimburse their employees for public transport fares incurred by the employee or when the employee owns the public transport card and the employer pays an allowance towards public transport costs. This creates inconsistencies within the tax regime.

It would be more effective and appropriate in meeting the desired outcomes and ensuring consistency for the FBT exemption to be extended to allow employers to instead reimburse employees for public transport costs or provide an allowance without a tax impost. This approach would be more attractive and cost-effective for employers to implement and would not require engagement with public transport providers. It would also mean the tax treatment would be neutral regardless of the different ways in which the employer chooses to administer the benefit.

This is particularly important given recent announcements about the new national ticketing solution project, which would allow for the use of debit or credit cards and other digital payment methods on public transport.

If there were integrity concerns regarding the introduction of a tax-free allowance, safeguards could be introduced, such as a safe-harbour limit amount (*Corporate Taxpayers Group, Deloitte*) or exclusions from the concession where the transport allowance is paid in lieu of part of an employee's salary or wages (*Corporate Taxpayers Group*).

Comment

Employers' allowances and reimbursements paid towards employees' public transport costs are not covered by the proposed FBT exemption. This is because they do not fall under the FBT rules but instead are subject to income tax through the PAYE system.

The existing neutrality issue the exemption tries to address does not arise in relation to reimbursements and allowances. This is because reimbursements and allowances for both car park fees and public transport costs are subject to income tax. To protect the integrity of the tax system, there are very few tax-free employer allowances in the income tax rules. Existing tax-free allowances are mostly limited to unusual work circumstances that cause additional costs, such as certain additional transport costs when there is no adequate public transport for the place of work, or limited out-of-town secondments and conferences.

Officials have talked to some large public transport providers in the process of developing products that may address some of the administrative difficulties of providing these fringe benefits. They stated that, while the national ticketing solution is in the initial stages of development, they understand that specific public transport ticketing solutions will be available alongside the ability to use debit or credit cards and other digital payment

methods.

Officials therefore do not recommend an equivalent income tax exemption for allowances or reimbursements relating to public transport costs.

Recommendation

That the submission be declined.

Issue: Practical guidance on operation of public transport FBT exemption

Submission

(EY, KPMG)

Practical guidance needs to be provided by Inland Revenue on the operation of the rules. It should be made clear that employers are not required to track actual usage of employer-provided subsidised public transport fares - rather, they should be able to rely on a clear policy to confirm whether the exemption applies.

To aid uptake of this concession, further Inland Revenue interpretive guidance is needed to assist employers in understanding the distinction between when PAYE or FBT is to be applied to the various forms of public transport subsidies. *(EY)*

Comment

The proposed exemption applies for public transport fringe benefits that are provided "mainly for the purposes of an employee travelling between their home and place of work". This focus on "mainly" acknowledges that some other incidental private travel may also occur without attracting FBT.

This concept is already used in the FBT rules where the private use of a business tool (costing no more than \$5,000) is exempt from FBT where the tool is provided mainly for business purposes.

Officials acknowledge that determining whether FBT or PAYE applies can be complex in some circumstances. This issue is not specific to the public transport exemption proposed in the Bill. Inland Revenue has published general guidance on the issue, including in the *IR409 Fringe Benefit Tax Guide*.

Officials will include some examples on the operation of the public transport FBT exemption in the relevant *Tax Information Bulletin* item outlining the changes following enactment of the Bill.

Recommendation

That the submission be noted.

Issue: Application of the exemption in practice

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, PwC)

The application of the proposed exemption will be difficult for employers, in particular the requirement to administer it within the FBT rules rather than it being a solution that would be taxed through the PAYE system. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, PwC)*

The proposal will require large-scale public transport providers to engage, and set up accounts, with a significant number of employers, which is likely to prove difficult without an incentive for the public transport providers. In addition, public transport providers would need to distinguish between travel for work purposes and for other purposes. *(Corporate Taxpayers Group, Deloitte, PwC)*

Every region will have its own fare system and developing a system that will allow employers to provide public transport subsidies to their employees (that fall within the FBT regime) may be challenging. *(Chartered Accountants Australia and New Zealand)*

This issue is particularly relevant given the announcement from the Minister of Transport on 21 October 2022 that discussed changes to the way New Zealanders pay for public transport, including enabling payment via phone or credit card. It is possible that, should consumers move to a different way of paying for transport, this exemption as drafted may be redundant. *(PwC)*

Due to these barriers, the actual uptake and use of the FBT exemption may be very low as there may not be the infrastructure or systems available to use.

Comment

Officials have talked to some large public transport providers in the process of developing products that may address some of the administrative difficulties of providing public transport fringe benefits. They stated that, while the national ticketing solution is in the initial stages of development, they understand that specific public transport ticketing solutions will be available alongside the ability to use debit or credit cards and other digital payment methods. Greater Wellington Regional Council also stated in their written submission that they are actively working on fare products to target businesses and employers and provided further detail on this in their oral submission.

Recommendation

That the submissions be noted.

Issue: FBT exemption for bicycles, including e-bikes

Submission

(410 submitters – refer to Appendix Two for the full list)

There should be an FBT exemption for bicycles (specifically including e-bikes).

Such an exemption should cover a variety of forms of employer bike schemes and employment-related cycling initiatives, for example, provision of a bike, purchase of a bike for an employee, employer reimbursement for the cost of an employee's bike, employee repayment or a bike subscription service, either subsidised or at market rates.

The provision of e-bikes up to a value of, say, \$4,000, should be exempt from FBT as is the case in the United Kingdom. *(Baucher Consulting Limited)*

Most submissions, particularly those from individuals, related to a campaign by the Cycling Action Network. They submitted in support of implementing proposed new section CX 19D of the Income Tax Act 2007 from the Income Tax (Clean Transport FBT Exclusions) Amendment Bill, a member's Bill by Hon Julie Ann Genter that has not yet been drawn from the ballot. That section proposes measures to encourage businesses to support clean modes of transport, including an FBT exemption when employers provide bicycles to enable employees to travel between home and work.

The suggested exemption would encourage more people to ride bikes more often and help New Zealand achieve international obligations and targets outlined in the emissions reduction plan.

Increasing the number of people commuting on, or generally riding, a bicycle would have the following positive effects:

- Reduction in CO₂ emissions from (private) transport.
- Reduction in transport costs for New Zealand households.
- Reduction in congestion and damage to our roadways.
- Improved road safety.
- Improved mental well-being of the population.
- Substantive health benefits (such as reductions in heart disease, cancer, diabetes, and death) from active transport – in particular, cycling.
- Increased competitiveness in New Zealand by creating cities that young talent might want to live in.

An FBT rate of 64% on e-bikes disincentivises and limits the ability of, and is a barrier to, employers implementing a bike-to-work scheme and achieving carbon reduction goals. *(Alexa Forbes, Big Street Bikers, The Warehouse Group)*

An FBT exemption is likely to open up e-bikes to people who would otherwise not be e-bike users, so it will have a high value in terms of mode shift away from cars by providing an option to ride an e-bike instead. *(Big Street Bikers)*

The current application of FBT on an employer if they provide an e-bike for staff to commute

between work and home is counterproductive to the government's climate action and mode shift priorities. (*Big Street Bikers, The Warehouse Group*) It does not support the Transport Emission Reduction Plan's essential action of "increasing support for walking and cycling, including initiatives to increase the use of e-bikes". (*The Warehouse Group*)

Tax policy should not incentivise unhealthy behaviours, which is currently the case. (*Doctors for Active, Safe Transport*)

As a country, we should use our tax system to incentivise behaviour that reduces emissions. (*Big Street Bikers*)

Comment

Positive effects of cycling in general

There have been numerous analyses acknowledging that cycling of some form, instead of travelling by car, can have positive effects, in particular in relation to improving health and environmental outcomes.

Submitters provided scientific information on the health benefits of cycling (in particular, *Doctors for Active, Safe Transport*).

Moreover, in discussions with employers, employer representative groups and public transport providers on the proposed FBT exemption for public transport, there was increased interest from employers to help the environment, as well as the health and wellbeing of their employees, through encouraging and supporting beneficial behaviours.

The 2018 Census indicated that just under 50,000 persons (2% of the working population) commuted to work by bike, slightly less than those commuting by train, and 72% of persons commuted to work by car, either as driver or passenger. Cycling is the fastest growing form of commuting.

While officials agree that cycling to and from work rather than taking a private car has numerous benefits (as stated by submitters), we do not recommend adding an additional FBT exemption for bicycles to encourage a behaviour change towards cycling. There are a range of tax policy and fiscal cost reasons for this, and those reasons are outlined below.

New Zealand tax system endeavours to achieve neutrality of treatment

Since the mid-1980s, New Zealand's income and goods and services tax systems, unlike many other countries, have been based around a broad-based framework. This means that taxes are applied neutrally with few exemptions and subsidies. As a result, substantial amounts of tax revenue are raised relative to the level of tax rates, with the added benefit of simpler administration and compliance. There is generally a high threshold to depart from this neutrality approach.

Purpose of fringe benefit tax

Fringe benefit tax is consistent with the neutrality approach as its purpose is to ensure non-cash employment benefits are taxed comparably to salary or wages, subject to the practicality of doing so.

It also promotes fairness between employees (whether they are paid in cash or in kind) and helps preserve the integrity of the base that taxes income from labour in that it reduces

incentives for employers to pay employees with non-cash benefits rather than salary and wages. There are few exemptions to the current fringe benefit tax rules, which minimises distortion of economic activity.

Some submitters commented on the high FBT rate of 64% for bicycle fringe benefits being prohibitive for employers to be able to provide bike-to-work schemes. This FBT rate (the legislative rate is 63.93%) represents a “gross-up” of the top personal marginal tax rate of 39%, reflecting the net income after income tax of an employee on this tax rate. Exemptions from FBT have generally been limited to situations where compliance costs make it impracticable to apply FBT, such as benefits provided on an employer’s premises. On-employer premises car parking, including car parks leased from a car park provider, come within that exemption. Employers often use this rate as a default option, but they can use a lower FBT rate when the relevant employees’ marginal tax rates are lower. Amendments made in 2021 have provided increased flexibility in this area.

This exemption for on-premises car parking can be a sizeable benefit to employees in locations where parking charges are material. It does not align with the general principle that tax should be applied neutrally. For example, it may encourage the use of private cars for transport to workplaces with free car parking over the use of environmentally friendlier modes of transport, in particular public transport, and can also encourage the provision of car parking in lieu of a portion of taxable salary and wages.

Applying FBT on valuable on-premises car parking would be an ideal solution for improving FBT neutrality, but this has not proved possible when tried in the past (most recently in 2012). In recognition of these difficulties, the Tax Working Group instead recommended exempting employer-subsidised public transport from FBT to reduce the environmental bias. This approach removes the bias between the key modes of travelling to work by car and public transport, although it does create some biases with other forms of getting to and from work, such as cycling.

FBT exemption for bicycles could be poorly targeted

Officials’ best advice is invariably that, at least from a tax policy perspective, it is preferable to use direct grants or subsidies rather than the income tax system to alter behaviour. Separate direct subsidies are generally a more effective means of providing incentives to change behaviour, partly because they can be better targeted. For example, in recognition of the need for a community-wide response, the clean vehicle discount scheme applies across a wide range of vehicle purchases, not just where there is an employment situation.

Likewise, an FBT exemption for bicycles has a potentially narrow reach in that it does not provide benefits to the wider bicycle-purchasing market, including private individuals, the self-employed, and employees who do not enjoy private use of a bicycle as part of their remuneration. Providing a tax concession may be perceived as unfair by those who would not enjoy private use of a bicycle as part of their remuneration, such as those that walk to work or those who do not live within cycling range of their work. It would also likely result in subsidising those that would already cycle without any subsidy and is likely to favour those on higher incomes and in urban areas.

Wide range of benefits to potentially subsidise, leading to incoherent policy

In principle, arguments could be made for many employer-provided or subsidised benefits being exempt because they encourage socially or environmentally desirable behaviour. For example, arguments could be made on health grounds in relation to employer-subsidised gym memberships or health insurance.

Such an approach would lead to a largely incoherent tax policy framework and distort economic activity. In the few areas where exemptions are provided, the reach of the exemption is important in managing the potential distortion. The proposed FBT exemption for public transport and the existing FBT exemption for on-premises car parking share a similar focus that manages this risk. Both exemptions do not involve funding, or enabling, the private use of an underlying asset, like a bicycle, as recommended by many submitters.

Fiscal and integrity implications

An exemption would have a fiscal cost, consisting of foregone revenue from FBT partly offset by a slight increase in company tax, as any FBT that would have been paid would have been a deductible expense. The cost would likely be difficult to quantify because it would not be well targeted to those who would receive the greatest benefit.

There would also be systems integrity risks. Exemptions at the company level entail a risk, particularly from small and closely held companies where the shareholders are often also employees. As found elsewhere with the FBT rules, which rely on a high trust model, system integrity assurance can prove challenging.

Implications of FBT de minimis

We note some cycle-related fringe benefits may be excluded from FBT already, where the benefit value is less than the de minima for unclassified benefits. The cycle benefit value will depend on the nature of the arrangement⁹ and the value of the bike. The current de minima are:

- total unclassified benefits provided to the employee must be no more than \$1200 a year, and
- the total benefits provided by the employer to all employees must be no more than \$22,500.

Conclusion

Our overall conclusion is that a specific FBT exemption for bicycles would increase the distortion between the taxation of transport benefits and other fringe benefits, reducing the overall fairness and coherence of the tax system and giving rise to integrity risks, impacting on the fiscal cost.

If Parliament wanted to increase the uptake of cycling to help achieve improved health outcomes and assist New Zealand to achieve emissions reductions, it would instead recommend a more transparent and potentially targeted subsidy specifically designed to

⁹ For example, rather than gifting a bike to an employee, some employers provide an employee with a loan to purchase the bike and arrange discounts with bike suppliers.

achieve considered policy outcomes.

Recommendation

That the submission be declined.

Issue: FBT should apply to employer-provided cars

Submission

(Alex Dyer, Alexa Forbes, Axel Downard-Wilke, Daryl Warnock, Edward Pilbrow, Esther Whitehead, Jill Borland, Logan O’Callahan, Natalie Reeves, OraTaiao: The New Zealand Climate and Health Council, Peter Ramage, Sharon Erdrich)

FBT should be applied to all use of cars *(Alex Dyer, Axel Downard-Wilke, Daryl Warnock)*, specifically to all work-provided combustion engine motor vehicles *(Alexa Forbes, Esther Whitehead, Jill Borland, Natalie Reeves, OraTaiao: The New Zealand Climate and Health Council)* and high-emission vehicles *(Edward Pilbrow, Logan O’Callahan)*.

This should include where the motor vehicle is used for the employee to commute to the place of work. *(Sharon Erdrich)*

There needs to be more barriers to private car use – especially in cities. *(Alex Dyer)*

Comment

Under current law, FBT applies when an employer makes a car available to an employee for their private use. This type of fringe benefit is the main source of FBT revenue.

There is a limited exemption for some private use of work-related vehicles. This allows for travel between home and work that is necessary in, and a condition of, the employment and for travel incidental to business travel (for example, passing by the bank on the way home from work).

Officials note that the Government’s tax and social policy work programme includes a review of the FBT treatment of work-related vehicles as part of reviewing existing tax provisions to ensure they are still fit for purpose and that the tax system is not biased against environmentally friendly behaviour.

See [“Issue: Add FBT on double-cab utes”](#) below for specific submissions to apply FBT to double-cab utes, which can qualify as a work-related vehicle if all legislative requirements are met.

Recommendation

That the submission be declined.

Issue: Add FBT on double-cab utes

Submission

(Ashley Hooper, Brent Thompson, Bus and Coach Association New Zealand, Cameron Matthews, David Ivory, International Climate-Safe Travel Institute, Logan O'Callahan, Peter Ramage, Robbie Webb, Simon Louisson)

FBT should apply to double-cab utes.

Taxpayers are indirectly subsidising utes due to their exclusion from FBT, which directly contradicts Government policy to reduce emissions and improve road safety. *(Bus and Coach Association New Zealand, International Climate-Safe Travel Institute)*

Utes are high-emitting vehicles due to their weight. They also pose a risk to themselves and other road users due to their high ride height, poor visibility and size. *(Bus and Coach Association New Zealand)*

Comment

There is no general FBT exemption for double-cab utes in the FBT rules. However, a double-cab ute that an employer provides to their employee can potentially qualify as a "work-related vehicle". The use of a work-related vehicle is exempt from FBT for travel between home and work, and incidental private travel during the course of business use.

This is outlined in Inland Revenue's Interpretation statement *IS 17/07 Fringe benefit tax – motor vehicles*.

Under current law, to qualify as work-related vehicle, a vehicle must be "not exclusively or mainly designed to carry passengers". The front half of a double-cab ute comprises the cab, which has two rows of seats for passengers. The back half of the vehicle is the tray, which is used for carrying goods. The interpretation statement concludes that a double-cab ute is designed equally for carrying people and for carrying goods, which means it does not satisfy the "mainly" requirement for passenger carriage. A double-cab ute can therefore be used for travel between home and work on a particular day without attracting FBT when that travel is needed as part of the employee's work and if other legislative requirements, such as permanent sign-writing on the side of the vehicle, are met. However, if the vehicle is available for other private use on that day, then that vehicle is not a "work-related vehicle" on that day and FBT must be paid. The category of work-related vehicles recognises that particular kinds of vehicles have little practical personal use.

As noted, the FBT exemption for work-related vehicles is restricted to travel between home and work, and incidental private travel during the course of business use, which by itself should not have a material impact on behaviour. However, there may be a public perception that there is a blanket exemption for utes, which may be encouraging wider non-compliance in this area. There have been some concerns around FBT compliance for work-related vehicles, which was also raised in the recent FBT review Inland Revenue undertook as part of its regulatory stewardship role. Inland Revenue is currently exploring ways of improving monitoring and compliance in this area to better target FBT non-compliance, and an FBT common errors education campaign is underway reaching out to specific customer groups where Inland Revenue thinks errors may have occurred to inform them of the FBT errors and

how they can be corrected.

The Government tax and social policy work programme includes a review of the FBT treatment of work-related vehicles as part of reviewing existing tax provisions to ensure they are still fit for purpose and the tax system is not biased against environmentally friendly behaviour. This review will include double-cab utes, which can qualify as a work-related vehicle as outlined above.

Recommendation

That the submission be declined.

Issue: Add FBT to car parking

Submission

(Alex Dyer, Alvaro Lo Fo Wong, Ben Wooliscroft, Bus and Coach Association New Zealand, Dylan Packman, Jill Borland, Jill Ford, Kate Clarke, Logan O'Callahan, Nicholas Rakels, OraTaiao: The New Zealand Climate and Health Council, Paul Kean, Peter Ramage, Tessa Zant, Tony Oosten, Trevor James)

FBT should be charged on employer-provided car parks because of tax neutrality and/or for environmental reasons.

All tax incentives for non-electric or ride-sharing company vehicles use or provision for car parking should be removed. *(Jill Borland)*

Failing to include employer-provided car parking misses another opportunity to redress the balance. *(Bus and Coach Association New Zealand)*

Carpark provision is one of the key considerations in choice to drive over other transport modes. *(Logan O'Callahan)*

Comment

Under current FBT rules, when an employer provides free car parking to an employee, this is not subject to FBT if the car park is "on premises", including when the car park is leased from a car park provider. Similar to the treatment of double-cab utes outlined in ["Issue: Add FBT on double-cab utes"](#) above, there is no blanket exemption for carparks. Instead, the exemption falls under the general FBT exemption for benefits provided on the employer's premises. The on-premises exemption exists because the administrative and taxpayer compliance costs of valuing the numerous benefits provided to an employee on an employer's premises would be excessive.

The on-premises car parking exemption can be a sizeable benefit to employees where parking charges are material, such as in urban centres like Auckland and Wellington. This does not align with the general tax neutrality approach that tax should be applied neutrally to avoid biasing economic decision-making. It can encourage the provision of car parking in lieu of a portion of taxable salary and wages. It may also encourage the use of private cars for commuting to workplaces with free car parking over other modes of transport, which

then has an environmental impact.

Applying FBT to on-premises car parking benefits would improve wider tax and environmental neutrality and achieve a more equitable tax treatment across employees and is, from a tax policy point of view, officials' preferred option to improve neutrality in the FBT rules in this area, as outlined in the regulatory impact statement "Fringe benefit tax exemption for public transport".¹⁰ This change has been considered on several occasions, most notably in 2012 in the context of the Taxation (Livestock Valuation, Assets Expenditure, and Remedial Matters) Bill, which was considered by the Finance and Expenditure Committee. The issue was highly contentious, mainly because of valuation, compliance cost and safety concerns, and did not proceed. In recognition of these difficulties, the Tax Working Group instead recommended exempting employer-subsidised public transport from FBT, as proposed in this Bill. This better aligns the FBT treatment across these major modes of travelling to and from work at least.

For the above reasons, officials recommend limiting the proposal to the FBT exemption for public transport services contained in the Bill.

Recommendation

That the submission be declined.

Issue: FBT exemption for other (non-bicycle) benefits

Submission

(27 submitters – refer to Appendix Two for the full list)

Submissions argued for a range of benefits to be exempt from FBT, mainly because of environmental, but also health, considerations:

- Update FBT policies to encourage very low emissions (for example, electric scooters, electric bicycles, other micro-mobility, public transport and frequent other active transport) as much as possible *(Cameron Sharpe)*
- Exempt green options from FBT *(Laura Barron)*
- Any zero-emission transport *(Tony Oosten)*
- Micro-mobility *(Kirk Archibald, Micromobility Industries, Simon Ross, The Lightfoot Initiative Charitable Trust)* and micro-mobility subscription services, particularly important for first and last mile public transport journey *(Greg Pollock, Simon Ross)*
- Active travel modes, and forms of support for active transport solutions *(Dylan Packman, Greater Wellington Regional Council, Jill Borland, Kate Clarke)*

¹⁰ <https://www.taxpolicy.ird.govt.nz/-/media/6fff15df58834c0087dce7e2ad1437ad.ashx?modified=20220902032658>

- Human-powered, or predominantly human-powered, wheeled vehicles like tricycles, e-tricycles and recumbent bicycles (*OraTaiao: The New Zealand Climate and Health Council, Simon Hubbard, Spokes Canterbury*)
- Scooters and e-scooters (*Bus and Coach Association New Zealand, Cameron Matthews, Christopher Miller, Dan Roberts, David Yates, Emily McGeorge, Faye Villegas, Jill Borland, Kiri Barfoot, Lynette Gubb, Micromobility Industries, Rana Hay, The Lightfoot Initiative Charitable Trust, Tony Oosten, Werner Pretorius*)
- Bike-associated infrastructure (for example, e-bike charging, bike locks (for locking bikes up at train stations), safe storage, security assistance (*Anne Scott, Cameron Matthews, Greater Wellington Regional Council, Jane Henwood, Kate Clarke, Spokes Canterbury*) and maintenance (*Anne Scott, Spokes Canterbury*))
- Bike equipment (*Cybele Souza, The Lightfoot Initiative Charitable Trust*) and safety gear (for example, locks, helmets, lights and reflective gear) (*Anne Scott, Spokes Canterbury*)
- Electric vehicles (*Alexa Forbes, Deloitte, Lynette Gubb*), temporary exemption (*Brent Thompson*)
- Electric car share or ride-sharing (*Tony Oosten*)
- Bike-sharing (*Bus and Coach Association New Zealand*)
- Park and ride (*Greg Pollock*)
- Fees for transactions incurred by the public transport cardholder (*Greg Pollock*)
- Accessories to support the use of public transport by employees (*The Lightfoot Initiative Charitable Trust*)
- Boots (for walking) (*Lynette Gubb*)

Comment

As noted earlier, New Zealand's tax system has traditionally been based around a broad-base framework. This means that taxes are applied neutrally with few exemptions and subsidies. As a result, substantial amounts of tax revenue are raised relative to the level of tax rates, with the added benefit of simpler administration and compliance. There is generally a high threshold to depart from this neutrality approach and there are few exemptions from FBT. The neutrality of the overall tax system is important because it helps ensure our tax base is sustainable and introducing an additional FBT exemption reduces this neutrality.

Where exemptions are provided, their scope is important in managing the potential distortion. The proposed FBT exemption for public transport and the existing FBT exemption for car parks on the employer's premises share a similar focus that manages this risk. Both exemptions relate to providing access rather than funding or enabling the purchase or private use of an underlying asset, such as a scooter or EV.

Exempting a fringe benefit conflicts with the principle that New Zealand does not generally use the tax system to modify behaviour (apart from excise taxes on cigarettes and alcohol). Tax officials consider broader, more targeted policies intended to increase uptake or behavioural change (for example, through a generally applied direct incentive or subsidy) are more effective.

Tax officials consider that FBT exemptions in general are poorly targeted measures. They do not provide benefits to most of the population, including private individuals, the self-employed, and employees who do not enjoy private use of that particular benefit (for example, a company electric vehicle) as part of their remuneration.

Exempting private benefits also undermines the purpose of the fringe benefit tax rules, which is to promote fairness between employees whether they are paid in cash or in kind.

In principle, many other employer-provided benefits could also be exempt because they provide socially desirable outcomes. For example, the benefits to health and well-being from subsidised gym membership, or increased labour-force participation from employer contributions towards childcare payments. Further FBT exemptions, particularly for underlying assets, would increase the distortion between the taxation of transport-related benefits and other fringe benefits. This would reduce the overall fairness of the tax system. While many other employer-provided benefits could also provide socially desirable outcomes, introducing additional exemptions would reduce the coherence and neutrality of the tax system.

Officials do not recommend any additional FBT exemptions.

Recommendation

That the submissions be declined.

Issue: Zero-rate GST on bikes

Submission

(Mark Penrice)

GST on bicycles, e-bikes and bicycle helmets should be reduced to 0%.

Comment

Officials consider introducing a zero-rate of GST for bicycles, e-bikes and helmets would be inconsistent with New Zealand's broad-based GST framework. Under this framework, GST applies to the broadest possible range of goods and services supplied in New Zealand. This keeps the tax simple, fair, and efficient.

Officials note this approach was supported by the Tax Working Group, which acknowledged GST exceptions would be complex, poorly targeted for achieving distributional goals, and generate large compliance costs. It also noted that it is not clear that the benefits of specific GST exceptions would be passed on to consumers.

Recommendation

That the submission be declined.

Issue: Non-tax environmental submissions

Submission

(Bus and Coach Association New Zealand, Dan Brazier, Dom Yates, Graham Simmonds, Gordon Burt, Jill Ford, John Taylor, Jon Adams, Kate Clarke, Mark Penrice, mSupply Foundation, Ronan Whitteker)

Environmental statements or suggestions not related to tax matters were made in the following non-tax submissions:

- Overall, the changes to remove “relative-bias” (that is, not prioritising one transport mode over another) are inadequate. Government policy is an opportunity to redress this imbalance wherever possible. *(Bus and Coach Association New Zealand)*
- Enact measures to promote mode shift to active modes. *(mSupply Foundation)*
- Subsidise the purchase of e-bikes. *(Dom Yates, Jill Ford, John Taylor, Kate Clarke, Mark Penrice)* and EV motorbikes *(Mark Penrice)*
- Provide incentives to increase the uptake of cycling *(Dan Brazier)*
- Make cycling cheaper for employees *(Ronan Whitteker)*
- Adopt the UK’s incentives to encourage employers to provide staff with bicycles and e-bikes *(Graham Simmonds, Mark Penrice)*, for example, an e-bike grant or loan fund *(Gordon Burt)*
- Start thinking about people movement holistically. *(Jon Adams)*
- Force drivers to take bicycle safety courses before renewing their licences. *(Jon Adams)*
- Stop building roads. *(Jon Adams)*
- Congestions charges for non-electric vehicles with exceptions for sub \$XX income. *(Jon Adams)*
- Don’t let NIMBYs (“not in my back yard”) ruin infrastructure projects. *(Jon Adams)*

Comment

These submissions do not concern tax matters and are outside the scope of this Taxation Bill. Where relevant, we will bring the submission to the attention of the relevant Government agencies concerned with the matter.

Recommendation

That the submissions be declined.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Housing remedial items

ROLLOVER RELIEF – BRIGHT-LINE TEST AND INTEREST LIMITATION

Clauses 6(1), 7 and 8

Issue: Application date

Submission

(Auckland District Law Society, KPMG, New Zealand Law Society, nsaTax Limited)

The proposed amendments to the rollover relief provisions should be retrospective to 27 March 2021, and for the bright-line test, the amendments should be effective for transfers occurring on or after 1 April 2022. These would be in line with the effective dates that applied when the rollover relief provisions were first enacted.

Comment

Officials agree that the proposed remedial amendments should be retrospective.

Point of difference

One of the proposed amendments is intended to apply prospectively on the day after the date of enactment because it is a policy change. As discussed below at ["Issue: Limiting expansion of relief for transfers to settlors"](#), the proposed amendment to section CB 6AB(2)(b) responds to concerns previously raised by stakeholders about the scope of the existing rollover relief for transfers of residential property from trusts to settlors. That amendment would extend the circumstances in which rollover relief applies to such transfers. Officials therefore consider it appropriate that the currently proposed effective date for that amendment is retained.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Relationship property

Submission

(Capital Accounting Associates Limited)

An additional rollover relief provision should be included to provide for transfers between spouses and civil union or de facto partners.

Comment

The current law provides rollover relief for the interest limitation rules and the bright-line test when residential property is transferred on a settlement of relationship property in accordance with part 6 of the Property (Relationships) Act 1976. There is nothing that requires the transaction to occur as part of a separation or relationship breakup, so the law

already applies broadly. Officials do not consider a convincing case exists for applying rollover relief in situations where, for example, a person transfers a 50 percent interest in their property to their new partner without a formal relationship agreement providing for this.

Recommendation

That the submission be declined.

Issue: Look-through companies and partnerships

Submission

(New Zealand Law Society, nsaTax Limited)

- a. Rollover relief should be available for transfers of shares in a land-rich look-through company (LTC) from an individual to a family trust. The restriction on the transfer of shares in an LTC is illogical and will ultimately be ineffective because the same result can be achieved through a series of transactions with no consequences under the bright-line test. *(nsaTax Limited)*
- b. Rollover relief should be available for transfers of residential property to partners or LTC owners on the dissolution of the partnership or liquidation of the LTC. Such transfers have the same economic effect as transfers to self. *(nsaTax Limited)*
- c. The rollover relief provisions should address the issue of latent tax liabilities for dual-resident LTCs by providing relief for deemed transfers arising on the cessation of an LTC. If there are concerns about possible unintended consequences, rollover relief could be restricted to situations where an entity ceases to be eligible to be an LTC on the basis that it no longer meets the "is not treated under, or for the purposes of, a double tax agreement as not resident in New Zealand" limb of the LTC definition. *(New Zealand Law Society)*

Comment

The intent of the rollover relief rules is to provide rollover relief for the most common and straightforward ownership change scenarios where economic ownership of residential property is unchanged (or materially unchanged, in the case of transfers to or from family trusts).

- a. The rollover relief rules explicitly prevent rollover relief when shares in a land-rich LTC are transferred to a trust. This was added out of concern that providing rollover relief might incentivise holding assets in a trust structure, which could lead to unintended outcomes and raise integrity concerns. Officials take the submitter's point that essentially the same result (in terms of the bright-line test) could be achieved by undertaking a series of transactions that all qualify for rollover relief. However, that makes officials more wary that the interposition of a trust might be an indication that something else might be going on. We also note that the 'acquisition with a purpose or intention of disposal' rule would likely apply if a series of transactions is undertaken

with the ultimate purpose of transferring the residential property back to the LTC as outlined in the submission. Alternatively, the general anti-avoidance rule may apply in such circumstances.

- b. The partnership and LTC provisions have specific rules concerning the transfer of assets upon the dissolution of the partnership or liquidation, or cessation, of an LTC, and they provide that these are treated as disposals occurring at market value. These rules have wider application than just the bright-line rules and apply to assets other than residential property. As such, there is a clear policy intention for these events to trigger a taxable event, with the amount of tax calculated on the market value of the property. The purpose is to ensure there is not a permanent avoidance of tax on partnership or LTC assets held on revenue account.
- c. The submitter considers the rollover relief rules should address the issue of latent tax liabilities for dual-resident LTCs. Following a change in interpretation by the Australian Tax Office, LTCs that are dual residents of Australia and New Zealand have ceased to meet the definition of an LTC because they are now treated as not resident in New Zealand for the purposes of the Australia/New Zealand DTA. We note that the previous Australian Government announced in 2020 that remedial changes would be made to Australia's corporate tax residence test with retrospective application. The problem the submitter has raised would be resolved if the announced changes proceed.

Recommendation

- a. – c. That the submissions be declined.
-

Issue: Mirror trusts

Submission

(Deloitte)

Rollover relief should apply when residential property is transferred from a mirror trust to the other mirror trust following the death of a settlor.

Comment

Mirror trusts, while not commonly used today, were common in the 1990s and early 2000s. According to the submitter, there are many mirror trusts still in existence. A typical structure was for one spouse to settle a trust with the other spouse and their children as beneficiaries, and for the second spouse to also settle a trust of their own with the first spouse and the children as beneficiaries. Each spouse would not be a beneficiary of their own trust.

The issue is that, in their current form, the rollover relief provisions do not apply when a property is transferred from one mirror trust to the other, as may occur when one spouse dies. While we consider there is a case for providing rollover relief in this scenario, rather than introduce any measure now that would require additional amendment in the future, further work would be necessary to ensure any integrity risks were properly considered. Such further work on this matter would require prioritising and resourcing as part of the

Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Limiting expansion of relief for transfers to settlors

Submission

(Matter raised by officials)

The rollover relief in proposed new section CB 6AB(2)(b) should only be available if a principal settlor of a trust receiving residential property from the trust is **not** the original owner of the property (meaning they did not previously own the property and transfer it to the trust).

Proposed new section CB 6AB(2)(b) inadvertently applies too widely and would extend the circumstances in which rollover relief applies when residential property is transferred from a family trust to a settlor of the trust.

An existing rule provides rollover relief when residential property that was originally transferred to a family trust by a settlor or a group of settlors is transferred back to the settlor(s). Rollover relief applies if at least one of the receiving settlors is a principal settlor¹¹ and, if there is more than one receiving settlor, the settlors each acquire proportionally the same amount of the property that they originally transferred to the trust.

The proposed amendment in the Bill is in response to concerns previously raised by stakeholders that the existing rollover relief for transfers of residential property from trusts to settlors is too restrictive. Specifically, the relief only applies where the settlor(s) previously owned the property and transferred it to the trust. As such, rollover relief does not apply in economically equivalent circumstances where, for example, the trust acquired the property from a third-party vendor using cash settled on the trust by the settlors and/or a loan guaranteed by them.

Proposed new section CB 6AB(2)(b) would provide another route for rollover relief to apply when residential property is transferred from a qualifying family trust (referred to as a "rollover trust" in the legislation) to a principal settlor. The provision would allow rollover relief when residential property is transferred from a rollover trust to a settlor or group of settlors, provided all settlors receiving the property are principal settlors at both:

- the time the property is acquired by the trustee, and
- the time the trustee transfers the property to the settlor(s).

While this provides a route for rollover relief to apply when a principal settlor who was not the original owner of the property receives the property from the trust, it would also

¹¹ A "principal settlor" is someone whose settlements on the trust are the greatest, or greatest equal, by market value.

inadvertently apply in cases where a principal settlor who was the original owner of the property receives it back from the trust. As outlined above, the existing rules already cover the latter scenario.

Limiting the proposed new rule so that it would only apply in limited circumstances when the (principal) settlor receiving the property from the trust was not the original owner of the property would be in line with the intention of the proposal. If the settlor was the original owner of the property, then the pre-existing rule for transfers from trusts to settlors would apply to determine whether the transfer qualifies for rollover relief.

Recommendation

That the submission be accepted.

Issue: Requirement for recipients to be principal settlors

Submission

(Auckland District Law Society, New Zealand Law Society)

The requirement in proposed new section CB 6AB(2)(b) that *all* settlors receiving residential property from a trust must be principal settlors of the trust for rollover relief to apply is too restrictive. It should instead be *at least one* of the receiving settlors is a principal settlor at the time the trustee acquired the property and when the trustee transfers the property to the settlors.

Comment

As outlined above in [“Issue: Limiting expansion of relief for transfers to settlors”](#), proposed new section CB 6AB(2)(b) would provide rollover relief when residential property is transferred from a rollover trust to a settlor or group of settlors, provided all settlors receiving the property are principal settlors at both the time the property is acquired by the trustee and the time the trustee transfers the property to the settlor(s).

Officials are concerned that a loosening of this proposed new rule, as suggested by submitters, could create an integrity risk. This is because someone could become a settlor simply by settling \$1 onto the trust and then receive a disproportionate share of residential property in return. For example, this could occur if residential property held in a family trust is transferred by the trustees to parents (who are the principal settlors) and their adult child (who only settled a nominal amount).

To date, the Government has been very clear that it does not intend to provide relief for family transactions, such as parents helping their adult children to buy houses. Providing specific relief to individuals who can purchase residential property to on-sell to family members would be a substantial shift in policy. Further work on that matter would require prioritising and resourcing as part of the Government’s tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Charitable beneficiaries

Submission

(KPMG, Tax Advisory)

Consideration should be given to expanding the scope of permissible beneficiaries to include charities beyond those registered under the Charities Act 2005 and potentially other not-for-profit organisations. *(KPMG)*

The rollover relief provisions should not limit the class of charitable beneficiaries a family trust is allowed to have to only charities registered under the Charities Act 2005. The definition of "close family beneficiary" should be amended to include the class of charitable beneficiaries used in standard form discretionary trust deeds.¹² *(Tax Advisory)*

Comment

Officials agree that the definition of "close family beneficiary" should be amended to include the types of organisations listed in the standard discretionary trust clause.

The rollover relief provisions applying to family trusts currently limit permissible charitable beneficiaries to just those registered under the Charities Act 2005. However, many discretionary trusts in New Zealand (many of which are family trusts) have a standard clause in their trust deeds that defines a charitable or non-profit beneficiary class very broadly, beyond entities registered under the Charities Act 2005. As a result, transfers to or from these discretionary trusts are never eligible for rollover relief, which was not intended.

We consider the potential integrity risk to be low as rollover relief does not apply to distributions to beneficiaries. This means that if residential property is transferred to a beneficiary, the transfer would be subject to the bright-line test if relevant.

Point of difference

However, officials do recommend inserting a criterion that to qualify as a rollover trust, there must be at least one natural person beneficiary (other than the principal settlor, if there is just one principal settlor) who is a close family associate of the principal settlor. This would limit the amendment's scope to trusts that are family trusts and thus avoid making the rules inappropriately broad in their application.

¹² The standard clause includes within the beneficiary class any association, club, institution, society, organisation or trust not carried on for the private profit of any person whose funds are to be applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent or cultural purpose, whether within New Zealand or elsewhere.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Bright-line test settings for recipient

Submission

(KPMG, nsaTax Limited, PwC)

Where rollover relief applies to a transfer occurring on or after 1 April 2022, the recipient should not be subject to the five-year bright-line test if the previous owner first acquired an interest in the property *before* 29 March 2018 (being the date the five-year test first applied from). *(nsaTax Limited, PwC)*

The rollover relief provisions do not work as intended in relation to inherited property. They should be amended to ensure that a rollover trust (or other entity for which rollover relief exists) holds the residential property subject to all the same bright-line test tax settings as the previous owner, including that a disposal by the rollover entity should not be subject to the bright-line test where the previous owner inherited the property. This should have retrospective effect on or after 1 April 2022. *(KPMG)*

Comment

Submitters have requested clarification to ensure that when rollover relief applies to a transfer of residential property, the recipient is subject to the same bright-line test tax settings (including the relevant bright-line test length) as the previous owner of the property. An existing proposed amendment in the Bill would address many of these situations, but submitters have raised two examples that are not currently addressed by amendments in the Bill. This includes, for example, when inherited property is transferred by a settlor of a family trust to the trust. Inherited property is exempt from the bright-line test, but at present the trustee in this situation would be taxed under the bright-line test on a subsequent transfer of the property if it occurs within 10 years of the date it was inherited by the settlor.

Officials agree that these unintended outcomes should be addressed with retrospective effect. Given the clear policy intention, we expect that taxpayers in the situations described above are likely to have assumed the recipient entity has the same bright-line test tax settings as those that applied for the previous owner. We further note that since the requested effective date is 1 April 2022, the affected returns will not have been filed by the time the Bill is reported back by the Committee, nor presumably by the time the Bill is enacted. Therefore, the suggested retrospectivity should not cause tax returns to be reopened after being filed.

Recommendation

That the submissions be accepted.

Issue: Proportionality requirement for transfers to self

Submission

(nsaTax Limited)

Section CB 6AB(4) should contain a proportionality requirement. The submitter understands the intention is to provide relief where the residential property is transferred in proportion to the indirect ownership.

Comment

Section CB 6AB(4) of the Income Tax Act 2007 provides rollover relief in the situation where a person owns (or co-owns) residential property in one capacity and transfers it to themselves in another capacity. An example of this is when the partners in a partnership transfer residential property that they co-own to the partnership.

The existing provision only provides rollover relief for a transfer to oneself in a different capacity. Therefore, it will apply only to the extent the transfer is a transfer to oneself in a different capacity. If the proportionality changes, there will not be a transfer to oneself (in a different capacity) to the extent a person's economic share increases. Therefore, officials are of the view that it already provides the appropriate policy result. For example, if the partners each co-own a residential property in equal shares before the transfer of the property to the partnership, but their respective partnership interests are 75:25 (meaning that one partner's economic ownership of the property has increased by a 25 percent share, and the other partner's has decreased by a 25 percent share as a result of the transfer), then both partners get rollover relief for their share of the property that they have effectively retained (50 percent and 25 percent respectively). That is, the disposal to the partnership is a full disposal as per QB 17/09,¹³ but there is rollover relief for the partners on any taxable future sale of the land by the partnership. The transfer of the 25 percent share that has effectively changed hands from one partner to the other is not eligible for rollover relief (as it is not in economic substance a transfer to self), in line with the policy intention that rollover relief should only apply to the extent that economic ownership is unchanged.

Other rollover relief provisions (such as those applying to transfers from family trusts to settlors in situations where the settlors had previously co-owned the property before putting it into the trust) explicitly require the transfer of the property from the trust to the settlors to be in the same proportions as in the original transfer of that property by the settlors to the trust. This is because some form of explicit proportionality requirement is necessary in this specific context – otherwise, for example, a trust with two principal settlors who co-own residential property in equal shares could transfer the property to the trust and then later get 25 percent and 75 percent respectively back from the trust and receive rollover relief for the entire transfer back to them (including the 25 percent share that changed hands). The same concern does not apply for the rollover provisions for self-transfers.

¹³ Available online at <https://www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2017/qb1709-qb-1709-is-there-a-full-or-partial-disposal-when-an-asset-is-contributed-to-a-partnership-as->

Recommendation

That the submission be declined.

Issue: Drafting errors/inconsistencies

Submission

(Auckland District Law Society, New Zealand Law Society, nsaTax Limited)

The drafting of the provisions providing rollover relief for transfers to and from family trusts should be reviewed to rectify errors, ambiguities and inconsistencies, including ensuring that defined terms are used correctly and consistently. For instance:

- The provisions define the trustees of a trust who are seeking rollover relief for a subsequent disposal of the property as “trust A” but continue to use “trustees of a trust” within the sections in reference to these trustees. *(nsaTax Limited)*
- The provisions define the person(s) who transferred the residential property to the trustees of a rollover trust as “the transferors”, but subsequently refer to them as “the transferor”. Similarly, the provisions define a settlor who received residential property from a rollover trust as “the transferee”, but then subsequently use the term “the transferees”. *(Auckland District Law Society, New Zealand Law Society, nsaTax Limited)*
- The use of the term “head trust” is misleading. The terms “trust A” and “trust B” should instead be used. *(Auckland District Law Society, New Zealand Law Society)*
- Section CB 6AB(1)(b)(i) and (ii) both require that “trust A” is a rollover trust – this requirement should be included within paragraph (b) rather than being repeated in each of subparagraphs (i) and (ii). *(nsaTax Limited)*
- Section CB 6AB(3) refers to transferors and transferees who may have “a different capacity from the capacity in which they became settlor”. It is not clear what this means. *(nsaTax Limited)*

Comment

Officials agree that issues with the legislative drafting of the rollover relief provisions should be addressed. This includes those noted by submitters, as well as other inconsistencies noted by officials (for example, several provisions use the word “transferee” or “transferees”, but “recipient” has been used elsewhere in the Act to mean the same thing in a rollover relief context).

Officials note that the “different capacity from the capacity in which they became settlor” wording in section CB 6AB(3) is referring to the situation where a person holds property in a particular capacity (such as a partner in a partnership) and settles the property on a trust. Potentially, the trustees may later transfer residential property held on trust to that settlor in another capacity. A possible example is when a family partnership settles partnership property on a family trust (so the partners are settlors of the trust in their capacity as partners) and the trust later transfers that property to the partners in their personal capacity

(that is, the property is not transferred to the partnership, but to the individual partners). We recommend changes to the Bill to clarify the intended meaning of the relevant provision.

Recommendation

That the submissions be accepted.

CHANGES IN CO-OWNERSHIP OF RESIDENTIAL LAND

Clauses 6(1), (3) to (6) and 32(1) to (4)

Issue: Drafting errors

Submission

(Matter raised by officials)

Remedial amendments were enacted in 2022 to ensure that transfers to effect a change in the co-ownership of residential property do not reset the start date of the applicable bright-line period. This applies to the extent the transfers do not change a person's proportional or notional proportional interest in the property. The Bill proposes amendments to improve the drafting of these provisions.

Officials recommend further drafting changes to clarify the provisions applying to changes in co-ownership of residential property. While we did not receive any submissions on the changes in co-ownership provisions, we have had discussions with stakeholders about remaining errors and ambiguities in the provisions. Both stakeholders and officials consider these should be fixed.

Recommendation

That the submission be accepted.

PARTITIONING OF LAND AMONG CO-OWNERS

Clause 98(6)

Issue: Wording of proposed addition to definition of “dispose” is not clear

Submission

(New Zealand Law Society)

The wording of proposed new paragraph (ab) of the definition of “dispose” is not sufficiently clear. The definition should set out what is intended by the term “same proportionate economic ownership” or ensure that the example in proposed new paragraph (ab) assists in the understanding of that term. It does not do so currently, as the term “a piece proportionate to” provides no practical guidance. The wording of clause 98(6) should be reviewed to ensure it is capable of being interpreted without reference to the Commentary on the Bill or any Inland Revenue guidance.

Comment

The proposed amendment to the definition of “dispose” is in response to a recent draft interpretation of the law relating to the partitioning of land among co-owners. Taxpayers sometimes purchase land together as co-owners to pool resources. It is not uncommon in this situation for the co-owners to then subdivide the land and allocate the subdivided parcels to each of the co-owners based on their ownership interests in the original parcel. This is known as partitioning and results in the bright-line test or other land sales provisions applying, even when there has been no effective change in ownership after the partition. Partitioning can occur in a large-scale development or on a smaller scale with two individuals.

The term “same proportionate economic ownership” was intended to signal that there should be no disposal when there is no overall change in economic ownership after the partition. One example is where two 50:50 co-owners of a single piece of land subdivide the land into pieces of equal value. One co-owner is allocated one piece and the other is allocated the other piece. The two co-owners effectively own the same economic interest in the land, but rather than holding a 50 percent share of the total unsubdivided land, they each now hold their own specific share of 50 percent of the land. As there has been no overall change in economic ownership, there should be no disposal. However, where there is an effective change in ownership proportions (for example, one of the 50:50 co-owners is allocated a piece that is worth 75 percent of the aggregate value of the two properties), this should still be considered a disposal and taxed according to the current law.

Officials agree that the proposed amendment should be revisited, including whether the inclusion of the in-text example is required.

Point of difference

However, while officials agree that the drafting could be improved, we note that it is not always practical to draft legislation in a way that it can be interpreted in isolation without

guidance. When new tax law is enacted, Inland Revenue publishes a *Tax Information Bulletin* to provide a technical explanation of the legislation. The use of other reader's aids is common, particularly in tax law where interpretation may change over time as case law develops. For example, Inland Revenue's Tax Counsel Office regularly publishes Interpretation Statements and 'Questions We've Been Asked' on interpretative matters.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Meaning of "part of an arrangement for land"

Submission

(PwC)

The submitter queries the function of "as part of an arrangement for land" in the proposed definition of "dispose". Is it intended that the simple act of partitioning is enough to constitute an arrangement or is it intended as a requirement that there was some pre-existing plan to partition the land (for example, when the land was acquired by the owners)? This aspect of the drafting should be clarified and/or some further guidance provided by officials.

Comment

The language was intended to include joint venture-type arrangements. It was not intended that there would be a requirement regarding when a plan or arrangement should be put in place. Officials consider that the proposed amendment should apply, for example, if two co-owners acquire a piece of land jointly with no confirmed intention as to what they would do with the land at that time, and then later they partition the land into two equal sections, with one piece held by one person and the other piece by the other.

As discussed in ["Issue: Wording of proposed addition to definition of "dispose" is not clear"](#), officials have recommended that the drafting be revisited to ensure the policy intent is met. Guidance will be provided by Inland Revenue in a *Tax Information Bulletin* upon enactment of the Bill.

Recommendation

That the submission be accepted.

Issue: Adjustments should not be a disposal

Submission

New Zealand Law Society

The wording of the proposed new definition of "dispose" should be reviewed in light of the fact that the market value of the subdivided sections will not necessarily be proportionate to

the cost of those sections, and that it is not possible to predict the market value of the subdivided or developed sections at the time the property is originally acquired.

In practice, the co-owners may have a commercial arrangement to adjust their respective contributions to the original purchase price of the property to reflect the market value of each co-owner's section at the time titles are issued to them.

For example, the co-owners have a commercial agreement in place that provides that if the value of the subdivided lots is not equal, then the co-owner who obtains the more valuable lot will pay an additional portion of the purchase price to the other co-owner. The co-owners share the subdivision costs equally, and once the subdivision is completed, they each receive title to one subdivided lot. It subsequently becomes apparent that one of the subdivided lots has a market value of \$100,000 and the other has a market value of \$105,000. Under the terms of the commercial agreement between the co-owners, the co-owner who receives the \$105,000 lot pays an amount to the other co-owner so that the contribution by each co-owner to the purchase of the property and the subdivision costs reflects the relative market values of the subdivided lot each co-owner receives.

The Law Society considers that there should be no disposal in this situation.

Comment

The proposed amendment in the Bill aims to provide certainty and reduce compliance costs in situations where there is no overall change in economic ownership between the different co-owners of land after a partition.

Where the effective ownership percentages after a partition are close, but not identical, to what they were before the partition, officials agree that there should be no disposal for tax purposes.

In the specific example raised by the submitter, officials agree that the adjustment should not constitute a disposal. Officials understand that such adjustments are common in the commercial development context.

Officials acknowledge that the current drafting would treat this minor adjustment as a disposal that could be subject to income tax under the bright-line test or under the other land sale rules depending on the tax status of the relevant co-owner.

Point of difference

However, officials do not consider it appropriate to exclude all effective changes in ownership percentages from being a disposal. The current law deliberately provides that disposals of residential land are deemed to occur at market value, even if the transfer is at zero cost or below market value. This rule is a key feature of the land sale rules, including the bright-line test, and continues to be the intended outcome.

An adjustment or transfer could, in effect, be a substantial disposal of residential land. This should be subject to income tax, where relevant. For example, where the effective ownership starts at 75:25 and, following a partition, becomes 50:50, then the change from 75 percent to 50 percent is a disposal and should continue to be taxed as such.

Officials recommend that a partition of land should not be considered a disposal provided

any difference in economic ownership is limited to 5 percent of the smallest pre-partition co-ownership share. This recognises the practicalities of partitioning land among co-owners while ensuring non-minor transfers and disposals continue to be treated as such for tax purposes.

For example, in a 50:50 co-ownership scenario, a partition resulting in the parties receiving 47.5 percent and 52.5 percent respectively would not be a disposal. This would include the \$100,000 and \$105,000 example mentioned by the submitter.

If a difference exceeds this 5 percent threshold, the full difference beyond the original co-ownership percentage should be treated as a disposal.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Guidance on split costs

Submission

(New Zealand Law Society)

It would be helpful to have guidance on how the proposed amendment is intended to apply if the co-owners each incur different costs when constructing a house on the part of the property they will ultimately own once the partitioning exercise is complete. There is a higher likelihood of an unintended disposal arising in circumstances where there is an existing house on the property and one party will receive the part of the property that includes the house when the subdivision is completed, or where buildings are constructed on the property before the subdivided titles are allocated to each party (for example, a unit title development where the fit-out of each unit is completed to different specifications and each co-owner pays for their own fit-out).

Comment

The exact treatment will depend on the facts and circumstances in each case, but officials will work through scenarios such as the ones identified by the submitter, and Inland Revenue will include guidance in the *Tax Information Bulletin* to be published following enactment of the Bill. Officials will work closely with Inland Revenue's Tax Counsel Office and other operational parts of Inland Revenue to ensure guidance on this area is published.

Recommendation

That the submission be noted.

OTHER ISSUES

Issue: Cross-reference error in the RLWT rules

Submission

(KPMG)

A cross-reference error has arisen in the residential land withholding tax rules as a result of the redrafting of the bright-line provisions. In section RL 1(2)(a) of the Income Tax Act 2007, the reference to section CB 6A(13) should be replaced by a reference to section CB 6A(1A).

Comment

Officials agree.

Recommendation

That the submission be accepted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Foreign trust remedial items

ALIGNING FOREIGN-SOURCED INCOME EXEMPTION WITH FOREIGN TRUST DISCLOSURE RULES

Clauses 70(1), (3) and (5), 139(4), 150(2), 151(1) to (4), 152(1), (3), (5) and (6), 153(1), (2) and (6) and 155(1), (2) and (3)(b)

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

Issue: Proposed definition too broad

Submission

(Auckland District Law Society, New Zealand Law Society)

The proposed new definition of a “foreign exemption trust” should be limited to trusts that are defined as “foreign trusts” at the relevant time.

The *Report on the Government Inquiry into Foreign Trust Disclosure Rules* (June 2016) (the Shewan Report) was only concerned with foreign trusts, and therefore the foreign trust disclosure rules should only extend to trusts currently falling within that definition.

Trusts using the foreign-sourced income exemption should not be subject to the foreign trust disclosure rules. This is not a remedial change as it would result in trusts being taxed on their worldwide income when they do not have a New Zealand resident settlor. This is contrary to New Zealand’s settlor-based taxation regime for trusts, which the Shewan Report broadly supported.

Comment

The proposed amendment does not impose tax on the worldwide income of trusts without a New Zealand resident settlor. It requires all trusts using the foreign-sourced income exemption to adhere to the foreign trust disclosure rules in the same way that foreign trusts already do. The Shewan Report recommended that the foreign-sourced income exemption only be available to “foreign trusts” that have registered and met their disclosure obligations.

A trust would only be subject to worldwide taxation if it failed to comply with its disclosure obligations. That is currently also true for trusts that fall within the “foreign trust” definition. This is entirely consistent with the Shewan Report, which sees the disclosure obligations as a

quid pro quo for use of the foreign-sourced income exemption.

While it is true the Shewan Report did not refer to trusts that are not “foreign trusts” using the foreign-sourced income exemption, it is unlikely this reflected a deliberate decision to exclude such trusts from the disclosure requirements. Rather, it seems to be an oversight, where they did not envisage trusts could use the foreign-sourced income exemption without technically being a “foreign trust”. The policy and reputational risks for such trusts are the same as those for foreign trusts, as they can be used by non-residents in the same way — to avoid (and possibly evade) tax on foreign income in their home jurisdiction, while not being subject to New Zealand tax.

The proposed amendment is a remedial as it corrects a loophole in the current law. The proposal was also subject to public consultation in March 2021. Officials proactively contacted those who submitted on the original foreign trust disclosure rules, allowed a four-week submission period, accepted late submissions, and refined the proposal in response to submissions.

Recommendation

That the submission be declined.

Issue: Trusts with transitional resident settlors or trustees

Submission

(Deloitte)

The proposed “foreign exemption trust” changes should not apply during a transitional residence period. It would defeat the purpose of the transitional residence period, which is to have low compliance requirements for a limited period to allow a non-resident to have a “look-see” of the country.

The circumstances in which the four-year deferral rules for registration of a foreign exemption trust are available are too narrow. They can only apply to the first trust that the transitional resident is a trustee for, and they do not apply to any professional (including corporate) trustees. The latter are likely to be non-resident trustees and therefore no more familiar with NZ requirements than the transitional resident trustee.

Comment

It is unclear whether the submitter is concerned about trusts with transitional resident settlors or trusts with transitional resident trustees (or both).

To the extent the concern relates to transitional resident settlors, it appears to be misguided. Under the proposed amendment, the trustee of a trust settled by a non-resident with a New Zealand resident trustee would have to comply with the foreign trust disclosure rules from the outset. If the settlor later moves to New Zealand and becomes a transitional resident, the proposed amendment ensures that the trustee continues to comply with the same disclosure rules during the transitional residence period. When the transitional residence period expires, the trust may be treated as a complying trust if an election is made under section HC 33 of

the Income Tax Act 2007 (and it would then fall within the domestic trust disclosure rules).

It would be contrary to the policy intent to allow a trust with a transitional resident settlor in New Zealand to have less disclosure obligations than a trust without any New Zealand settlor at all. It would be very odd if the disclosure rules did not apply to trusts with transitional resident settlors. In the above example, the trust would have to comply with the foreign trust disclosure rules at the outset but could stop complying once its settlor became transitional resident. There would therefore be a gap during the transitional residence period where the trust could use the foreign-sourced exemption but not be subject to any disclosure requirements.

To the extent the submission relates to transitional resident trustees, it is outside the scope of this Bill. The foreign trust disclosure rules currently apply to foreign trusts with at least one New Zealand resident trustee (including a transitional resident trustee), and the Bill does not propose to change that. We also note that the grace period and its restrictions apply irrespective of the transitional residence rules, and the Bill does not propose to change that either.

Recommendation

That the submission be declined.

POWER TO DEREGISTER A TRUST

Clause 154

Issue: Right of challenge required

Submission

(Chartered Accountants Australia and New Zealand)

The legislation should set out the contact trustee's right of challenge to the Commissioner's proposal to deregister a foreign exemption trust. Alternatively, Inland Revenue could set out the process in an operational statement.

Comment

A decision of the Commissioner to deregister a foreign exemption trust would be a "disputable decision". Taxpayers can generally dispute and challenge disputable decisions by following the disputes and challenge procedures in the Tax Administration Act 1994. This is unless the decision is specifically excluded from challenge under section 138E of that Act. Officials have not proposed to exclude rights of challenge in this case.

Standard practice statement (SPS) 16/06 *Disputes resolution process commenced by a taxpayer* explains how a taxpayer may challenge a disputable decision. An explicit statutory provision preserving that right of challenge is unnecessary and could create adverse inferences.

Recommendation

That the submission be declined.

REQUIRE SIGNED DECLARATION FROM POST-REGISTRATION SETTLORS

Clause 153(5)

Issue: Support for proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendment.

Recommendation

That the submission be noted.

TREATMENT OF RESIDUAL BENEFICIARIES

Clauses 151(8) and (13)

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

UPDATING TRUST INFORMATION WHEN IT CHANGES

Clauses 151(10) and (11), 152(2) and 153(4)

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

Issue: Proposed change impractical

Submission

(Deloitte)

This proposed change is impractical as many contact trustees may not be aware of any changes. Consideration should be given to making this a requirement of part of the annual return filing.

Comment

The proposed amendment does allow contact trustees to provide updated information as part of the next annual return. The exception is where the updated information relates to contact trustees or their contact details. In these cases, updated information must be provided to the Commissioner within 30 days of the trustee becoming aware of it. Contact trustees will be aware of changes to their own contact details or status as a contact trustee.

Recommendation

That the submission be noted.

TESTAMENTARY TRUSTS

Clauses 70(2) and (4), and 151(9)

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

Issue: Guidance needed

Submission

(Deloitte)

Inland Revenue will need to provide clear guidance in an operational statement on the extent to which these changes apply to estates.

Comment

To access the foreign-sourced income exemption a trust must have a trust deed. Testamentary trusts created by wills do not have trust deeds, so the proposed amendment would deem the will to be the trust deed for the purposes of accessing the foreign-sourced income exemption.

Officials consider this change to be clear. Guidance will be provided in the Tax Information Bulletin and Inland Revenue's website will be updated to reflect changes as per normal practice.

Recommendation

That the submission be noted.

Issue: Trusts not created by trust deed or will

Submission

(PwC)

Some trusts may be created other than by a trust deed or will. For example:

- foreign entities classified as trusts for New Zealand tax purposes, but which are not created by a "trust deed",

- trusts created by a statute (such as under the rules of intestacy),
- trusts created by testamentary documents that do not qualify as wills under general law, and
- trusts created by domestic and foreign post-death variations.

While clause 151(9) includes “any other document that creates and governs the trust”, this may not go far enough as it does not provide for statutory trusts. Further consideration should be given to this issue.

Comment

Officials agree that, in theory, there could be trusts created other than by a trust deed or will. This issue arises under the existing legislation as sections HC 26(1)(c)(i) and (d)(i) of the Income Tax Act 2007 require that “the trust has a trust deed”. In practice, this does not seem to be a problem as it has not been brought to our attention since the foreign trust disclosure rules were introduced in 2017.

Point of difference

However, sections HC 26(1)(c)(i) and (d)(i) appear to be largely redundant (and overly restrictive to the extent they are not redundant). Section HC 26 already requires the trustee to comply with section 59B of the Tax Administration Act 1994, and section 59B(3)(f) requires the trustee to provide the Commissioner of Inland Revenue with a copy of the trust deed or its functional equivalent. We consider the issue raised by the submitter can be mitigated by repealing sections HC 26(1)(c)(i) and (d)(i) of the Income Tax Act 2007.

Recommendation

That the submission be accepted, subject to officials’ comments.

COMMISSIONER'S DISCRETION TO BACKDATE REGISTRATION

Clause 151(2)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support this change.

Recommendation

That the submission be noted.

NEW CIVIL PENALTY AND GREATER DISCRETION FOR FOREIGN-SOURCED INCOME EXEMPTION

Clauses 70(6) and 167

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

CLARIFICATIONS TO THE TRUST RULES

Clauses 98(20), 139(7), 151(2), (5), (6), (7), (12) and (13), 152(2), (4) and (5), 153(3), 155(3)(a) and (4), and 173(1)

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendments.

Recommendation

That the submission be noted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

GST remedial items

GST TREATMENT OF GOVERNMENT GRANTS PAID TO PUBLIC AUTHORITIES

Clauses 106(2) and (10)

Issue: Support for the proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposal that would require public authorities to pay GST on government grants and subsidies in the same way as other GST-registered persons.

Recommendation

That the submission be noted.

GST – IMPROVEMENTS TO PLACE OF SUPPLY RULES

Clauses 106(2), 107 and 108

Issue: Support for proposals

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

Submitters support removing the need for a non-resident supplier and GST-registered recipient to agree that the supply is made in New Zealand under section 8(4) and support making this a unilateral decision by the non-resident supplier. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)*

Submitter supports allowing resident suppliers to apply the rules in section 8B to determine if their supplies of remote services are being exported to a non-resident. *(Corporate Taxpayers Group)*

Recommendation

That the submissions be noted.

Issue: Proxies should be optional for suppliers to use

Submission

(Corporate Taxpayers Group, Financial Services Council NZ, PwC)

The use of proxies for determining residence in section 8B and for determining GST registration status in section 8BB should be optional, as many suppliers will have more accurate information under their existing systems or processes. *(PwC)*

The proposed changes to the place of supply rules are intended to take effect from the day after Royal assent. These changes could increase compliance costs for some taxpayers, such as insurers. Therefore, it would be preferable if there were an option for taxpayers to elect not to apply the new rules until suppliers have had adequate lead time (such as two years) to build systems to track customer residency. *(Corporate Taxpayers Group, Financial Services Council NZ)*

Comment

The proposals aim to reduce compliance costs by allowing businesses to use certain commercial information (proxies) to help them determine if their customer is non-resident or a GST-registered person. However, as the submitters note, many suppliers may already have existing systems or processes for applying these rules that collect more accurate information than the proxies. Accordingly, officials agree the proxies should be optional to use. This would allow suppliers to continue with their existing systems and processes where

appropriate, while those suppliers who would benefit from the proposed proxies can choose to use them to reduce their compliance costs.

Recommendation

That the submissions be accepted.

LIABILITIES INCURRED DURING A VOLUNTARY ADMINISTRATION

Clause 127

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

Support for proposed amendment that will make clear a “specified agent” includes an “administrator” of a company in “voluntary administration”. *(Chartered Accountants Australia and New Zealand)*

Support for clarification that deems an administrator to be a registered person carrying on the taxable activity of the company or limited partnership in the voluntary administration. This increases certainty in the position and potential liabilities when undertaking a voluntary administration. *(Corporate Taxpayers Group)*

Recommendation

That the submission be noted.

Issue: Consequential amendment – notification requirement

Submission

(Matter raised by officials)

The wording of section 58(3) of the Goods and Services Tax Act 1985 should also be amended to clarify that administrators are subject to the same notification requirements as other specified agents under section 58.

The Bill includes proposed amendments to section 58(1) to insert ‘administrator’ within the definition of “specified agent” and ‘voluntary administration’ within the definition of “incapacitated person”. These proposed amendments would mean administrators would be subject to the same GST obligations as liquidators, receivers and executors of an estate.

Section 58(3) places a requirement on specified agents to notify the Commissioner of Inland Revenue within 21 days of their appointment to a particular registered person. While including administrator within the definition of “specified agent” means an administrator would be subject to the same notification requirements, the section could be further clarified by explicitly stating that these notification requirements include voluntary administrations.

Officials therefore recommend amending section 58(3) to include voluntary administration, so it is explicit that administrators are subject to the same notification requirements as liquidators, receivers and executors of an estate.

Recommendation

That the submission be accepted.

CLARIFICATIONS TO THE COMPULSORY ZERO-RATING OF LAND RULES

Clauses 105(9) and 112

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Submitters support the proposed amendments as they would reduce compliance costs for taxpayers and prevent suppliers from intentionally shifting any GST liability onto unwitting purchasers.

Recommendation

That the submission be noted.

Clause 112

Issue: A supply of land that wholly or partly consists of the grant of a lease

Submission

(PwC)

The amendment does not achieve the desired outcome because section 11(8D)(b) excludes the supply of land that includes the grant of a lease over land from being zero-rated.

Comment

Officials disagree. The proposed amendment is intended to allow taxpayers to zero-rate a supply of business assets by a GST-registered person that is made conditional on the grant of a lease over the business premises, provided the requirements set out in section 11(1)(mb) are met. This is achieved by including a supply that wholly or partly consists of a grant of an interest in land in section 11(8D)(a).

Proposed new section 11(8D)(b) concerns supplies of an interest in land that are made under a lease agreement. These supplies (generally rental payments) cannot be zero-rated unless they meet the requirements set out in section 11(1)(mb) and are also irregular, lump sum payments of more than 25% of the total consideration specified under the lease agreement.

Officials consider that section 11(8D)(b) does not apply to prevent zero-rating of the grant of a lease because that supply is made under a sale and purchase agreement and not under a lease agreement.

Recommendation

That the submission be declined.

Issue: Further clarification may be required where supplier responsible for incorrect GST treatment

Submission

(Corporate Taxpayers Group)

Further clarity may be needed in situations where the recipient of the land provides correct information to the supplier, but the supplier still gets the GST treatment wrong.

Comment

Proposed new section 5(23B) would apply when a recipient provides a supplier with incorrect or insufficient information to determine whether the supply should be zero-rated. It does not apply when the incorrect zero-rating is the fault of the supplier. In this case, normal rules would apply, and the supplier remains liable for the GST amount.

Recommendation

That the submission be declined.

Issue: Minor updates to cross-references

Submission

(Matter raised by officials)

Several cross-references in the Goods and Services Tax Act 1985 require updating to align with the proposed amendments.

Existing cross-references to section 5(23) should be amended to refer to proposed new section 5(23B) in the following sections:

- section 10(7B)
- section 20(4B)
- section 51B(4)
- section 51B(4)(a), and
- section 51B(6)(a).

This is necessary because, under the proposed amendment, the rule deeming the recipient to be making a taxable supply of the goods will be contained in proposed new section 5(23B).

Recommendation

That the submission be accepted.

ASSOCIATING MEMBERS OF JOINT VENTURES WITH THE JOINT VENTURE

Clause 104

Issue: Support for the proposed amendment

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposed amendment.

The amendment is logical and consistent with the GST treatment of other unincorporated bodies. *(Chartered Accountants Australia and New Zealand)*

Recommendation

That the submission be noted.

INPUT TAX DEDUCTIONS FOR GOODS AND SERVICES NOT YET AVAILABLE FOR USE IN MAKING TAXABLE SUPPLIES

Clause 116(5), (7), (8), (18) to (20)

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

The submitters support the proposed amendments.

The amendments would align the law with existing taxpayer practices, providing taxpayers with certainty and reducing their compliance costs. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)*

Recommendation

That the submission be noted.

MODERNISING INFORMATION REQUIREMENTS FOR GST

Clauses 116(1) and (2), 186, 187, 188 and 189

Issue: General support for the proposals

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

The submitters support the proposed amendments and clarifications of the rules.

The submitter notes that the changes will require amendments to business systems and supports the long lead time that has been provided. *(Chartered Accountants Australia and New Zealand)*

Recommendation

That the submissions be noted.

Clause 187(15)

Issue: Supply correction information - Commissioner's discretion to allow certain particulars to be omitted

Submission

(KPMG)

The Bill proposes to give the Commissioner discretion to allow the omission of certain particulars from taxable supply information (TSI). There is no equivalent provision allowing such a discretion to be exercised for supply correction information (SCI).

In the submitter's view, the Commissioner should be given discretion to allow SCI to not be required or issued, or certain particulars to be omitted from SCI.

Comment

Officials agree. In circumstances where the Commissioner is satisfied sufficient records will be available to establish the particulars of a supply or class of supplies, the Commissioner should have discretion to be able to omit certain requirements from SCI or omit the need for SCI altogether.

Recommendation

That the submission be accepted.

Issue: Supply correction information – information identifying the taxable supply information

Submission

(KPMG, PwC)

Section 19E(1)(b) of the Goods and Services Tax Act 1985, as it applies from 1 April 2023, requires that supply correction information (SCI) includes information identifying the taxable supply information (TSI) for the supply.

In the submitter's view, it is not clear from the legislation what information will be required to identify the TSI or, in circumstances where the SCI covers several TSI, whether all the TSI must be identifiable using the information. On the face of it, this requirement seems more prescriptive than the current law, which simply requires that registered persons provide a brief explanation of the circumstances giving rise to a credit note.

It is commonplace for SCI to be issued for several transactions that occurred during a period. For example, a commercial landlord could issue TSI to tenants for budgeted operating expenses and then issue an SCI at year end based on actual operating expenses as a form of "wash up" to account for the difference. The SCI in these circumstances could relate to multiple TSI (for example, one invoice per month), and a large-scale commercial landlord could potentially have hundreds of tenants. It follows that requiring information to identify each specific TSI could impose compliance costs.

Section 19E(1)(b) should be amended so that information identifying the TSI is required only upon request either by the Commissioner during an audit or by the customer. Alternatively, Inland Revenue should provide practical guidance on what information is required to be included in SCI to satisfy section 19E(1)(b).

Comment

Officials agree that, based on the wording of the legislation, it is not abundantly clear what 'information identifying the taxable supply information' in section 19E(1)(b) means.

However, officials consider this can be addressed through guidance.

Inland Revenue's position is that the SCI must include sufficient information so that it is clear to the recipient which TSI is being referred to. For example, in circumstances where the SCI covers multiple TSI, the requirement to identify the TSI may be sufficiently met by referring to a series of supplies within a specific date range, rather than providing individual invoice numbers for these earlier supplies. Determining what information is required to identify the TSI will ultimately depend on the facts and circumstances surrounding the supply or group of supplies. The overarching point is that it must be clear to the recipient what TSI is being referenced in the SCI.

Recommendation

That the submission be accepted.

Issue: Taxable supply information and supply information – the requirement to include “the date of invoice”

Submission

(KPMG)

The Bill proposes to amend multiple references of “the date of the supply” and replace these references to “the date of the invoice, or where no invoice is issued, the time of supply.” The purpose of the proposed amendments is to provide greater certainty. This is because “the date of the supply” is ambiguous and could refer to various dates.

The proposed language of “the date of the invoice, or where no invoice is issued, the time of supply” should be amended to refer to the “date when all taxable supply information relating to the supply has been provided.”

The “date when all taxable supply information relating to the supply has been provided” will generally be the date when the tax invoice is issued. This wording is preferable to “invoice” because invoice is defined broadly as a “document notifying an obligation to make payment” (section 2 of the Goods and Services Tax Act 1985). Therefore, if “invoice” is used, it will be unclear whether all relevant invoice dates, or a particular invoice date, must be provided for the taxable supply information (TSI) in situations where multiple invoices are issued.

Comment

Officials do not agree that replacing the references to “the date of the supply” with the “date when all taxable supply information relating to the supply has been provided” will improve clarity. It seems likely to be less clear when all the TSI has been provided in relation to a supply, particularly considering that TSI can now be held across a range of documents. However, suppliers will still need to note when invoices have been issued or the time of supply has occurred (for example, because they received a payment) for other GST rules. Moreover, the date when all TSI has been provided would not be workable in some cases, such as where the Commissioner exercised his discretion under section 19K(10) for some, or all, of the TSI not to be provided.

It is also noted that the reference to “the date of the supply” in clauses 186(2) and 187(4) of the Bill sit within the definitions of “supply information” and “taxable supply information” respectively. Officials consider that defining “supply information” or “taxable supply information” to mean, among other things, the “date when all taxable supply information relating to the supply has been provided” could make the legislation unclear.

Officials consider that when there are multiple invoices issued, the dates for all invoices should be included in the information making up the TSI. This should resolve any perceived ambiguity.

Recommendation

That the submission be declined.

Clause 187(2), (5) and (6)

Issue: Taxable supply information – consideration in money for the supply

Submission

(Corporate Taxpayers Group, Deloitte)

The Bill proposes an amendment to the thresholds for taxable supply information to ensure that they refer to GST inclusive amounts. This is achieved by replacing references to value (which is a GST-exclusive amount) with references to “the consideration in money for the supply”.

“Consideration **in money**” is problematic because it makes the treatment of barter transactions unclear. This is because the Goods and Services Tax Act 1985 does not define money as including “money’s worth”.

Comment

Officials agree. These thresholds should be amended to refer to “consideration in money or money’s worth for the supply” to account for barter transactions.

Recommendation

That the submission be accepted.

Clause 187(13)

Issue: Drafting choice – sections 19K(1) and (3)

Submission

(Corporate Taxpayers Group, Deloitte)

From 1 April 2023, sections 19K(1) (as amended by the proposals in the Bill) and 19K(3) will require taxable supply information to be provided within 28 days of a request. Section 19K(1) applies to registered recipients and section 19K(3) applies to unregistered recipients.

These sections should be amalgamated together, in line with the previous equivalent provision (section 24(1) of the Goods and Services Tax Act 1985).

Comment

Officials disagree. Under current section 19K, subsection (2) overrides subsection (1). If sections 19K(1) and (3) were combined, this would create further drafting complications for this section. For example, buyer-created taxable supply information in section 19K(4) would then apply to supplies to unregistered persons. Although these subsections could also be modified, officials consider that the section works well as currently drafted.

Recommendation

That the submission be declined.

Issue: Buyer-created taxable supply information – appropriate heading

Submission

(Corporate Taxpayers Group, Deloitte)

With effect from 1 April 2023, section 19K(4) is the new equivalent of the buyer-created tax invoices in the current section 24 of the Goods and Services Tax Act 1985 (GST Act). However, the new provision is not labelled with any sort of name. It would be much easier for taxpayers to understand and apply the rules if the section were assigned a name, such as buyer-created taxable supply information, to identify it.

Comment

Although officials agree that this is a good idea in substance, the GST Act does not currently have any subheadings. The use of a subheading specifically for section 19K(4) would be out of place with the current scheme of that Act. Officials note this is something that could be considered as part of a future rewrite of the GST Act. However, as discussed in [“Issue: Rewrite of the Goods and Services Tax Act 1985”](#) below, a rewrite of the GST Act would need to be considered alongside the Government’s other priorities for the tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Review of buyer-created taxable supply information rules

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters recommend that the buyer-created taxable supply information rules be reviewed to ensure they can apply flexibly and, in particular, that buyers and sellers are able to agree to use this process for certain types of supplies but can follow ordinary processes for other types of supplies.

As currently drafted, section 19K(4) of the Goods and Services Tax Act 1985, as it applies from 1 April 2023, requires that a registered person who has a taxable supply from another registered person must provide the supplier with taxable supply information (TSI) for the supply. However, the section requires the recipient to issue TSI for **each** taxable supply by the supplier to the recipient.

Comment

Officials agree that the current wording of the buyer-created TSI provision in section 19K(4) is not achieving the intended outcome. As currently worded, if the supplier and recipient agree to buyer-created TSIs, then the recipient will be required to issue TSI for **each** taxable supply between the supplier to the recipient.

The provision should be amended to provide parties with the flexibility to only apply buyer-created TSI for taxable supplies to which the agreement relates.

Recommendation

That the submission be accepted.

Clause 187(14)

Issue: Drafting error – section 19K(5)

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed new section 19K(5) sets out when taxable supply information (TSI) must be provided for buyer-created taxable supply information issued under section 19K(4). As drafted, the proposed section states that “a registered person who provides taxable supply information under subsection (4) for a taxable supply must provide the **recipient** with taxable supply information for the supply...”

This reference to “recipient” should be updated to reflect that the TSI is being provided to the supplier.

Comment

Officials agree.

Recommendation

That the submission be accepted.

Clause 187(15)

Issue: Discretion in issuing taxable supply information – section 19K(10)

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed new section 19K(10) in the Bill provides the Commissioner with the discretion to allow taxable supply information (TSI) to not be issued, or for certain particulars to be omitted from TSI, where the Commissioner is satisfied that there will be sufficient records to

establish the particulars of the supply.

The Commissioner should have a further discretion-making power under this section to grant discretions on an industry basis. For example, restaurants do not need to get recipient details for TSI over \$1000 if the point of sale does not already collect this information.

Comment

Officials agree.

Recommendation

That the submission be accepted.

Issue: Drafting error – section 19Q

Submission

(Corporate Taxpayers Group, Deloitte)

From 1 April 2023, section 19Q provides that any references to tax invoices, credit notes and debit notes should be read as including a reference to the new terminology (“taxable supply information” and “supply information”) to the extent necessary to reflect sensibly the intent of the document.

Section 19Q should be amended further to include references to buyer-created tax invoices, now known as buyer-created taxable supply information.

Comment

Officials agree.

Recommendation

That the submission be accepted.

Issue: Clarification of “recipient details”

Submission

(Deloitte)

From 1 April 2023, the definition of “recipient details” in section 2 of the Goods and Services Tax Act 1985 refers to a number of the recipient’s details, including “an address of a physical location for the person such as a mailing or billing address”.

Clarification should be provided as to whether a PO Box address is a “physical location”.

Comment

Officials agree that clarification should be provided.

Point of difference

However, officials consider this can be dealt with by way of guidance rather than legislative clarification. Officials consider that “an address of a physical location” **does** include a PO Box address.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: Buyer-created supply correction information

Submission

(Deloitte)

Section 19N(5) of the Goods and Services Tax Act 1985, as it applies from 1 April 2023, provides that a registered person can issue buyer-created supply correction information (BCSCI) if they meet the requirements to issue buyer-created taxable supply information (BCTSI) under section 19K(4).

The problem is that, as drafted, this will require a registered person to have an agreement in place to issue BCTSI to be eligible to issue BCSCI, rather than having an agreement in place to issue BCSCI. There may be circumstances where registered persons wish to issue BCSCI but do not need to issue BCTSI (and therefore do not have agreements that specifically deal with issuing BCTSI).

This is not a problem under current law, as eligibility to issue buyer-created credit/debit notes is not linked to buyer-created tax invoices.

Comment

Officials agree that the current requirement that a registered person must have issued BCTSI to be eligible to issue BCSCI for the supply is too prescriptive.

Officials consider an amendment should be made to allow BCSCI to be issued by the buyer through an agreement between the parties. This will ensure there is no pre-requisite for the buyer to issue BCTSI before being able to issue BCSCI.

Recommendation

That the submission be accepted.

Clause 116

Issue: Input tax deductions and provision of supply correction information

Submission

(Matter raised by officials)

An amendment should be made to ensure that, where relevant, supply correction information (SCI) must be provided to enable an input tax deduction to be claimed.

Under previous law, there was a requirement that no input tax deduction could be claimed for a supply unless a tax invoice, debit note or credit note for that supply had been provided to the other party to the transaction. In the case of an inaccuracy in a tax invoice, there was an incentive to provide a credit note to ensure the other party knew of the mistake and could correspondingly correct their return, as otherwise there was no ability to claim an input tax deduction.

The law has now been amended to remove this prescriptive requirement and simply provides that, among other things, the registered person must meet the record-keeping requirements to be able to claim an input tax deduction for a supply. In the case of an inaccuracy, this is insufficient because merely requiring a registered person claiming an input tax deduction to have a record of the SCI (formerly a credit note) provides them with no incentive to provide this information to the other party to the transaction so that they can correct their return too.

Although there is a general requirement that SCI is provided, an amendment is required to stipulate that SCI must be provided for a deduction to be claimed.

Recommendation

That the submission be accepted.

Clause 116

Issue: Record-keeping requirements for supplies when claiming an input tax deduction

Submission

(Matter raised by officials)

An amendment is required to ensure section 20(2)(a) applies to a supply generally, rather than a taxable supply.

Proposed new section 20(2)(a) currently provides that a registered person must keep records when claiming an input tax deduction in relation to a **taxable** supply.

This means that, on the face of it, a taxpayer would not need to keep records for certain exempt supplies. For example, there would be no requirement to hold supply correction

information when correcting a supply from being taxable to exempt. This is not the correct outcome and is not in line with the previous law, which was wider and referred to a “supply” rather than a “taxable supply”.

Recommendation

That the submission be accepted.

Clause 187(8)

Issue: Record-keeping requirements in relation to supplies

Submission

(Matter raised by officials)

Proposed new section 19F requires a registered person who makes or receives a **taxable** supply of goods or services to have a record of taxable supply information and supply correction information for the supply. This should apply more broadly to supplies in general to ensure that the record-keeping requirements apply to exempt supplies.

Recommendation

That the submission be accepted.

Issue: Scope of liability of issuing member of a supplier group

Submission

(Matter raised by officials)

Section 55B(3) of the Goods and Services Tax Act 1985 (GST Act) should be amended to provide that an issuing member of a supplier group is responsible for the GST record-keeping obligations of a supplying member making a supply.

Section 55B(3) currently provides that an issuing member of a supplier group is responsible for the obligations under the GST Act of a supplying member making a supply. This is unintentionally broad and is inconsistent with sections 55B(1) and (2), which refer to an issuing member being required to issue taxable supply information and supply correction information on behalf of the supplying member.

The effect of section 55B(3) is that the issuing member is responsible for all the supplying members’ responsibilities under the GST Act. A GST-registered person is unlikely to agree to become liable for unpaid GST owed to Inland Revenue by an unrelated supplier, and consequently they would therefore be unwilling to agree to become an issuing member under section 55B.

Recommendation

That the submission be accepted.

Issue: GST secondhand goods credit

Submission

(Corporate Taxpayers Group, PwC)

The Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 contained a remedial amendment to section 3A of the Goods and Services Tax Act 1985 to ensure that deductions for secondhand goods to an associated person were equivalent to the input tax that would be allowed if the supplier had started using the secondhand goods in their own taxable activity instead of making an associated persons' transaction.

However, this resulted in the unintended consequence that a GST input tax deduction could not be claimed if an associated unregistered taxpayer sold the asset back to the original associated GST-registered vendor. This type of scenario may arise in a corporate group that includes a GST-registered land development business and an unregistered residential property business where land is bought and sold between entities as and when needs arise.

Before 1 April 2022, an associated GST-registered taxpayer repurchasing an asset from an unregistered associated party would have been entitled to a secondhand goods credit under section 3A(3)(a) (typically being the tax included in the original cost of goods to the supplier). However, following the change to section 3A, that section now effectively limits the input claim to the tax fraction paid by the last non-associated person.

This means that where an associated unregistered taxpayer sells an asset back to the original associated GST-registered vendor, that original vendor cannot claim an input tax deduction.

An amendment is required to ensure that an associated supply in the circumstances set out above results in the equivalent outcome as if the supplier had started using the secondhand goods in their own taxable activity instead of making an associated person transaction.

Comment

Officials agree that the previous remedial amendment resulted in an unintended outcome in the scenario described by the submitter where a GST-registered person sells goods to an unregistered associated person and then buys the same goods back from them. Although such scenarios should be rare, they can lead to the registered person being overtaxed.

A remedial amendment is recommended to make it clear that, in associated persons' transactions, if GST has been charged by one of the associated persons, then the amount of secondhand goods credit that can be claimed is limited to the amount accounted for as output tax by the associated party. If GST has not been charged, then the secondhand goods credit will be limited to the tax fraction of the purchase price when the goods were last acquired from a non-associated person.

Recommendation

That the submission be accepted.

OTHER ISSUES

Issue: Rewrite of the Goods and Services Tax Act 1985

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The Goods and Services Tax Act 1985 (the GST Act) should be rewritten.

The GST Act is old, the structure is outdated, some of the terminology is hard to follow, and the section numbering has become nonsensical.

A rewrite of the GST Act should be prioritised over the planned revision of the Tax Administration Act 1994. *(Deloitte)*

Comment

Officials agree the GST legislation has become more complex as new rules and concepts have been added over the 37 years since its enactment in 1985. A rewrite would allow the GST Act to be simplified with a more logical structure and plainer language.

However, there are significant costs and timing constraints associated with a rewrite. These include:

- a substantial allocation of tax policy and drafting resources to undertake analysis and iterative consultation with key users of the legislation on exposure drafts over several years, and
- existing users of the legislation then being required to learn the new structure and drafting, which would impose compliance costs. Existing guidance materials, such as public rulings and articles in Tax Information Bulletins, that refer to the current GST Act would also become harder to use.

A rewrite of the GST Act would need to be considered alongside the Government's other priorities for the tax and social policy work programme.

The Government has included the Tax Administration Act 1994 (TAA) on its revision bill programme. The TAA is critical to the administration of a large proportion of New Zealand's revenue and is used frequently. It has been heavily amended and contains a mix of drafting styles and outdated language. From a drafting perspective, it has become increasingly more difficult to amend. Officials do not consider it appropriate to stop work on the revision of the TAA, and potentially erode the benefit of the resources invested to date, in favour of a more substantive rewrite of the GST Act. Further, lessons learned from the modernisation of the TAA will benefit any future work on the rewrite or modernisation of the GST Act.

Recommendation

That the submission be noted.

Issue: Unintended change to the GST voucher rules

Submission

(PwC)

There appears to have been an unintended change to the drafting of the GST voucher rules in the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Act 2019, such that a voucher may only be treated as taxable upon redemption if it is both impractical to tax on issue and the supplier of the goods or services and the issuer of the voucher are different persons. We do not consider this change was intended, and we submit that a remedial amendment should be made to reflect the policy intent.

Comment

Officials agree that a remedial amendment should be introduced to address this unintended drafting change.

Recommendation

That the submission be accepted.

Issue: GST incurred by non-resident businesses on business conferences and staff training costs

Submission

(Deloitte)

While not mentioned in this Bill, the submitter notes the on-going issue of GST incurred by non-resident businesses on business conferences and staff training costs. This has previously been discussed with officials prior to COVID-19.

The policy work on this issue should be restarted.

Comment

As noted by the submitter, the matter raised in this submission is not included in the current Bill being considered by the Committee.

The issue relates to the practical difficulties for non-resident businesses to register for GST in New Zealand so that they can claim back GST paid on business expenses incurred when sending staff to a conference or training course in New Zealand (particularly when their only New Zealand expenses are a one-off or occasional expense of staff attending a conference).

One view is that the challenges faced by a non-resident company to be able to recover GST in a cost-effective way is impacting the New Zealand conference industry's ability to attract international conferences to New Zealand when compared to other countries, such as Australia.

The issue was included in an officials' issues paper released for public consultation in February 2020, with several submissions received on potential policy responses to the issue.

Officials intend to undertake further policy development work and at the appropriate time will engage with industry representatives on potential policy solutions.

Recommendation

That the submission be noted.

Issue: GST on management services supplied to managed funds and retirement schemes

Submission

(Deloitte, New Zealand Law Society)

While the proposed changes relating to GST on investment management fees were removed from an earlier version of the Bill, the submitters consider this is a topic that still needs to be addressed.

Comment

The matter raised is outside the scope of the proposals in the current Bill being considered by the Committee.

A Government proposal to standardise the application of GST on fees and services charged to managed funds and retirement schemes was included in an earlier tax Bill.¹⁴ However, on 31 August 2022, the Minister of Revenue announced that the proposal would not proceed and the tax Bill containing the proposed GST amendments was withdrawn. This issue is no longer included on the Government's tax and social policy work programme.

Inland Revenue's technical area is currently undertaking a review of the existing legislation to consider a way forward that provides more certainty for taxpayers.

Recommendation

That the submission be declined.

¹⁴ Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Other remedial items

TAX TREATMENT OF EXPENDITURE ON DISTRIBUTION NETWORKS

Clauses 34, 45, 46, and 98(22), (23) and (24)

Issue: Replace “property” with “assets”

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The word “property” in the definition of “utilities distribution assets” should be replaced with the word “assets”.

“Asset” is more appropriate in this context, given that the “asset” may be broader than each individual item of property that is legally capable of being separately owned. Take, for example, the various components installed on a power pole (for example, air brake switches, fuses, regulators, bird spikes and possum guards). These components might be separate items of property, but they could not each sensibly be characterised as an “asset” in their own right, and they are not separately listed in Inland Revenue’s depreciation determination.

Comment

Officials disagree. The depreciation rules use the word “property” rather than “assets” and the concept of “property” and “item of property”. This can be contrasted with the previous legislative provision that provided the Commissioner with a discretion to allow a deduction for depreciation for assets. The Valabh Committee in its February 1991 Discussion Paper considered depreciation and made recommendations that were the catalyst for the depreciation rules. On a close reading of the Discussion Paper, it appears reasonably clear that the Committee used “depreciable property” and not “depreciable assets” (and “property” and not “assets”) deliberately in both the commentary and draft depreciation legislation included in its report.

As stated on page 180 of the Commentary on the Bill and referred to in [“Issue: Power poles example”](#) below, officials consider that a reasonable treatment of classification of items attached to a power pole should be unaffected by these changes. It would be at the distribution network operator’s discretion whether these items were included as a single asset with the pole they were attached to or whether they were treated separately. In the latter case, the items could be added to a pool, or if they were not already on the depreciation schedule, the operator could likely apply the default rate or apply to the Commissioner for a provisional rate.

Recommendation

That the submission be declined.

Issue: Power poles example

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The words “for example: power poles” in the definition of “utilities distribution assets” should be removed as their inclusion suggests the asset is the power pole in isolation, and that each of the components attached to it should be treated as a separate utilities distribution asset.

Comment

Officials disagree. Officials consider it should be up to an individual operator’s discretion whether components attached to a power pole should be included within that asset or separately identified. This is consistent with the way operators that have always applied the component items approach have applied the rules. The example of a possum guard was specifically referred to on page 180 of the Commentary on the Bill. The relevant asset is the power pole, and it is depreciated using the rate that applies to a power pole (20 years for wooden and 25 years for other power poles). Whether any other components are included within that same asset does not change the asset’s classification as a power pole. The inclusion of power poles as an example in the definition is not intended to change the interpretation of how component items attached to that pole are treated.

However, officials consider the example should be changed from “power poles” to “a power pole” to remove any potential inference that multiple poles could form a single asset.

Recommendation

That the submission be declined.

Issue: Supply of goods

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The definitions of “utilities distribution assets” and “utilities distribution network” should be amended to ensure the definitions can sensibly be applied to each category of “utilities distribution network operator”.

The definition of “utilities distribution assets” refers to property used or available to use to distribute goods and services by a “utilities distribution network operator”, which includes a network operator under the Telecommunications Act 2001 and an electricity distributor. However, telecommunication assets are used to provide, but do not themselves “distribute”, telecommunications services in the same way as pipes distribute water. Further, the decision in *Electricity Supply Association of New Zealand Incorporated v Commerce Commission* (1998) 6 NZBLC 102,555 (HC) held that electricity was not “goods” for the purposes of the Consumer Guarantees Act 1993, and that neither the supply of electricity nor the provision of line function services were within the definition of “goods” or “services” in that Act.

Comment

Officials disagree that telecommunications services and electricity are not within the “goods and services” included in the “utilities distribution asset” definition.

The case referred to by the submitter is about the meaning of “goods” in the Consumer Guarantees Act 1993, and that definition has a specific meaning of personal property. The term “goods” is also defined in the Commerce Act 1986 as personal property but, in that case, does specifically include gas and electricity.

The term “goods” is defined in the Income Tax Act 2007 with reference to the definition in the Goods and Services Tax Act 1985. However, this definition applies only for specified sections, and this does not include the proposed definition of “utilities distribution assets”.

Section 10(1) of the Legislation Act 2019 states that “the meaning of legislation must be ascertained from its text and in the light of its purpose and its context.” In officials’ view, it is clear from the purpose and context of the distribution network remedials that “goods and services” in the definition of “utilities distribution assets” includes electricity and telecommunication services.

Point of difference

However, to remove any uncertainty, we recommend the term “goods and services” be defined to include electricity, gas, water and telecommunication services for the proposed amendments.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: Definition is too broad

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The definition of “utilities distribution assets” is too broad. On its face it would apply to assets used by (say) a telecommunications network operator in its retail stores.

Comment

The definition of “utilities distributions assets” refers to property used to distribute goods and services by a utilities distribution network operator. The definition of a “utilities distribution network operator” is somewhat broad because of its reliance on existing legislative definitions. For example, the definition includes a network operator under the Telecommunications Act 2001. Under that Act, a network operator means any person declared under section 105 of that Act to be a network operator, and section 105 specifically provides that Chorus and Spark are declared to be network operators. As Spark is a network operator under that Act, their retail operations would also be covered by that definition. However, without choosing an entirely different approach, it does not appear simple to carve out operations that would not be within the common understanding of a distribution

network.

In any event, the only consequence of being a utilities distribution network operator is that the person has utilities distribution assets (being the property used to distribute goods and services by that operator) and their network is not a separate item of property. While each situation will be dependent on its facts, for operations that are not within the common understanding of a distribution network (such as retail), there are two potential scenarios:

- This property (for example, retail) is not used to distribute goods and services by a utilities distribution network operator, and therefore that portion of the network operator's operations is not a utilities distribution asset. In this case, the asset identification, capital/revenue boundary and depreciation are unaffected by the proposed amendments.
- This property is used to distribute goods and services by a utilities distribution network operator, and therefore the network operator would not be able to identify the relevant items as a single item of property (for example, their entire retail network). Officials are not aware of any business operating in this way and would not expect any to be doing so.

Although officials agree that there may be some operations of a utilities distribution network operator unnecessarily caught within this definition, there does not appear to be a simple way to move this boundary without risking the omission of operations that are the intended target of these proposals. In addition, we do not expect there will be any adverse consequences for any operations that are inadvertently covered by this definition.

Recommendation

That the submission be declined.

Issue: Transition for operators applying the network approach

Submission

(Chartered Accountants Australia and New Zealand)

The Commentary on the Bill does not discuss how the change should be implemented for those operators who have adopted the network approach and have included the distribution network as a single asset on their depreciation register. When parts of the distribution network are replaced, under the component approach the "replacement asset(s)" will be added to the fixed asset register. However, there will be no disposition of a portion of the distribution network asset to account for the part(s) replaced.

Comment

Officials have identified only a small number of operators who have applied the network approach, and all of these have continued to depreciate assets on a component basis. The two main reasons for this are that these operators are required to identify component assets

for regulatory purposes and Inland Revenue has never issued a depreciation rate for an entire network.

The exception to this is assets accounted for by the globo method on or before the 1992–93 income year. This occurred when electricity supply authorities entered the tax base for the first time in 1987. The Commissioner allowed these assets to be grouped together as the electricity supply authorities had not previously identified component assets and could not practically do so. As these assets were depreciated at 5% per annum over a 20-year period from 1987, they are not relevant to the current proposals.

The consultation document released by Inland Revenue in April 2022 included a request for submissions from networks applying the network approach on any potential transitional issues. Officials have been working with individual taxpayers and their advisors through this process to manage transitional issues. We have not identified the need for any specific legislative transitional provisions beyond the application date savings provisions included in the Bill.

We are also aware that a small number of operators are pooling component items. This is a general approach allowed by the current legislation and not directly affected by the current proposals. Standard features of pooling items for depreciation purposes are that compliance costs can be lower, but also that as items in the pool cease to be individually identifiable, they cannot be written off for tax purposes when they are replaced – rather they continue to be depreciated so that over time the amount deducted will be the same.

Recommendation

That the submission be noted.

Issue: Savings provision

Submission

(Corporate Taxpayers Group)

The savings provisions, which refer to return positions or a binding ruling that ignores the amendments, should be amended to remove the word “ignores”. The amendments should use the wording that has been used in previous amendments, for example, section FH 11 of the Income Tax Act 2007, as amended by section 105(8) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.

Comment

Officials agree with the submitter that, where possible, wording that is consistent with previous equivalent provisions should be used. However, the example provided by the submitter is itself a deviation from previous savings provisions. This is potentially due to it being included in the relevant Bill late in the FEC process. The word “ignore” appears 133 times in 93 sections of the Income Tax Act 2007. Recent examples where the word “ignores” or its variants have been used in a savings provision are section 149(2) of the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, section 20(3) of the

Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021 and section 79(2) of the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019.

While the application provision in each of the relevant proposed provisions provides the changes would apply to grandparented taxpayers from the 2024–25 year, clause 2(4) of the Bill provides that each provision would have a commencement date of 1 April 2008. Thus, although the amendments would not have existed at the time a network operator took a network approach and would not have applied to them for that year, the retrospective commencement date means they would have to have ignored the amendment in taking their position to use the network approach. Therefore, officials consider use of the word “ignores” is appropriate.

Recommendation

That the submission be declined.

STUDENT LOAN TIME BAR

Clause 163

Issue: Support for proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed amendment to limit the Commissioner's ability to amend an assessment that includes an amount of salary and wage deduction made under the Student Loan Scheme Act 2011 once four years have passed. They note the amendment will be welcomed by student loan borrowers.

Recommendation

That the submission be noted.

BUSINESS CONTINUITY TEST – MEASUREMENT OF OWNERSHIP

Clause 75

Issue: Support for the proposed amendment

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

General support for the proposed amendment.

Recommendation

That the submission be noted.

Issue: The provision should be redrafted

Submission

(Chartered Accountants Australia and New Zealand)

The proposed legislation could be clearer by providing a complete definition of “continuity period” for the purposes of the business continuity test (BCT) in the proposed section rather than modifying the standard definition of “continuity period”.

Comment

Officials consider that inserting a separate definition of “continuity period” for the purposes of the BCT is not necessary. As this change only relates to the BCT, and not the general continuity of ownership rules, inserting an additional definition may give the same term two different meanings, and this could complicate interpretation.

Recommendation

That the submission be declined.

EARLY PAYMENT DISCOUNT AND TAX POOLING

Clauses 190 and 191

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

Submitters support the proposed amendments.

Recommendation

That the submission be noted.

FINANCIAL ARRANGEMENTS – DEBT-EQUITY SWAPS

Clause 50

Issue: Support for proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

We support the proposed amendment to treat the issue of shares by an insolvent company debtor for consideration as a payment under the financial arrangements rules equal to the market value of the shares issued and commend the work done by Officials.

Recommendation

That the submission be noted.

Issue: Write-off of forgiveness income

Submission

(Chartered Accountants Australia and New Zealand)

An amendment should be made to section 177C of the Tax Administration Act 1994 to allow the Commissioner of Inland Revenue to agree, at the time the insolvent company debtor enters into the arrangement to replace debt with equity, to write off the resulting tax on the debt-forgiveness income, if any. Being able to agree this upfront would provide certainty for directors that the work-out arrangement would not result in any tax liabilities that will be unable to be paid.

Comment

The Commissioner already has the discretion to write off tax debts. This appears to allow the Commissioner to agree in advance to write off a future tax debt arising from a debt-equity swap if requested to do so. Any such agreement would likely be given on a conditional basis. Given this discretion to agree conditionally to write off such a debt, the infrequency of these transactions, and the benefit of flexibility, it does not seem appropriate to make any special provision for this case.

Recommendation

That the submission be declined.

Issue: The proposal should not proceed

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The proposal should not proceed for the following reasons:

- It is not a “remedial item”. Rather, it is a substantive policy change affecting start-ups and small to medium enterprises across the country.
- The Commentary on the Bill notes the proposed amendments would “ensure ... taxpayers cannot avoid deriving debt-forgiveness income”. If so, particular instances can already be addressed through the general anti-avoidance rule where it applies. To apply the rule to all arrangements with third-party creditors would be overreach. Where the existing owners of a business make a commercial decision to accept a dilution of their equity interests in favour of a third-party creditor, that should not be regarded in the ordinary course as the avoidance of debt-forgiveness income to which a rule such as that proposed should apply.
- In practice, the rule will create an impediment to financially distressed businesses reaching commercial compromises with third-party creditors. The insolvent business would be required to undertake a costly valuation exercise or risk having deemed income. Such a valuation may be difficult and open to dispute, even for a business that has sought to comply with the rules.
- These kinds of arrangements are often commercially driven, with the creditor seeing value in acquiring shares in place of its debt.
- The proposal is not consistent with the recent relaxation of the loss carry-forward rules

Comment

No evidence has been presented to show that debt-equity swaps where the borrower is insolvent are commonplace. Furthermore, in many (but not all) debt-equity swaps, the borrower has tax losses that can absorb any taxable income arising because of this proposal.

Officials agree that debt-equity swaps, when they occur, are often commercially motivated. The proposal in the Bill is not founded on a view that they are not commercially motivated. The proposal addresses transactions that are documented in a way that does not reflect market values. The lender subscribes for shares in an insolvent borrower **for an overvalue** (as a third party would pay very little for the shares in most cases) on the basis that the borrower will have to use that overvalue to repay the debt it owes, which otherwise would not be repaid. The lender subscribing for the shares at an overvalue enables the borrower to repay the debt in full. This avoids any taxable debt-forgiveness income arising to the borrower. The submitter does not address this aspect of the transaction. There is no reason why the tax law should have to respect these above-market values. The fact a transaction is commercially motivated is not a reason for not taxing it. The majority of taxable transactions are commercially motivated.

The Commissioner’s practice for valuing shares is pragmatic. For example, shares issued pursuant to employee share schemes must be valued. This does not seem to give rise to an

unreasonable level of dispute in practice. The Commissioner does not have significant resources to spend on fact-intensive and time-consuming valuation disputes, and generally must rely on businesses to make reasonable valuations.

Because the lender will generally be entitled to a tax deduction for its loss on the shares on their disposal, commercial tension exists regarding the value of the shares. The lower the value of the shares, the greater the borrower's income but the greater the lender's deduction. This makes it less likely the Commissioner will require unreasonable expenses to be incurred for a valuation – if a valuation establishes a lower value than was paid, the increased income to the borrower will be matched by an increased deduction for the lender.

If the borrower is insolvent, any conceivable valuation of its shares will generally be low, so relatively little is likely to be at stake in terms of possible valuation disparities.

The imposition of a tax liability on the borrower in a debt-equity swap may prevent the swap being done in particular cases and therefore prevent the borrower's continuation. However, that does not mean that the borrower's business itself cannot continue by being sold to another owner (which could be the lender, if so desired). The continuation of the business is more significant than the continuation of the company that operates it.

The proposed change is remedial in nature. When non-cash consideration is used to repay debt, that consideration must be valued to determine financial arrangement income or expenditure. The valuation standard is market value – it is not possible for the parties to simply decide a value. The policy intention has never been for an original issue of shares to be an exception to this general approach.

Recommendation

That the submission be declined.

Issue: Application only to tax avoidance arrangements

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

Proposed new section EW 46D should apply only where there is a "tax avoidance arrangement" to make clear (as the Commentary on the Bill itself suggests) that the proposal is a specific anti-avoidance rule and is not intended to apply each time an insolvent company reaches a commercial agreement to issue shares to a third-party creditor.

Comment

The Commentary on the Bill does not refer to debt-equity swaps as involving tax avoidance. It would not be appropriate to insert a tax avoidance arrangement requirement into the proposed new provision. Proposed new section EW 46D would operate by replacing a non-arm's length value with an arm's length value. The use of a non-arm's length value should be all that is required to trigger the operation of the section. This is common practice in the Income Tax Act 2007. For example, most of the provisions in subpart GC operate on that basis.

Recommendation

That the submission be declined.

Issue: Definition of insolvency

Submission

(PwC)

The term “insolvent” is not defined and could be read as referring to one or both of balance sheet insolvency, and an ability to meet debts as they fall due. The proposed amendment should only apply where a company is treated as insolvent for the purposes of the Companies Act 1993.

Comment

Officials agree that adopting the solvency test in section 4 of the Companies Act 1993 could provide additional precision to the proposed new provision.

Recommendation

That the submission be accepted

Issue: Arrangements entered into with solvent debtors

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The legislation or officials’ guidance should clarify that the proposal does not apply where the “arrangement” was entered into before the debtor is insolvent, including where the terms of the debt or another agreement permit either party to elect to convert the notes in the event of an insolvency. Such arrangements are common, for example, for start-up businesses and in certain regulatory capital instruments.

Comment

Officials disagree that proposed new section EW 46D requires clarification as the provision is clear on its terms that it would only apply if the debtor is insolvent at the time it enters into the arrangement. Furthermore, it would only apply if the debtor uses an amount received from issuing shares to repay debt. It would not apply to a solvent borrower that issues a convertible note, even if the note is later converted when the borrower is insolvent. Officials will confirm this in guidance to be published after the Bill has been enacted.

Recommendation

That the submission be declined.

Issue: Bad debt deductions

Submission

(Corporate Taxpayers Group)

The legislation or guidance should clarify that debt will not be treated as repaid to the creditor to the extent it exceeds the market value of the shares, so that the creditor can claim a bad debt deduction if the requirements for doing so are otherwise met.

Comment

Officials disagree that proposed new section EW 46D requires clarification as the provision has the same effect on the lender as it has on the borrower. Accordingly, the lender would be treated as having received the same amount (the market value of the shares) as the borrower would be treated as having paid. Officials will confirm this in guidance to be published after the Bill has been enacted.

Recommendation

That the submission be declined.

Issue: Indirect repayment

Submission

(Matter raised by officials)

To prevent taxpayers structuring around the rule, proposed new section EW 46D should also cover the proceeds of an issue of shares being used to indirectly repay debt of an insolvent company.

Recommendation

That the submission be accepted.

FINANCIAL ARRANGEMENTS – IMPAIRED CREDIT ADJUSTMENTS

Clauses 48 and 192

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Submitter considers the proposed amendments to clarify that reversals of impaired credit adjustments to financial assets under the IFRS method are non-assessable, to the extent the reversal offsets a previous decline, appear sensible given that the original adjustment(s) made for the decline in the credit quality of a financial asset under the IFRS method would have been non-deductible for income tax.

Recommendation

That the submission be noted.

GENERAL AND LIFE INSURANCE – REPLACEMENT OF NZ IFRS 4 WITH NZ IFRS 17

Clauses 20, 44, 58, and 98(10), (13), (14) and (25)

Issue: Support for the proposal

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposal provided officials have consulted with the insurance industry.

Comment

Officials have consulted with the insurance industry while developing the remedials.

Recommendation

That the submission be noted.

Issue: Grandparenting provision

Submission

(Matter raised by officials)

Inland Revenue has entered into agreements with taxpayers that govern the spreading method used for life financial reinsurance contracts. As these were entered into under IFRS 4, a grandparenting provision would ensure these agreements remain in force following the introduction of IFRS 17.

A grandparenting provision was not included in the Bill at introduction. Officials recommend that one be inserted to ensure that agreements reached between the Commissioner and insurers remain in place.

Recommendation

That the submission be accepted.

Issue: Support for proposal to include a grandparenting provision

Submission

(Financial Services Council NZ)

The submitter understands a grandparenting provision to preserve existing insurance

arrangements, already agreed between Inland Revenue and insurers, is to be included in the Bill. We support the inclusion of such a provision.

Comment

While a grandparenting provision was not included within the Bill at its introduction, officials have recommended in "[Issue: Grandparenting provision](#)" that one be inserted to ensure that agreements reached between the Commissioner and insurers remain in place.

Recommendation

That the submission be noted.

Issue: Transitional provisions

Submission

(PwC)

Sections CR 4 and DW 4 of the Income Tax Act 2007 both provide that movement in the Outstanding Claims Reserve (OCR) may be taxable or deductible to the insurer.

However, while section DW 4 prescribes how the opening OCR balance should be determined in the year of transition to IFRS 17, no equivalent provisions have been included in section CR 4. Consideration should be given to whether the provisions to determine the opening OCR balance in the year of transition to IFRS 17 should be added to section CR 4.

Comment

Officials agree these transitional provisions should be clarified within the Bill.

Recommendation

That the submission be accepted.

Issue: Definition of present value

Submission

(PwC)

The proposed new section DW 4(4)(iv) in clause 44 of the Bill would apply when a life insurer with general insurance contracts does not adopt IFRS 17 but is applying the definition of "present value (gross)" in the current tax year. "Present value (gross)" is defined as "a claim under a life insurance contract." How this is intended to apply to general insurance contracts should be clarified.

Comment

The items in the Bill are not intended to amend current policy settings. While general insurers using IFRS 4 will now use IFRS 17 to determine their Outstanding Claims Reserve, life

insurers will continue to use the method prescribed by sections EY 24(3) and (4) of the Income Tax Act 2007 and the proposed new definition of “present value (gross)” for contracts of both life insurance and general insurance. However, officials agree this should be clarified within the Bill.

Recommendation

That the submission be accepted.

Issue: Location of the definition of “present value (gross)”

Submission

(Matter raised by officials)

The definition of “present value (gross)” applies to section EY 24 of the Income Tax Act 2007. Accordingly, to assist insurers in applying this definition, officials recommend shifting it from section YA 1 and locating it within section EY 24, specifically subsection (5).

We recommend updating the “present value (gross)” reference in proposed section DW 4(4)(a)(iv) to include its proposed new location in section EY 24(5).

Recommendation

That the submission be accepted.

UPDATING LEGISLATIVE REFERENCES TO OECD TRANSFER PRICING GUIDELINES

Clauses 6, 98(12) and (26), and 139(5)

Issue: Amendment required to drafting

Submission

(EY)

An amendment is required to remove an inconsistency between the draft legislation and the policy intent as stated in the Commentary on the Bill.

The Commentary on the Bill suggests that there are two scenarios in which taxpayers may continue to apply the 2017 OECD Transfer Pricing Guidelines instead of the 2021 version of those Guidelines:

- All taxpayers may choose to delay application up to and including the 2022–23 year.
- Taxpayers with an existing binding ruling that applies the 2017 Guidelines may delay applying the 2021 Guidelines for the period of the binding ruling.

However, the Bill drafting at clause 98(26) only reflects the latter scenario.

Comment

Officials agree that the description in the Commentary on the Bill reflects the policy intent and that the draft legislation did not match this description. The legislation should therefore be amended to match the Commentary on the Bill.

Recommendation

That the submission be accepted.

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The proposal to update the definition is logical, provided Inland Revenue has fully considered the changes and considers they are appropriate for New Zealand.

Recommendation

That the submission be noted.

Issue: Support for savings provision

Submission

(Corporate Taxpayers Group)

Submitter supports the proposed savings provision.

Recommendation

That the submission be noted.

INCOME OF DECEASED PERSONS RECEIVED AFTER DATE OF DEATH

Clauses 21 and 69

Issue: Support for the proposed amendments

Submission

(Chartered Accountants Australia and New Zealand)

Support for the proposed amendments.

Recommendation

That the submission be noted.

Issue: The proposed amendments do not go far enough

Submission

(EY)

The proposed amendments should go further as the issue of a deceased person earning other income is wider than just payments from the Ministry of Social Development. At present, the rules that relate to the treatment of income of a deceased person cause unnecessary compliance costs and complexity.

A broader review of these rules is necessary to simplify the rules and ease compliance burdens. The proposed amendments should be expanded to broader categories of income (that is, not be limited to reportable income) and should apply for a longer period.

Comment

While we have sympathy for the submission and the compliance costs incurred when a taxpayer dies, this remedial was limited to deal with one of the more common scenarios we have observed where the compliance costs incurred far outweigh any benefit of filing two returns. Any additional work would require a larger policy project.

Officials note the comments of the submitter and will refer the wider issue of taxation on a person's death for consideration as part of the tax and social policy work programme.

Recommendation

That the submission be declined.

NON-ACTIVE TRUSTS

Clauses 149 and 150(1)

Issue: Support for the proposals

Submission

General support for the proposals. (*Corporate Taxpayer Group, Public Trust, PwC, Trustees Executors*)

Support for the proposed amendment confirming a trust or estate that does not have an IRD number is not required to notify the Commissioner that it is non-active. (*Chartered Accountants Australia and New Zealand*)

Support for the proposed amendment to clarify that interest incurred by the beneficiaries of the trust or estate incidental to the occupation of a dwelling owned by the trust or estate is not taken into account in determining non-active status. (*Chartered Accountants Australia and New Zealand*)

Recommendation

That the submissions be noted.

Issue: Estates without IRD numbers

Submission

(*Chartered Accountants Australia and New Zealand*)

The proposed amendment to section 43B(1)(c) of the Tax Administration Act 1994 should include estates as well as trusts. The proposed amendment currently only provides that trusts that do not have an IRD number do not have to notify the Commissioner if they are non-active.

Comment

Estates were inadvertently omitted from the proposed provision and should be included.

Point of difference

However, officials have also identified that the wording within the proposed section is not consistent, and therefore we recommend that certain references to "trust or estate" should be changed to "trustee of a trust or an administrator or executor of an estate".

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Bank charges and administration costs

Submission

(Chartered Accountants Australia and New Zealand)

The proposed increase in allowable bank charges and administration costs to \$1,000 should be raised to \$1,500 as that would be more appropriate in the current inflationary environment.

Comment

Officials agree that an additional increase of a further \$500 to \$1,500 is not particularly material in the current environment and provides some future proofing for future cost increases.

Recommendation

That the submission be accepted.

Issue: Reportable income threshold

Submission

(Chartered Accountants Australia and New Zealand)

It is proposed that a trust or estate can earn up to \$1,000 of reportable income without being considered an "active" trust. This should be increased to \$5,000 in line with testamentary trusts.

A higher threshold would be more meaningful and further advance the objective of the amendments.

Comment

Unlike testamentary trusts, which are formed by the death of the settlor, other trusts can be formed at any stage and are consequently more likely to be used to reduce tax liabilities. Officials see a clear distinction between testamentary trusts and other trusts and the different thresholds reflect this.

Recommendation

That the submission be declined.

Issue: Threshold for non-reportable income

Submission

(Chartered Accountants Australia and New Zealand)

Under the proposals in the Bill, a testamentary trust can earn up to \$1,000 of non-reportable

income against which it has deductions of at least \$800 for the income year:

- a. The threshold for non-reportable income should be increased to \$1,500.
- b. The wording of the provision is not clear and can have unanticipated results where the non-reportable income does not exceed the expenses of \$800. It should be redrafted.

Comment

- a. Officials do not consider that the threshold for non-reportable income should be increased from \$1,000 to \$1,500. This is income that is not subject to tax at source and having a greater threshold would not align with the wider income thresholds for other types of taxpayers.
- b. Officials agree that the drafting of the provision is not clear and will refer this back to the drafter. The intention is that a testamentary trust can earn up to \$200 of net non-reportable income before it must file an income tax return (subject to a maximum of \$1,000 of non-reportable income).

Recommendation

- a. That the submission be declined.
- b. That the submission be accepted.

Issue: Distributions from a testamentary trust

Submission

(Public Trust, Trustees Executors)

Under the proposals in the Bill, a testamentary trust that has distributions exceeding \$100,000 must file a tax return.

A substantial number of testamentary trusts will only have a house property as a life interest or other non-income earning assets that exceed \$100,000. Under this proposal, a tax return would need to be filed when the estate was wound up.

This requirement should be removed, or it should be amended to exclude all distributions made during the winding up of the estate.

Comment

In the development of this proposal, officials did meet with several stakeholders to design the final proposal around testamentary trusts. The requirement that the trust have a maximum amount of distributions during a year was suggested by those stakeholders and included in the final proposal after discussion of a suitable threshold.

However, as the submitters point out, testamentary trusts have been created due to the death of a person rather than to minimise taxation. After reviewing the submissions, we agree that to include a distribution threshold will incur compliance costs for no benefit and the requirement should be removed.

Recommendation

That the submission be accepted.

Issue: Tax deducted at the “correct rate”

Submission

(Public Trust)

Under the proposals in the Bill, testamentary trusts can earn up to \$5,000 of reportable income provided tax has been deducted from that income at the “correct rate”.

The effect of the reference to tax being deducted at the “correct rate” without further qualification potentially negates the effect of the exemption as it does not take into account tax deductible fees for filing.

The wording should be changed to “any tax payable has been deducted from that income at the correct rate taking into account deductions against that income”.

Comment

Officials agree that not taking into account any expenses when determining the “correct rate” of tax could result in over-deductions and the need to file a tax return to obtain a refund of the over-deduction.

Point of difference

Officials agree that a change is warranted, but rather than adopt the submitter’s suggested wording, we consider it is preferable to make the trust a “complying trust”, which requires it to meet its tax obligations but allows more flexibility to the selection of a “correct rate”.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: Trustee not to have derived any income

Submission

(Public Trust, Trustees Executors)

Under current rules, a trust cannot be a non-active trust if the trustee of the trust or the administrator or executor of the estate has derived any “income”. There will be instances where trusts have derived income from a portfolio investment entity that has been taxed at the top prescribed investor rate, and that income is therefore excluded income.

The trust disclosure rules will not apply to that trust as those require a trust to derive “assessable income”. However, under the current rules, the trust will still be required to file a tax return as the trust has derived “income”. These two provisions are inconsistent and should be aligned.

Comment

Officials agree that the two provisions should be aligned to ensure that this inconsistency does not mean a taxpayer still has to file a tax return despite not having to comply with the trust disclosure rules. Additional amendments should be made to section 43B of the Tax Administration Act 1994 to change "income" to "assessable income". Consequential changes to proposed section 43B(3B) will also be made to reflect this change.

Recommendation

That the submission be accepted.

Issue: Treating the trust as an individual

Submission

(Trustees Executors)

Only a natural person can earn "reportable income". Under the proposals, trusts or estates can earn up to a certain level of reportable income, treating the trust or estate "if it were a natural person". The word "as" should be inserted before "if" to improve clarity by giving direction to treat the trust or estate "as a natural person".

Comment

After discussing the issue with the drafter, officials consider that the current wording is adequate and adding the word "as" may make the provision ambiguous.

Recommendation

That the submission be declined.

Issue: Transactions with third parties

Submission

(PwC)

The current rules for non-active trusts contain a requirement that a trust or estate cannot have been a party to, or perpetuated, or continued with, transactions with assets of the trust or estate which, during the corresponding income year, –

- give rise to income in any person's hands, or
- give rise to fringe benefits to an employee or to a former employee.

This requirement seems to be overly onerous, particularly on trusts or estates that would otherwise be treated as non-active. For example, it can include situations where a contractor is hired to undertake maintenance on trust property.

Comment

Officials agree the wording of section 43B(2)(c) is wide, and it appears it was not intended to capture independent third-party transactions that result in income for another person.

Point of difference

We do, however, consider that the provision remains useful where the person(s) deriving the income is associated with the trust or estate. Officials therefore recommend that this provision be narrowed accordingly.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Impact of the trust disclosure rules

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Olivershaw Limited)

Submitters raised concerns that the proposed amendments to increase the scope of the non-active trust and estate rules do not go far enough and more is required to reduce the compliance cost burden of the domestic trust disclosure rules.

One submitter noted there is a mismatch between the tax treatment of a beneficiary distribution made under section HC 6(1)(b) of the Income Tax Act 2007 and the information required to be disclosed in the trust's tax return. The mismatch increases compliance costs for trusts. *(Chartered Accountants Australia and New Zealand)*

Submitters recommended the following changes:

- The trust disclosure rules in section 59BA of the Tax Administration Act 1994 should be reviewed and reduced in scope to achieve an acceptable balance between the desire to collect relevant information about trusts and the compliance costs imposed on taxpayers. *(Chartered Accountants Australia and New Zealand)*
- The trust disclosure rules should be amended to fully exempt a "simplified reporting trust"¹⁵ from the trust disclosure rules. *(Chartered Accountants Australia and New Zealand)*
- The financial statement requirements under the disclosure rules should align with

¹⁵ A "simplified reporting trust" is defined in the Tax Administration (Financial Statements—Domestic Trusts) Order 2022. A trust is a simplified reporting trust in relation to an income year if:

- the assessable income derived by the trustee of the trust during the income year is less than \$100,000 (excluding income derived under the bright-line test for residential land),
- the deductible expenditure or loss incurred by the trustee of the trust during the income year is less than \$100,000, and
- the amount of total assets of the trust as at the end of the income year is less than \$5 million.

trustees' record-keeping obligations under the Trusts Act 2019. (*Chartered Accountants Australia and New Zealand*)

- The trust disclosure rules in section 59BA should be repealed, and the Commissioner should rely on his general powers to collect information for anything that is "necessary or relevant" in relation to the tax affairs of a taxpayer. (*Olivershaw Limited*)

Comment

A post-implementation review of the trust disclosure rules is scheduled in 2023 (once a full year of data has been disclosed). This review will evaluate whether the rules are achieving the policy objectives and whether legislative and/or operational changes can be made to improve and simplify future disclosure requirements.

Progressing changes to the trust disclosure rules before this review has been completed, or without public consultation, risks undermining the policy intent of the rules. However, we have noted submitters' concerns and will consider their feedback as part of the post-implementation review.

Considering changes to the rules as part of the post-implementation review will ensure that feedback from all affected parties can be taken into account.

Recommendation

That the submissions be declined.

PROVISIONAL TAX – STANDARD UPLIFT CALCULATION METHOD FOR THE SECOND INSTALMENT

Clause 88

Issue: Support for the proposal

Submission

(Corporate Taxpayers Group, Deloitte)

General support for the proposal.

Recommendation

That the submission be noted.

Issue: The application date should include a savings provision

Submission

(Deloitte, KPMG)

The application date should have a savings provision for taxpayers who have filed their prior year income tax return on the first working day following a due date that is not a working day to ensure their provisional tax instalment calculations are not adversely affected by this change.

The proposed amendments should not be retrospective as a taxpayer should not be penalised for applying the rules as they currently stand. Taxpayers should either have any penalties and interest automatically remitted or be advised that they can request remission of any penalties and interest.

Comment

Officials do not consider a blanket savings provision should be included. The proposed amendment only clarifies the current position on how the rules apply. It is not changing the rule, and for most taxpayers, any differences would have been addressed as part of their year-end obligations.

The proposed amendment is designed to provide clarity to taxpayers who file tax returns around a provisional tax payment date rather than change the current rule. It would ensure the rule regarding which uplift amount a taxpayer should be using (that is, 105% or 110%) is clear to taxpayers and their agents.

Most taxpayers avoid the issue entirely by not filing their tax return for the prior year on, or closely around, a payment date. However, some taxpayers attempt to minimise their

provisional tax liabilities for the year by filing around the payment date to use the lower of the two available uplift amounts.

The proposed rule would clarify which uplift applies and ensure taxpayers attempting to minimise their liabilities clearly know what will happen. Previously, this was unclear or subject to various opinions.

Point of difference

However, officials are aware that some taxpayers may have already had penalties and interest assessed on a different basis than that applying under the proposal. In those cases, officials agree that a savings provision should be applied to ensure those taxpayers do not face increased penalties and interest.

Recommendation

That the submission be accepted, subject to officials' comments.

INCOME TAX TREATMENT OF GRANTS PAID BY PUBLIC PURPOSE CROWN-CONTROLLED COMPANIES

Clauses 30 and 36

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The submitters support the proposed amendments to align the income tax treatment of grants paid by public purpose Crown-controlled companies with the treatment of grants paid by public authorities. The proposed amendments will provide certainty in this area.

Recommendation

That the submission be noted.

INVESTMENT IN AUSTRALIAN UNIT TRUSTS

Clauses 14, 31, 51, 52, 55, 56 and 57

Issue: Support for proposals

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, New Zealand Superannuation Fund, PwC)

Submitters support the proposals.

Recommendation

That the submission be noted.

Issue: All amendments should be retrospective

Submission

(Corporate Taxpayers Group, Deloitte, New Zealand Superannuation Fund, PwC)

Submitters support the proposed retrospectivity of the amendment enabling more taxpayers to use the fair dividend return (FDR) method for their foreign investment fund (FIF) investments. However, submitters would like the other amendments to the taxation of Australian unit trusts to be retrospective to the same date (1 July 2014).

Comment

Officials do not believe retrospectivity is appropriate in this case. There is a high bar for retrospectivity. The FDR method changes meet this as they address a clear error in the law. The other proposed amendments do not fix an error in the law; instead they make policy changes to remedy a concern with economic double taxation. While domestic law and tax treaties will often seek to eliminate juridical double taxation, economic double taxation is not necessarily inappropriate and is not something that jurisdictions will always seek to eradicate. In this case, the economic double taxation arises because of historic choices on the investment structure.

Recommendation

That the submission be declined.

Issue: Indirect holding through chain of AUT CFCs

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, New Zealand Superannuation Fund, PwC)

Submitters would like clarification that the proposed amendment to section CD 36 of the Income Tax Act 2007 applies to investments where a FIF interest is held indirectly via a chain of controlled foreign companies (CFCs) that are Australian unit trusts (AUTs).

The proposed amendments to sections EX 20B(3)(c) and EX 20C(10) should be widened to cover the multiple AUT CFC scenario to ensure economic double taxation does not arise at this level. *(Corporate Taxpayers Group, Deloitte)*

Comment

Officials agree with the suggested amendments. There is the same risk of double taxation where the investment in the FIF is through a chain of AUT CFCs as when the investment is through a single AUT CFC.

Recommendation

That the submissions be accepted.

Issue: Indirect FIF interests applying the attributable FIF income method

Submission

(New Zealand Superannuation Fund, PwC)

The proposed amendment to section CD 36 of the Income Tax Act 2007 should be expanded to relieve double taxation for indirect FIF interests where the New Zealand investor applies the attributable FIF income (AFI) method and returns "passive income".

Comment

Officials disagree. The proposed amendments seek to remove economic double taxation where the investor applies one of the four FIF calculation methods listed in section EX 59(1) to the underlying FIF investment. These four methods are treated as a 'code', meaning that the only income that comes from FIF interests where one of these methods is applied is the income calculated under the FIF rules (that is, dividends paid by these FIF interests are not separately taxed under New Zealand tax law). The AFI method, which essentially treats the FIF as a CFC for calculating FIF income or loss, is not listed in section EX 59(1).

The current policy for excluding dividends from FIF interests only applies where one of the methods listed in section EX 59(1) applies. Given that the AFI method is not treated as a code, the change proposed by the submission would be against the policy intent of the FIF

rules.

Recommendation

That the submission be declined.

Issue: Amendments should extend to non-AUT FIF interests

Submission

(Corporate Taxpayers Group, Deloitte, New Zealand Superannuation Fund, PwC)

To prevent economic double taxation in cases where the New Zealand resident receives a deductible foreign equity distribution (DFED), the proposed amendments to section CD 36 of the Income Tax Act 2007 should also cover distributions from non-Australian unit trust (AUT) FIF interests.

Comment

Officials agree. The proposed amendment to section CD 36 seeks to prevent distributions from AUT CFCs holding a FIF interest from being treated as a dividend where the New Zealand interest holder will also be taxed on that FIF interest under one of the relevant FIF methods (where one of the methods listed in section EX 59(1) is applied) and at an individual level. The same issue arises with non-AUT FIF interests, so the proposed amendments should be extended to apply to these interests.

Recommendation

That the submission be accepted.

Clauses 51 and 52

Issue: Distributions from an AUT CFC investment in a CFC returning passive income

Submission

(New Zealand Superannuation Fund, PwC)

The proposed amendments to sections EX 20B and EX 20C of the Income Tax Act 2007 should be amended to confirm that distributions sourced directly or indirectly from a non-attributing active CFC are not taxable. Where a New Zealand taxpayer invests in a CFC that derives 'passive income' through an Australian unit trust (AUT) CFC, the New Zealand resident investor will be taxed on their income from the AUT under the CFC rules before it is subject to tax again as a distribution. This results in double economic taxation.

The proposed amendments should also be extended to AUT CFCs that are not non-attributing active CFCs as well. *(PwC)*

Comment

The use of AUT structures has raised integrity concerns in the past due to their ability to be used as reverse hybrids to obtain deductions in Australia with no corresponding income taxed in Australia or New Zealand (a deduction/non-inclusion outcome). These concerns were addressed through the introduction of the hybrid and branch mismatch rules in 2018 and the expanded definition of “deductible foreign equity distribution”.

It is unclear whether this submission would undermine those changes and re-open integrity concerns. Further work on this matter would require prioritising and resourcing as part of the Government’s tax and social policy work programme. Therefore, officials do not consider it appropriate to make any changes to the proposed amendments at this time.

Recommendation

That the submission be declined.

Issue: Dividend exclusion should apply to distributions from an AUT FIF

Submission

(Corporate Taxpayers Group, Deloitte)

Section CD 36(2) of the Income Tax Act 2007 should also be amended to include an additional qualification criteria to ensure the proposed exclusion from the dividend rules applies as intended to distributions from Australian unit trusts.

Comment

Officials agree. This change is necessary to ensure section CD 36 reflects the proposed changes to expand the availability of the FDR rules.

Recommendation

That the submission be accepted.

Clause 51

Issue: Distributions from non-attributing active FIFs

Submission

(Corporate Taxpayers Group, Deloitte, New Zealand Superannuation Fund)

While a deductible foreign equity distribution (DFED) is generally treated as passive income under the CFC rules, there is an exclusion for a DFED that is distributed from an associated non-attributing active CFC. The CFC passive income exclusion should be expanded to include DFEDs from non-attributing active FIFs.

Distributions from non-attributing active Australian unit trust (AUT) FIFs to AUT CFCs should not be taxed under the CFC rules as there is the potential for economic double taxation. Instead, these distributions should be taxed on the DFEDs from the AUT CFC to the New Zealand resident investor.

Comment

The current proposed amendment to the CFC “passive income” definition excludes from passive income the DFED from a non-attributing active CFC to another CFC, provided they are associated. This means the distributions are not attributable as income to the New Zealand investor under the CFC rules.

Officials do not consider it appropriate to expand the exclusion to all non-attributing active FIFs. It is important to note that the current exclusion only applies where the relevant CFCs are associated, which will not often be the case between a CFC and FIF. While there could be rare situations where a non-attributing active FIF will in fact be associated with the relevant CFC, further work would be needed to determine if there are risks with expanding the exclusion to include associated non-attributing active FIFs. Further work on this matter would require prioritising and resourcing as part of the Government’s tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Formula in section EX 20C should be amended

Submission

(PwC)

There is the risk of double taxation when a CFC (or a FIF that is taxed the same way as a CFC) of a person has an interest in a FIF that is also an attributing interest for that same person.

An issue with the formula in the current section EX 20C of the Income Tax Act 2007 means any deductible foreign equity distribution (DFED) that is distributed through a chain of CFCs may result in over taxation. This is contrary to the policy intent.

Comment

The risk of economic double taxation in this case arises from the use of particular investment structures, in particular the use of Australian unit trust. Officials do not consider that the outcome is against the policy intent, noting that the treatment of DFEDs was specifically introduced to reduce integrity risks.

Recommendation

That the submission be declined.

Issue: Proposed dividend exclusion may result in under taxation

Submission

(Matter raised by officials)

There is a risk that the proposed changes to the dividend exclusion in section CD 36 could result in under taxation of interests in foreign investment funds (FIFs) held via Australian unit trusts (AUTs).

The purpose of the dividend exclusion is to prevent the double taxation of a FIF interest where a New Zealand resident holding the FIF interest is taxed once under the FIF rules and then again on a distribution from the FIF. In this case, section CD 36 prevents the distribution from the FIF being taxed as a dividend to the New Zealand resident interest holder if certain criteria are met, including that one of the FIF calculation methods in section EX 59(1) is applied.

The proposed changes in the Bill seek to apply a similar approach to indirect interests in FIFs that are held through an intermediary AUT. However, officials have identified the risk that an AUT may distribute an amount that is funded from indirect FIF interests from years where one of the FIF calculation methods in section EX 59(1) has not been applied.

For example, a New Zealand resident holds an interest in an AUT, which in turn holds an interest in a FIF. In Years 1 to 4, the New Zealand resident interest holder applies the attributable FIF income (AFI) method, which is not a FIF calculation method listed in section EX 59(1), to the FIF. Under the AFI method, no FIF income is attributed to the New Zealand resident interest holder in Years 1 to 4.

In Year 5, the New Zealand resident interest holder applies the fair dividend rate method, a method listed in section EX 59(1), to the FIF. In the same year, the AUT pays a dividend to the New Zealand resident interest holder that is funded from distributions from the FIF. Under the proposed wording of section CD 36(4), the distribution from the AUT would not be a dividend of the New Zealand resident interest holder, even though it is partly funded from distributions from the FIF that have not been taxed under the FIF rules. This leads to under taxation of the FIF interest.

To ensure no under taxation arises, for proposed section CD 36(4) to apply, the requirements of section EX 59(1) must be satisfied for every year that the New Zealand resident interest holder, or an associated person, holds the relevant FIF interest(s) that fund the distribution from an AUT.

Recommendation

That the submission be accepted.

INTEREST RATE SWAPS HELD BY MULTI-RATE PIES

Clause 72

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Financial Services Council NZ, KPMG)

Submitters support permitting multi-rate PIEs to elect to apply Determination G27 to interest rate swaps.

Recommendation

That the submission be noted.

Issue: Application date

Submission

(KPMG)

The expected value method should apply for interest rate swaps entered into on or after 1 April 2022. This would allow interest rates swaps entered during the 2022–23 income year to receive this treatment from the outset. This is on the basis that the PIE tax calculations will generally not be completed until after the end of the 2022–23 income year.

Comment

Officials do not recommend allowing a PIE to apply proposed new section HM 35(8)(c) to swaps entered into between 1 April 2022 and 31 March 2023, which is almost entirely before the Bill will be enacted. Although PIE tax calculations may not generally have been completed before the end of the 2022–23 income year, this will not be true in all cases, particularly where the PIE calculates tax quarterly or for exiting investors.

Recommendation

That the submission be declined.

Issue: Application to existing swaps

Submission

(KPMG)

The proposed change should apply to interest rate swaps on a case-by-case basis (by election) for interest rate swaps entered into on or after 1 April 2022.

For interest rate swaps entered into before the start of the 2023–24 income year that are still in place on 1 April 2023, and for which either unrealised gains or losses in the swap value have been returned to date, the appropriate treatment is unclear. This is because the expected value method ignores any and all unrealised movements over the life of the instrument (that is, the tax position should be neutral over the life of the interest rate swap). To the extent the cumulative position to 1 April 2023 is either a net unrealised gain or unrealised loss that has been included for PIE tax calculation purposes, the position will not be neutral.

In these circumstances, it may be preferable to allow the current taxation treatment to continue (that is, for unrealised gains/losses on pre-existing interest rate swaps to continue to be taxed until the swap matures). Alternatively, to apply the expected value method, a mechanism similar to a “base price adjustment” is needed to square-up the position so that the starting point is neutral as at 1 April 2023. Given this, the proposed change should be applied on a swap-by-swap basis.

Comment

Officials do not recommend allowing a PIE to choose to apply proposed new section HM 35(8)(c) on a swap-by-swap basis as this would allow the PIE to cherry-pick which swaps would provide a tax advantage by the application or non-application of the proposed section.

However, officials agree it would be inappropriate for any unrealised gains or losses from an interest rate swap included in the taxable income of a multi-rate PIE due to the application of section HM 35(8)(a) or (b) to be ignored if that PIE chose to apply proposed new section HM 35(8)(c).

Point of difference

Due to the relatively short-term nature of swaps, and that this is only an issue on transition, officials do not prefer designing a specific base price adjustment mechanism and instead recommend that proposed section HM 35(8)(c) apply only to swaps entered into after the date the PIE chooses to apply that section. As this proposed section is optional, this date may be later than the earliest possible application date of the start of the 2023–24 income year.

Section EW 24 requires a consistent spreading method be applied to the same, or similar, financial arrangements. A PIE with existing swaps that chooses to apply proposed new section HM 35(8)(c) will be applying two different spreading methods until the swaps entered into before that choice mature. Therefore, officials recommend that section EW 24 be amended to allow two different spreading methods in this circumstance.

Recommendation

That the submission be accepted, subject to officials’ comments.

MEANING OF HIGHLY EFFECTIVE HEDGING

Clause 54

Issue: Support for proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

We support the proposal to include a definition in the tax legislation that mirrors the old accounting standard.

Recommendation

That the submission be noted.

R&D TAX INCENTIVE – NOTIFICATION OF CHANGES IN ACTIVITIES

Clauses 157 and 158

Issue: Support for proposed amendments

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The proposed amendments are supported as they will reduce compliance costs for taxpayers.

Recommendation

That the submission be noted.

Issue: Deadlines are broadly impractical

Submission

(EY)

While the specific amendment is supported, deadlines for applying for the R&D Tax Incentive (RDTI), or for making a variation of an existing application, are broadly impractical. Such deadlines should be generally extended to improve access to the regime. The ability to vary an application that has already been filed should be available up until the corresponding tax return is due.

Comment

The deadlines across the RDTI regime are designed to ensure taxpayers have enough time to file the requisite pre-approval applications and supplementary returns, while also ensuring this information is provided to Inland Revenue promptly.

Various legislative and non-legislative extensions of deadlines have been allowed to date. This is due to both the significant impact of COVID-19 over the past couple of years, as well as more general and expected issues around the regime being new. Far fewer extensions have been announced in recent months compared to the same time last year, which reflects the lessening impact of COVID-19 on RDTI assessment teams as well as an increase in assessment efficiencies at Inland Revenue and Callaghan Innovation.

Although a broader review of due dates cannot be undertaken in time for inclusion in the current Bill, officials agree that adverse timing of due dates could affect compliance costs and taxpayers' willingness to claim R&D tax credits. Officials are receptive to hearing specific concerns with a view to considering potential changes for inclusion in a future Bill if appropriate. This could include lengthening the time for a taxpayer to vary an application beyond the due date for originally filing the application.

Recommendation

That the submission be noted.

PETROLEUM DECOMMISSIONING

Clause 82

Issue: Support for proposal

Submission

(Corporate Taxpayers Group)

The submitter supports this remedial as it removes an error in the tax system regarding the petroleum decommissioning rules.

Recommendation

That the submission be noted.

REMOVING TRANSITIONAL PROVISION

Clause 166

Issue: Support for the proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendment.

Recommendation

That the submission be noted.

PRIORITY ACCORDED TO KIWISAVER EMPLOYER CONTRIBUTIONS

Clause 140, 174, 193 and 194

Issue: Support for the proposed amendment

Submission

(Chartered Accountants Australia and New Zealand)

Submitter supports the proposed amendment.

Recommendation

That the submission be noted.

OTHER ISSUES

Clause 2

Issue: Commencement clause

Submission

(Cantin Consulting)

Clause 2 should be re-drafted as a table with subject headings and section references to make it easier to see when each section applies.

Comment

Officials raised this submission with Inland Revenue drafters.

Inland Revenue drafters follow the Parliamentary Counsel Office style guide when drafting commencement clauses. Any change to this would require consultation with a range of stakeholders. Officials are always looking to improve readability and accessibility for all New Zealanders, so this feedback will be considered for future Bills.

Recommendation

That the submission be declined.

Issue: Improving readers aids

Submission

(Deloitte)

Further materials should be provided for future Bills to improve understanding, including:

- a table to make clear which clause and subclause in the Bill is being amended by the proposed changes,
- clause numbers in the section subheadings of the Commentary to the Bill, and
- a 'redline' version of the proposed amendments in the relevant Act to assist stakeholders to see how the proposed amendments would apply to existing legislation.

Comment

Officials are continuously looking to improve the explanatory materials we provide to assist people's understanding of proposed legislation. Officials will consider this feedback for future Bills.

In relation to a redline version of the relevant Act, this would be difficult to achieve with the current drafting technology, but future technological improvements may assist us to produce such versions. However, this would have to be led by, or in conjunction with, the Parliamentary Counsel Office, which has stewardship responsibilities for the New Zealand Statute book (through legislation.govt.nz).

Recommendation

That the submission be noted.

Issue: Increased compliance costs concerns

Submission

(Chartered Accountants Australia New Zealand, Corporate Taxpayers Group, Olivershaw Limited)

The proposals in the Bill that require increased information reporting would increase compliance costs for the private sector. The amount of information required is unjustified and much of the information would be hard to use.

Comment

New Zealand's tax system operates based on voluntary compliance. Voluntary compliance relies on people having confidence that everyone is paying the right amount of tax and that Inland Revenue can monitor and action non-compliance. Where the ability to monitor non-compliance is diminished, there is a risk that trust in the tax system, and voluntary compliance, would be undermined.

In some cases, the main intent behind a policy reform is to simplify processes and streamline taxpayers' interactions with Inland Revenue, for example, in the administration of an exemption. However, to do this, Inland Revenue needs the requisite information to make an accurate determination about the use of the exemption.

External consultation is a key feature of the Generic Tax Policy Process (GTPP). Feedback from stakeholders enables officials to better understand the trade-offs of proposals and to prepare key advice for Ministers, including the development of the regulatory impact assessment. Stakeholder insight is a vital part of this process. However, in areas where the rules are developing or at a conceptual stage, initial views may be inconsistent or inconclusive. It is therefore important to continue stakeholder dialogue throughout the policy process, including the legislative stages.

Regardless of what the information is used for, there is a need to strike a balance between having the right information to support the functioning of the tax system and minimising compliance costs borne by taxpayers. Once it has been determined that certain information is needed to support the implementation of a policy, officials consider whether the information is already collected in some form – either by Inland Revenue or another government agency – and the likely availability of the relevant information to taxpayers.

Recommendation

That the submission be noted.

MISCELLANEOUS SUBMISSIONS

The Committee has received the following submissions that officials recommend be noted:

Submission description	Submitter
Support for the underlying policy proposals in the Bill.	Chartered Accountants Australia New Zealand
Support for the majority of the maintenance items.	Chartered Accountants Australia New Zealand
Support the bulk of changes in the Bill, particularly those that have the broad objective of generally improving current tax settings.	Financial Services Council NZ
Extending the requirement to provide a signed declaration from post-registration settlors is unlikely to be followed in practice, given that many trustees will not have complied to date because of the broad definition of "settlor" in New Zealand tax law.	Deloitte
The Group has been a strong advocate for extended consultation periods with stakeholders to ensure that the drafting process is done right the first time, to minimise deficiencies in the legislation and reduce the need for subsequent remedial amendments.	Corporate Taxpayers Group
It is important that constant health checks are being carried out on the Income Tax Act and Tax Administration Act. Both Acts are significant in length and can often be tricky for stakeholders to navigate and understand. If redundant provisions remain in the Acts, it distorts the usefulness of the Acts and could result in non-compliance if the wrong provisions are relied upon.	Corporate Taxpayers Group
While the Group supports allocating resources to addressing deficiencies in tax legislation (including through remedial amendments), the Group submits that the need for such a large number of remedial amendments suggests the drafting process is still not working adequately at the outset.	Corporate Taxpayers Group
The remedial amendments to the recent bright-line rollover relief rules and new interest limitation rules, soon after the introduction of these amendments, highlight the rushed nature of these reforms and the inadequate consultation due to their introduction via Supplementary Order Papers rather than following the Generic Tax Policy Process (GTPP). This has led to below par drafting of these rules, particularly the bright-line rollover relief, and has resulted in the need for extensive remedial reforms soon after introduction. The need for remedial reforms to these rules and others, and the resulting uncertainty for those applying the new rules, would have	PwC

Submission description	Submitter
been reduced had these proposals undergone the usual consultation process under GTPP.	
The IR833 form should be updated to note that it still needs to be completed where rollover relief applies but that availability of rollover relief is relevant to how the form is completed.	Auckland District Law Society
The Committee should set out clear principles for acceptable GST base changes as any change necessarily impacts the cost to the consumer. In short, the Committee should explain why the platform economy GST changes are acceptable (assuming it agrees that they should proceed).	Cantin Consulting
Where the rules applicable to a particular tax regime are contained within multiple subparts of the Income Tax Act 2007, it can be useful to have a roadmap or cross-references to help guide users in applying the legislation and ensuring they can easily locate the relevant rules.	PwC
<p>The interest limitation rules should be repealed.</p> <p>The following supplementary submission points were made:</p> <ul style="list-style-type: none"> ▪ 90 day no-cause evictions should be reinstated. (<i>Glynis Moleta</i>) ▪ Exemption from interest limitation for all entities that have owned residential properties for more than 10 years. (<i>Pat Debney</i>) ▪ Incentivise investment opportunities in New Zealand to encourage diversification. (<i>Phillip McCall</i>) 	Andrew Pattullo, Auckland Property Investors Association Incorporated, Clare Hong Leng Materara, Clinton Stokes, David Lus, Dmitri Stern, Glynis Moleta, Ian Engelbrecht, Jim Gordon Tax Limited, John Bradley, June Younger, Lidia Real Lozano, Lloyd Kane, Manjit Singh, Maurice Horne, Mike Cullen, Mitchell Cocking, New Zealand Property Investors' Federation, Pat Debney, Paul Oatley, Phearum Ly, Phillip McCall, Simone O'Meara
Airbnb should pay GST on the income derived from service fees it charges.	Hannah Herchenbach
Tax is voluntary for non-resident settlors.	Paul Leslie
Close Parliament and remove legal practitioners. Lawyers should not be politicians. A forensic audit should be made public immediately, including contracts politicians have in secret.	Indigenous peoples UNDRIP

Submission description	Submitter
Introduce a tax-free threshold, capital gains tax, and make the system fairer.	Frank Fordham
Cut taxes.	Michael Li
Lower income tax bracket needs to be removed.	John Bradley
Reduce taxes for low to middle-income earners. If the desire is to make GST more consistent, apply a zero rate.	Kushlan Sugathapala
Stop spending on COVID-19.	Daryl DC Cockburn
No extra taxes.	Mike Powell, Myell Smith, Stella Hamilton Baker
Tax break for people earning under \$60,000.	Simon Johannis
Annual rates should be revised to be fair and at a rate that does not favour corporates.	Nick Glasson
A remedy should be provided for the T J Faloon Grandchildren's Trust in relation to a dispute regarding land surrounding the Palmerston North Airport.	Clarence Faloon on behalf of the T J Faloon Grandchildren's Trust
Taxes should not be increased, stop increasing government debt and reduce spending on consultants.	Wade Alexander
Stop increasing taxes.	Grant Patteraon
Impose a tourist tax at the border.	Greg Caie
Increase the corporate tax rate.	Sean Kearney
Remove secondary tax.	Megan Church
Support all taxes aimed at rapidly decarbonising the transport system and incentivising net zero aligned behavioural shifts.	Frankie McKeefry
Create a tax break for electric and hybrid vehicles.	Natalie Reeves
Fringe benefit tax should apply to flights where employees combine work trips with holiday/private recreation.	Peter Ramage
Make it at least an even playing field in terms of tax implications across business vehicle options and lower carbon emission options.	Richard Hovey

Submission description	Submitter
Restrict the ability to claim business use for inappropriate vehicles and/or allow bicycle use to be given the same considerations as motor vehicles.	Rory M Jones
Reduce or eliminate any FBT exemptions for non-green options.	Laura Barron
Offer 0% Rego for electric motorcycles.	Mark Penrice
Increase fuel tax to reduce people motoring to work.	Steve Proud
Drop all taxes on bicycles and e-bikes to combat climate change and level the playing field with cars.	Mark Penrice

The Committee has received the following submissions that officials recommend be declined on the basis the work would require resourcing and prioritisation as part of the Government's tax and social policy work programme:

Submission description	Submitter
Māori Authorities and subsidiaries should not be subject to the residential rental loss ring-fencing rules. Māori Authorities and subsidiary companies should be excluded from subpart EL on the same basis as widely-held companies. The operation of the ring-fencing rules should be consistent with the approach taken in the interest limitation rules, where Māori excepted land and exempt Māori companies are excluded from the operation of those rules.	Deloitte
The requirement for registered persons to submit a section 20F election before they can use the B2B zero-rating of financial services rules should be removed. The requirement to make this election frequently imposes additional tax on unprepared GST-registered persons and does not reduce compliance costs.	Deloitte
The temporary donated trading stock rules introduced in response to COVID-19 should be made permanent.	Jim Gordon Tax Limited
Inland Revenue should undertake a holistic review of the land tax rules, particularly in the area of residential property, with the aim of simplifying and rationalising the existing rules to ensure overall coherence. It has become a complex area and is increasingly difficult to understand and apply. There is increasing divergence between the bright-line test and other land sale rules with greater rollover relief being available under the bright-line test.	Chartered Accountants Australia and New Zealand, PwC
There should be a full review of the tax rules that apply to landlords.	Jim Gordon Tax Limited

<p>There should be a comprehensive review of the rollover relief provisions to ensure family re-organisations are not unduly penalised under the bright-line test. We wish to express concern regarding the complexity of the rollover relief provisions and the resulting increased compliance costs for our clients.</p>	<p>Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited</p>
<p>There should be a wholesale review of the land sale provisions as they are outdated and do not work well. The additional changes made to the bright-line test in 2021 have made the rules overly complex.</p>	<p>Corporate Taxpayers Group</p>

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Matters raised by officials

DEFINITION OF “COMPANY” AND FOREIGN COMPANIES

Issue: Amendment of definition required

Submission

(Matter raised by officials)

The definition of a “company” should be amended to exclude a “limited partnership” rather than a “partnership”.

Section YA 1 of the Income Tax Act 2007 (the ITA) defines “company” and “partnership”. The definition of a “company” excludes partnerships. A “partnership” is defined as including a partnership under section 8(1) of the Partnership Law Act 2019 (the PLA) or a limited partnership. Section 8(1) defines a partnership broadly as “the relationship that exists between persons carrying on a business in common with a view to profit.” The exclusions to this are found in section 9 of the PLA and all relate to entities formed under an Act of the Parliament of New Zealand. Consequently, all companies incorporated outside of New Zealand are not within the exclusions in the PLA, and so are all technically partnerships. Therefore, they are not “companies” as defined in the ITA. This means that foreign companies are not subject to portions of the ITA, such as the foreign investment fund or controlled foreign companies’ rules. This outcome is clearly outside the policy intent and would frustrate the application of those rules.

Replacing “partnership” with “limited partnership” in the “company” exclusion criteria in paragraph (ab) of the definition of “company” in section YA 1 will mean that companies created or incorporated overseas will be considered companies for the purposes of the ITA. “Limited partnerships” will continue to be appropriately excluded. This proposal gives effect to the policy intent.

Recommendation

That the submission be accepted.

FRINGE BENEFIT TAX – COST OF VEHICLE AND STATE SECTOR DECARBONISATION FUND

Issue: Clarifying cost of vehicle

Submission

(Matter raised by officials)

It is not clear under current fringe benefit tax (FBT) legislation whether the “cost price” and “tax value” of a vehicle are inclusive of any amount received from the State Sector Decarbonisation Fund (the Fund) to fund the vehicle. The Fund is available to the state sector for updating its assets to less carbon intensive alternatives to reduce carbon emissions. The public does not have access to the Fund.

FBT on a vehicle is calculated with reference to the “cost price” or the “tax value” of the vehicle to the employer or vehicle owner. The calculation is designed to reflect the average after-tax benefit an employee receives through not needing to purchase and maintain their own vehicle. FBT is designed to equate with the PAYE (pay as you earn) tax that applies to salary and wages. This promotes fairness between employees, whether they are paid in cash or in kind, and helps preserve the integrity of the employment income tax base.

To not undervalue the fringe benefit to a state sector employee of a vehicle funded or part-funded by the Fund, the cost basis for calculating FBT should be the gross cost of the vehicle inclusive of any amount funded by the Fund. This would be consistent with the overall purpose of the FBT regime and original policy intent to tax the value of the benefit that the employee receives equivalent to the payment of additional salary or wages.

Schedule 5 of the Income Tax Act 2007 should be amended to clarify that the “cost price” and “tax value” of a vehicle for the FBT rules is the gross cost including any amount funded by the Fund.

The proposed amendment should apply prospectively to fringe benefits provided on or after 1 April 2023.

Recommendation

That the submission be accepted.

R&D LOSS TAX CREDITS

Issue: Changes to the deadline for statements

Submission

(Matter raised by officials)

The due date for a statement required to be filed to claim R&D loss tax credits (R&DLTCs) for a year is not intuitive.

They are due on the earlier of:

- the date a taxpayer files their income tax return, and
- the due date for the income tax return.

This means a taxpayer that files an R&DLTC statement a day after they file their income tax return for that year is ineligible for R&DLTCs for the year, even if the statement is filed well in advance of their income tax return due date. This outcome is counter to the intent of the R&DLTC regime, where taxpayers have an incentive to file early to cash out their R&D losses sooner. The order in which the R&DLTC statement is filed relative to the filing of an income tax return for the same period should not affect a taxpayer's eligibility for R&DLTCs.

Officials recommend several amendments to make the deadline for statements more appropriate for R&D businesses. These include:

- removing the requirement to file an R&DLTC statement before or on the date that the income tax return is filed (with retrospective effect),
- changing the due date for future R&DLTC statements to 30 days after the income tax return due date (to align with the equivalent due date for supplementary returns in the R&D Tax Incentive), and
- changing the due date for historical R&DLTC statements to 31 March in the year following the relevant income year (to remove potential uncertainty around R&DLTCs already paid out).

Recommendation

That the submission be accepted.

R&D TAX INCENTIVE – GRANT-RELATED EXPENDITURE EXCLUSION

Issue: Carve-out for New to R&D Grant

Submission

(Matter raised by officials)

R&D expenditure by businesses that receive a New to R&D Grant should be carved out from the grant-related expenditure exclusion in the R&D Tax Incentive (RDTI) to the extent that R&D expenditure exceeds the amount contracted for under the New to R&D Grant.

Expenditure or loss that is incurred in conjunction with receipt of a government grant is generally not eligible for the RDTI. However, there are some carve-outs to this exclusion. For example, business R&D expenditures funded by Callaghan Innovation Project Grants are carved out to the extent that R&D expenditure exceeds the amount contracted for under the Project Grant. This ensures that expenditures that are not supported by a Project Grant can still be supported by the RDTI.

The New to R&D Grant is replacing the Project Grant. The two types of grant have similar terms: both provide for co-funding of up to 40% of eligible R&D expenditure and are administered by Callaghan Innovation.

Officials consider that a new carve-out to the grant-related expenditure exclusion should be made for New to R&D Grants in the same way a carve-out currently exists for Project Grants. This would similarly ensure that expenditures that are not supported by a New to R&D Grant can still be supported by the RDTI. This is particularly pertinent as one of the policy objectives of the New to R&D Grant is to encourage new businesses (or business new to R&D) to establish an R&D programme and potentially move off the New to R&D Grant and onto the RDTI in the future.

Recommendation

That the submission be accepted.

INCORRECT REFERENCE TO REVENUE INFORMATION

Issue: Reference in section 18B(2) of TAA incorrect

Submission

(Matter raised by officials)

The term “revenue information” should be replaced with “sensitive revenue information” in section 18B(2) of the Tax Administration Act 1994 (TAA).

Section 18(2) of the TAA requires persons other than revenue officers to maintain the confidentiality of “sensitive revenue information”. Section 18B(2) then requires those persons to complete a certificate of confidentiality for that purpose. However, section 18B(2) incorrectly refers to “revenue information” instead of “sensitive revenue information”.

This was a drafting oversight when the relevant legislation was replaced on 18 March 2019, and the proposed amendment would apply from that date.

Recommendation

That the submission be accepted.

INTEREST LIMITATION – GRANDPARENTING VARIABLE LOANS FOR DRP

Issue: Formula requires amendment

Submission

(Matter raised by officials)

The formula to calculate the “affected loan balance” should be amended so that it correctly treats the sale of property funded by a loan that could not be traced when the interest limitation rules came into effect.

Under the interest limitation rules, interest deductions for residential property loans drawn down before 27 March 2021 are gradually phased out between 1 October 2021 and 31 March 2025.

When a loan drawn down before 27 March 2021 relates to both disallowed residential property (DRP) and allowed property, and the borrower cannot reasonably trace the funds borrowed between these two purposes, the formula in section DH 7(2) of the Income Tax Act 2007 effectively apportions the loan between the two property types.

Section DH 7(4) then specifies how to treat any repayment of the notional loan principal for the DRP. Currently, amounts applied to repayment of this notional loan principal then become the amount of the “unrelated repayments” item in the “affected loan balance” formula in section DH 10(5). This formula is used to calculate what portion of interest can be grandparented and can continue to be deducted during the phase-out period, rather than being fully disallowed.

However, this current definition of the “unrelated repayments” item leads to an error. If a repayment is sourced from the sale proceeds of allowed property, there should be no change to the affected loan balance that is grandparented. Instead, however, the current law achieves no change in the affected loan balance when the sale proceeds are from DRP.

To correct this, the definition of the “unrelated repayments” item should be amended to refer to repayments under section DH 7(4) that are **not** against the notional loan principal.

This change should apply from 27 March 2021, to align with the introduction of the interest limitation rules.

Recommendation

That the submission be accepted.

MEMBER DEPARTING CONSOLIDATED IMPUTATION GROUP

Issue: Allocation rules for imputation credits

Submission

(Matter raised by officials)

Rules should be introduced to govern the allocation of imputation credits upon a member's departure from a consolidated imputation group. These rules would fill a gap in the existing imputation credit regime and avoid the unintended complexity that currently arises.

Under the Income Tax Act 2007 (ITA), a group of wholly-owned companies may form a consolidated imputation group. This group has one imputation credit account (ICA) and any debits or credits that would have arisen in individual members' ICAs arise in the consolidated imputation group's ICA.

Members of the imputation group, which may be individual entities or consolidated income tax groups, may leave the imputation group. However, there are currently no legislative provisions regarding the allocation of imputation credits accrued to the group's ICA but associated with the tax payments of the departing member. All imputation credits remain in the consolidated imputation group's ICA.

Tax payments made to the Inland Revenue or a tax pool intermediary by the departing member remain owned by that member. However, if the departing member wished to obtain a tax refund or transfer their entitlement in a tax pooling account, they would be unable to do so as they would have insufficient imputation credits to cover the required debits to their account. Conversely, the consolidated imputation group retains imputation credits exceeding its tax liability, allowing it to impute more than it would otherwise be able.

Officials recommend that, when a member departs a consolidated imputation group, a debit should arise to the consolidated imputation group's ICA and a credit should arise to the ICA of the departing member. The size of the debit and credit should be equivalent to the size of the income tax payments made by the departing member and credited to the group's ICA that have not yet been credited to a tax liability that has or will be assessed on the departing member. We recommend this apply for the 2021–22 and later imputation years.

Recommendation

That the submission be accepted.

WRITE-OFF OF TAX BY COMMISSIONER

Issue: Limiting tax loss extinguishment obligations

Submission

(Matter raised by officials)

Tax write-offs that occur via Inland Revenue's "auto-calc" process should not result in a tax loss extinguishment. This should apply to general tax losses and to ring-fenced excess deductions on loss-making residential rental property and bright-line property disposal.

If the Commissioner writes off tax for a taxpayer that has a tax loss, section 177C of the Tax Administration Act 1994 (TAA) requires the Commissioner to extinguish all or part of that tax loss. Section 22J of the TAA also requires the Commissioner to write off an amount of tax if it meets certain qualifying criteria (for example, low-balance write-offs). Other tax is eligible to be written off under sections 174AA and 177C, but it is not mandated. In practice, several of these tax write-offs occur automatically via Inland Revenue's "auto-calc" process. This is the process by which tax liabilities are automatically calculated for those taxpayers who receive only income with tax deducted at source (for example, salary and wages). However, this process does not automatically generate a corresponding tax loss extinguishment for taxpayers with tax losses.

The types of tax write-offs that occur automatically under the "auto-calc" process generally relate to small balances or to liabilities that arise through no fault of the taxpayer. Extinguishing losses in these cases would involve significant compliance and administration costs that would outweigh any benefit from the extinguishment of the losses. Officials therefore recommend an amendment to ensure there is no requirement to extinguish losses in this situation.

Recommendation

That the submission be accepted.

Issue: Extinguishing excess bright-line deductions when a taxpayer receives a tax debt write-off

Submission

(Matter raised by officials)

The Tax Administration Act 1994 provides the Commissioner with the ability to write off tax debts. To ensure that taxpayers who benefit from a debt write-off do not receive an undue advantage, any accrued tax losses the taxpayer has are extinguished.

Excess bright-line deductions carried forward under section EL 20 of the Income Tax Act 2007 are not considered a "tax loss", and therefore they cannot be extinguished when a taxpayer has a tax debt written off. This does not align with the policy intent of the debt

write-off rules.

For the purposes of the debt write-off rules, the Commissioner should be able to extinguish excess bright-line deductions when a tax debt is written off. This should apply for tax debts written off on or after 1 April 2024. This would allow sufficient time for the required system and tax return form changes to be made.

Recommendation

That the submission be accepted.

ANNUAL IMPUTATION RETURN FOR MEMBERS OF A CONSOLIDATED IMPUTATION GROUP

Issue: Remove requirement to file annual ICA return

Submission

(Matter raised by officials)

Members of a consolidated imputation group are technically required to file an annual IR4J Imputation Credit Account (ICA) return even if the return is nil.

This has significant compliance costs for no benefit. Section 69 of the Tax Administration Act 1994 should be amended to ensure an ICA company that is a member of a consolidated imputation group is not required to file an ICA return with the Commissioner if the balance in that ICA is nil at all times during the tax year.

This change should be backdated to the 2020–21 income year to ensure those members of a consolidated imputation group that have not yet filed a nil return for that period are not required to do so.

Recommendation

That the submission be accepted.

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Summary of recommendations

SUMMARY OF RECOMMENDATIONS

Platform economy

Information reporting

Rec #	Recommendation description	Submitter	Page #
1	Defer implementation of the extended model reporting standard for digital platforms and enable it to be brought into force by an Order in Council within three years	3 submitters	28
2	Provide guidance material on the OECD reporting rules and what is required to satisfy them	5 submitters	37
3	Express EUR 2,000 threshold in "Excluded Seller" definition as NZD 3,500	PwC	42
4	Clarify scope of regulation-making power to ensure it prevents changes to reporting rules that are not changes made by OECD and enables changes considered inappropriate to implement in New Zealand to be blocked	2 submitters	48
5	Provide guidance on the platform operator penalty provisions and clarify what constitutes an "occasion"	2 submitters	53
6	Clarify that a reporting platform operator only needs to comply with the requirements of the applicable reporting standard	2 submitters	55
7	Clarify that Annex A to the "Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy" does not apply in New Zealand	CTG	59
8	Update proposed section 185S(5)(c) of the Tax Administration Act 1994 to refer to the "model reporting standard for digital platforms" and not the "extended model reporting standard for digital platforms"	CTG	60
9	Ensure only Part II of the <i>Model Reporting Rules for Digital Platforms: International Exchange Framework and Optional Module for Sale of Goods</i> is given legislative effect in New Zealand	CTG	60

Rec #	Recommendation description	Submitter	Page #
10	Replace "list" with "the list maintained by New Zealand outlining which receiving jurisdictions use financial account identifier information" in Section III, paragraphs B(2) and B(3) of the model reporting standard	Officials	61
11	Amend the definition of "civil penalty" in section 3(1) of the Tax Administration Act 1994 to include a reference to the new penalties in proposed sections 142J and 142K	Officials	61

GST – marketplace rules for accommodation and transportation services

Rec #	Recommendation description	Submitter	Page #
12	Provide guidance on marketplace rules	3 submitters	85
13	Provide guidance on the meaning of "closely connected services"	CA ANZ	92
14	Exclude from "listed services" services supplied directly by the marketplace operator to the recipient	KPMG	92
15	Clarify that the definition of "listed services" is intended to be exhaustive	2 submitters	93
16	Clarify that the tax shortfall referred to in proposed section 8C(3)(c)(ii) could be subject to shortfall penalties	Deloitte	96
17	Make information about a person's GST registration status available only to operators of electronic marketplaces to determine eligibility for flat-rate credit	KPMG	97
18	Provide guidance on how the proposals for listed services interact with the new requirements around supply information	CA ANZ	99

Opt-out agreements

Rec #	Recommendation description	Submitter	Page #
19	Amend opt-out provisions to allow a large commercial enterprise to be a member of a "group of companies" that collectively satisfies the 2,000-night criterion	KPMG	104
20	Provide guidance on what is required to substantiate an opt-out agreement	CA ANZ	104

Rec #	Recommendation description	Submitter	Page #
21	Expand scope of opt-out agreement provisions to apply to listed services generally, not just taxable accommodation	PwC	105
22	Allow a person required to maintain a monthly or two-monthly taxable period to unilaterally opt out of the marketplace rules for listed services	2 submitters	106

Flat-rate credit scheme

Rec #	Recommendation description	Submitter	Page #
23	Confirm the income tax treatment of the flat-rate credit is the same as for input tax more generally and provide guidance on the rules	3 submitters	113
24	Provide guidance confirming underlying suppliers and marketplace operators cannot net off commissions and the flat-rate credit	Deloitte	114
25	Introduce a new zero-rating provision to ensure a supply of listed services between marketplace operators is zero-rated	PwC	114
26	Provide guidance on how, and whether, the flat-rate credit would be reported under the OECD reporting rules following further consideration of the OECD's XML schema	Deloitte	116
27	Amend proposed section 60H(3) to refer to a "deficiency of tax" rather than a "deficiency of output tax"	2 submitters	116

Cross-border workers

Flexible PAYE, FBT and ESCT arrangements

Rec #	Recommendation description	Submitter	Page #
28	Allow 60-day grace period to apply where an employee manages their own tax affairs and where another person undertakes employment-related tax obligations on the employer's behalf	CTG	128
29	Clarify that the 60-day grace period applies where NZ tax resident employees work abroad but cannot meet timing requirements of NZ employment-related tax rules or where intention that employee's NZ tax residency will cease but this does not occur	2 submitters	128

Rec #	Recommendation description	Submitter	Page #
30	Clarify that the 60-day grace period applies to employee share scheme income where the employer has elected to withhold and pay tax and the ordinary timeframe for compliance is unable to be met	CTG	128
31	Clarify that the 60-day grace period applies to trailing bonuses where the ordinary timeframe for compliance is unable to be met	KPMG	128
32	Clarify that the payment of an extra pay does not of itself trigger a grace period	EY	128
33	Provide guidance on how the grace period will work in practice and what "reasonable measures" means	4 submitters	131
34	Provide guidance clarifying the circumstances that will qualify for an annual PAYE arrangement	4 submitters	132
35	Clarify that income subject to annual PAYE arrangements is not required to be reported under standard payday filing rules	CTG	134

PAYE, FBT and ESCT integrity measures

Rec #	Recommendation description	Submitter	Page #
36	Clarify that a non-resident employer who voluntarily registers for NZ employment-related taxes should benefit from the safe harbour and provide a timeframe for compliance	CTG	135
37	Remove requirement that employer must communicate to employee that they must meet their own NZ tax obligations	2 submitters	135
38	Clarify that non-resident employer has no requirement to report or withhold employment-related taxes if they meet the safe harbour conditions	2 submitters	135
39	Provide guidance to clarify how taxable benefits and employer superannuation contributions to foreign schemes should be captured and reported under IR 56 arrangements	6 submitters	138
40	Introduce a taxable benefit de minimis of \$2,500 per income year for remote employees who directly manage their NZ employment-related tax obligations	2 submitters	140
41	Correct minor drafting issues	Deloitte	141

Rec #	Recommendation description	Submitter	Page #
42	Correct minor drafting issues	CTG	141
43	Undertake post-implementation review in two to five years	Officials	142
44	Ensure penalties do not apply where the employer falls within the safe harbour conditions	Officials	143

Flexible NRCT payment arrangements

Rec #	Recommendation description	Submitter	Page #
45	Provide guidance on how the grace period will work in practice and what "reasonable measures" means	CTG	145
46	Provide that a non-resident contractor can use the compliance history of an associated contractor to obtain a certificate of exemption	CTG	146
47	Allow non-resident contractors to specify the relevant tax types or social policy entitlements and obligations that determine the scope of the nomination	Officials	147

Reporting requirement for payers of NRCT

Rec #	Recommendation description	Submitter	Page #
48	Remove the NRCT reporting requirements, and the proposed changes to the "single payer view", from the Bill	9 submitters	149

Employer contributions to foreign superannuation schemes

Rec #	Recommendation description	Submitter	Page #
49	Provide guidance on the changes and ensure ability to tax employer contributions to foreign superannuation schemes under PAYE rather than FBT is optional	3 submitters	153

Dual resident companies

Dual resident companies – integrity issues with domestic dividend exemption

Rec #	Recommendation description	Submitter	Page #
50	Provide that NRWT not imposed to the extent any dividend on-paid by DTA non-resident company within the two-year deferral period is fully imputed	3 submitters	164
51	Allow retrospective imputation credit attachment to paid dividends	3 submitters	166
52	Provide guidance on the operation of the new rules	CTG	167
53	Add an additional exclusion to exclude dividends paid to companies that are dual resident in Australia and NZ	Officials	168
54	Amend proposed section RA 6(5) to also refer to sections RA 15, OB 9 and OB 30	Officials	168

Dual resident companies – integrity issues with corporate migration rules

Rec #	Recommendation description	Submitter	Page #
55	Amend the triggering events for the corporate migration rules so they do not apply to companies that inadvertently become DTA non-resident	5 submitters	171
56	Clarify that the deemed distribution at the time the corporate migration rules apply is to the shareholders of the company immediately before becoming DTA non-resident	Officials	179
57	Amend administrative requirements so they only apply at an appropriate interval after the relevant dividend income is allocated to shareholders under proposed section FL 3	Officials	179

GST apportionment

GST apportionment and adjustment rules

Rec #	Recommendation description	Submitter	Page #
58	Provide guidance on operation of new rules	2 submitters	186

Rec #	Recommendation description	Submitter	Page #
59	Allow registered person (or GST group) to opt out of applying the principal purpose test for all goods and services they acquire for \$10,000 or less for a minimum 24-month period	4 submitters	187
60	Allow businesses that are members of an industry association that has agreed an alternative apportionment method with IR to choose whether to apply that method or the general rules	KPMG	189
61	Clarify in guidance that registered persons should directly attribute acquired goods or services to making taxable supplies, exempt supplies or private use before applying apportionment	PwC	190
62	Treat the disposal of goods not acquired or used for the principal purpose of making taxable supplies as a non-taxable supply instead of an exempt supply	CA ANZ	190
63	Provide guidance on how election is made	Deloitte	191
64	Clarify that if a registered person ceases to be a registered person, the proposed deeming rule applies to deem the relevant assets disposed of at market value immediately before the person ceases to be a registered person	PwC	195
65	Allow Commissioner to publish apportionment methods considered acceptable to use and when they can be used	Deloitte	197
66	Allow Commissioner to publish apportionment methods used under the mixed-use asset rules considered acceptable for taxpayers to continue using and when they can be used	KPMG	198
67	Replace "pleasurecraft" with "ship" and define "ship" as it is defined in the Maritime Transport Act 1994	Deloitte	200
68	Correct minor drafting issues	2 submitters	201

Other policy items

GST status of legislative charges

Rec #	Recommendation description	Submitter	Page #
69	Clarify that Tax Administration Act 1994 definition of "tax law" applies in the context of the definition of "general tax"	2 submitters	206

Rec #	Recommendation description	Submitter	Page #
70	Provide guidance on the transitional implications of the legislative charges proposal and on the effect of section 78	3 submitters	210
71	Retain rule in section 5(6BB)(b) for rebates of regional fuel tax	Officials	212

Build-to-rent exclusion from interest limitation

Rec #	Recommendation description	Submitter	Page #
72	Clarify the intent of the personalisation requirement and provide guidance	10 submitters	220
73	Remove the term "without penalty" from personalisation requirement	REINZ	220
74	Remove the term "contiguous land" from "build-to-rent land" definition and instead refer to a single project-based definition	8 submitters	222
75	Amend the Residential Tenancies Act 1986 to clarify that build-to-rent tenants who accept a fixed-term tenancy offer of at least 10 years have the right to give 56 days' notice to terminate and will still satisfy the definition of fixed-term tenancy	2 submitters	225
76	Adopt language consistent with the Residential Tenancies Act 1986 in the definition of "build-to-rent land"	APIAI	225
77	Refer to the Chief Executive responsible for the administration of the Residential Tenancies Act 1986 in proposed sch 15 rather than the Chief Executive of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development	5 submitters	229
78	Insert a disclosure provision into the Tax Administration Act 1994 so that the Commissioner can communicate information to Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development	Officials	231
79	Clarify that the application of the provision depends on the responsible agency being satisfied that the land meets the definition of "build-to-rent land"	Officials	231

Fringe benefit tax exemption for certain public transport fares subsidised by employer

Rec #	Recommendation description	Submitter	Page #
80	Clarify wording of exemption to include on-demand services where those services are part of a public transport provider's network and subject to a public transport fare	3 submitters	234
81	Modify list in proposed section CX 19C to refer to "rail vehicle"	Greg Pollock	235
82	Include employer-provided fringe benefits mainly for the purposes of travel between home and work that are part funded by the Total Mobility scheme	2 submitters	236

Housing remedial items

Rollover relief – bright-line test and interest limitation

Rec #	Recommendation description	Submitter	Page #
83	Make proposed amendments to rollover relief provisions retrospective, with the exception of proposed amendment to section CB 6AB(2)(b)	4 submitters	255
84	Ensure rollover relief in proposed section CB 6AB(2)(b) only available if a principal settlor of a trust receiving residential property from the trust is not the original owner of the property	Officials	258
85	Amend definition of "close family beneficiary" to include the types of organisations listed in the standard discretionary trust clause	2 submitters	260
86	Insert criterion that to qualify as a rollover trust there must be at least one natural person beneficiary who is a close family associate of the principal settlor	2 submitters	260
87	Ensure that when rollover relief applies to a transfer of residential property, the recipient is subject to the same bright-line test tax settings (including the relevant bright-line test length) as the previous owner of the property	3 submitters	261
88	Correct minor drafting issues	3 submitters	263

Changes in co-ownership of residential land

Rec #	Recommendation description	Submitter	Page #
89	Clarify the provisions applying to changes in co-ownership of residential property	Officials	265

Partitioning of land among co-owners

Rec #	Recommendation description	Submitter	Page #
90	Revisit proposed amendment to definition of "dispose"	NZLS	266
91	Provide that a partition of land is not considered a disposal provided any difference in economic ownership is limited to 5 percent of the smallest pre-partition co-ownership share	NZLS	267
92	Ensure guidance is published on application of amendment if co-owners each incur different costs on the part of the property they will own on completion of partitioning exercise	NZLS	269

Other issues

Rec #	Recommendation description	Submitter	Page #
93	Correct cross-reference error	KPMG	270

Foreign trust remedial items

Testamentary trusts

Rec #	Recommendation description	Submitter	Page #
94	Repeal sections HC 26(1)(c)(i) and (d)(i) of the Income Tax Act 2007	PwC	280

GST remedial items

GST – improvements to place of supply rules

Rec #	Recommendation description	Submitter	Page #
95	Make use of proxies for determining residence and GST registration status optional	3 submitters	288

Liabilities incurred during a voluntary administration

Rec #	Recommendation description	Submitter	Page #
96	Amend section 58(3) to include voluntary administration	Officials	290

Clarifications to the compulsory zero-rating of land rules

Rec #	Recommendation description	Submitter	Page #
97	Update cross references	Officials	293

Modernising information requirements for GST

Rec #	Recommendation description	Submitter	Page #
98	Provide the Commissioner with the discretion to omit certain requirements from supply correction information or omit the need for supply correction information at all	KPMG	296
99	Provide guidance on what information is required to be included in supply correction information to satisfy section 19E(1)(b)	2 submitters	297
100	Amend threshold for taxable supply information to refer to "consideration in money or money's worth for the supply"	2 submitters	299
101	Amend section 19K(4) to provide parties with the flexibility to only apply buyer-created taxable supply information for taxable supplies to which the agreement relates	2 submitters	300
102	Correct minor drafting issue	2 submitters	301
103	Provide the Commissioner with power to grant discretions on an industry basis	2 submitters	301
104	Correct minor drafting issue	2 submitters	302
105	Provide clarification that "an address of a physical location" does include a PO Box address	Deloitte	302
106	Allow buyer-created supply correction information to be issued by the buyer through an agreement between the parties	Deloitte	303
107	Ensure that, where relevant, supply correction information must be provided to enable an input tax deduction to be claimed	Officials	304

Rec #	Recommendation description	Submitter	Page #
108	Change "taxable supply" to "supply" in section 20(2)(a)	Officials	304
109	Change "taxable supply" to "supply" in proposed new section 19F	Officials	305
110	Amend section 55B(3) to provide that an issuing member of a supplier group is responsible only for the GST record-keeping obligations of a supplying member making a supply	Officials	305
111	Remove unintended consequence of previous remedial amendment to section 3A and deductions for secondhand goods	2 submitters	306

Other issues

Rec #	Recommendation description	Submitter	Page #
112	Correct unintended change to the drafting of the GST voucher rules	PwC	309

Other remedial items

Tax treatment of expenditure on distribution networks

Rec #	Recommendation description	Submitter	Page #
113	Define "goods and services" to include electricity, gas, water and telecommunication services	2 submitters	314

Financial arrangements – debt-equity swaps

Rec #	Recommendation description	Submitter	Page #
114	Adopt the solvency test in section 4 of the Companies Act 1993	PwC	325
115	Amend proposed new section EW 46D to cover the proceeds of an issue of shares being used to indirectly repay debt of insolvent company	Officials	326

General and life insurance – replacement of NZ IFRS 4 with NZ IFRS 17

Rec #	Recommendation description	Submitter	Page #
116	Include a grandparenting provision to preserve existing agreements between the Commissioner of Inland Revenue and insurers	Officials	328
117	Clarify the transitional provisions	PwC	329
118	Clarify how the definition of “present value (gross)” applies to general insurance contracts	PwC	329
119	Move definition of “present value (gross)” from section YA 1 to section EY 24(5) and update reference in proposed section DW 4(4)(a)(iv)	Officials	330

Updating legislative references to OECD transfer pricing guidelines

Rec #	Recommendation description	Submitter	Page #
120	Remove inconsistency between draft legislation and policy intent as stated in the Commentary on the Bill	EY	331

Non-active trusts

Rec #	Recommendation description	Submitter	Page #
121	Include estates as well as trusts in proposed provision	CA ANZ	334
122	Change certain references to “trust or estate” to “trustee of a trust or an administrator or executor of an estate”	Officials	334
123	Raise increase in allowable bank charges and administration costs to \$1,500	CA ANZ	335
124	Clarify drafting of provision	CA ANZ	335
125	Remove distribution threshold	2 submitters	336
126	Change wording of provision to make trust a complying trust	Public Trust	337
127	Align the two provisions to ensure taxpayer does not still have to file tax return despite not having to comply with the trust disclosure rules	2 submitters	337
128	Change “income” to “assessable income” in section 43B of the Tax Administration Act 1994 and make consequential changes to proposed section 43B(3B)	2 submitters	337

Rec #	Recommendation description	Submitter	Page #
129	Narrow the wording of section 43B(2)(c)	PwC	338

Provisional tax – standard uplift calculation method for the second instalment

Rec #	Recommendation description	Submitter	Page #
130	Include savings provision for certain taxpayers	2 submitters	341

Investment in Australian unit trusts

Rec #	Recommendation description	Submitter	Page #
131	Clarify that the proposed amendment to section CD 36 applies to investments where a FIF interest is held indirectly via a chain of CFCs that are Australian unit trusts	5 submitters	345
132	Widen the proposed amendments to sections EX 20B(3)(c) and EX 20C(10) to cover scenarios with a chain of Australian unit trust CFCs	2 submitters	345
133	Extend proposed amendments to section CD 36 to cover distributions from non-Australian unit trust FIF interests	4 submitters	346
134	Add a qualification criteria to section CD 36(2) to ensure the proposed exclusion from the dividend rules applies as intended to distributions from Australian unit trusts	2 submitters	347
135	Provide that, for proposed section CD 36(4) to apply, the requirements of section EX 59(1) must be satisfied for every year that the New Zealand resident interest holder, or an associated person, holds the relevant FIF interest(s) that fund the distribution from an Australian unit trust	Officials	349

Interest rate swaps held by multi-rate PIEs

Rec #	Recommendation description	Submitter	Page #
136	Provide that proposed section HM 35(8)(c) apply only to swaps entered into after the date the PIE chooses to apply that section	KPMG	350
137	Amend section EW 24 to allow two different spreading methods	KPMG	350

Matters raised by officials

Definition of “company” and foreign companies

Rec #	Recommendation description	Submitter	Page #
138	Amend the definition of “company” to exclude a “limited partnership” rather than a “partnership”	Officials	367

Fringe benefit tax – cost of vehicle and state sector decarbonisation fund

Rec #	Recommendation description	Submitter	Page #
139	Clarify that the “cost price” and “tax value” of a vehicle for the FBT rules is the gross cost including any amount funded by the State Sector Decarbonisation Fund	Officials	368

R&D loss tax credits

Rec #	Recommendation description	Submitter	Page #
140	Make the deadline for statements to be filed to claim R&D loss tax credits more appropriate for R&D businesses	Officials	369

R&D Tax Incentive – grant-related expenditure exclusion

Rec #	Recommendation description	Submitter	Page #
141	Carve out R&D expenditure by businesses that receive a New to R&D Grant from the grant-related expenditure exclusion in the R&D Tax Incentive to the extent that R&D expenditure exceeds the amount contracted for under the New to R&D Grant	Officials	370

Incorrect reference to revenue information

Rec #	Recommendation description	Submitter	Page #
142	Replace “revenue information” with “sensitive revenue information” in section 18B(2) of the Tax Administration Act 1994	Officials	371

Interest limitation – grandparenting variable loans for DRP

Rec #	Recommendation description	Submitter	Page #
143	Amend formula to calculate the affected loan balance	Officials	372

Member departing consolidated imputation group

Rec #	Recommendation description	Submitter	Page #
144	Introduce rules to govern the allocation of imputation credits upon a member's departure from a consolidated imputation group	Officials	373

Write-off of tax by Commissioner

Rec #	Recommendation description	Submitter	Page #
145	Ensure tax write-offs that occur via Inland Revenue's "auto-calc" process do not result in tax loss extinguishment	Officials	374
146	Allow the Commissioner to extinguish excess bright-line deductions when tax debt is written off	Officials	374

Annual imputation return for members of a consolidated imputation group

Rec #	Recommendation description	Submitter	Page #
147	Ensure an ICA company that is a member of a consolidated imputation group is not required to file an ICA return if the balance in that ICA is nil at all times during the tax year	Officials	376

**TAXATION (ANNUAL RATES FOR 2022–23, PLATFORM ECONOMY,
AND REMEDIAL MATTERS) BILL (NO 2)**

Appendices

APPENDIX ONE – PLATFORM ECONOMY

List of submitters

Opposition to the proposal – reasons undisclosed

Airbnb 1, Airbnb 2, Airbnb 3, Celia Grant, Chris Boyce, Joy Tilson, K Wai, Marion Steele, Naomi Nicholas, Shana Makuta, Sharon Hall, Sharon Hoare, Spy Holdings Ltd, Stefanie Backhouse, Suzanne Robin, Visit Waiheke.

Reason 1: The proposals can be avoided by marketing properties off electronic marketplaces

Allison Rowe, Anonymous, Charlotte Dunning, Diana Parr.

Reason 2: The proposals will damage the tourism industry and the economy

Alex Ingle, Alison Dale, Amanda Connell, Ana Kennedy, Angela Mackay, Ann Adsett, Ann Bradley, Anne Barnett-Bell, Anonymous, Barbara Mackenzie, Barry Ball, Barry Jensen, Ben Pearson, Carol Warner, Caroline Styles, Christine Moses, Christine Tyler, Dale Morrow, Danielle Lowy, David Simoni, Debbie Rehu, Denise Stevenson, Diane Cranfield, Frans de Jong, Gary Hendrikse, Geoff Hunt, Gina Brugh, Glenn Holmes, Greg Caie, Haley Saunders, Helen Bloom, Ian Blackman, Janet Dolan, Janette Wallace Gedge, Jeffrey Wagg, Jennifer Watt, John Carter, Judith Owen, Judy O'Brien, Julie Mayne, Juliet Corowa, Juliet Hay, Karen Northey, Kay Paterson, Ken Harris, Keri Molloy, Kexin Education, Kim Lund, Larry Hill, Lee Barraclough, Lena Nelson, Leon Benade, Letitia Steane, Liz Connelly, Luan Rose, Margaret Fox, Margaret Lumsden, Melanie Tollemache, Melia Guthrie, Michael Woods, Michelle Godsiff, Michelle Ingle, Natalie Tustin, Neil Robertson, Olivia Skene, Pat Tonizz, Paul Gray, Pete Simpson, Peter Webb, Rachel Clements, Reed Helicopter Services Ltd, Robyn Kaa, Roger Wyatt, S Cross, Sam Downing, Sarah Hart, Selina Thompson. Shelley Kuenning, Sian Hazell, Steven Wilson, Symone and Mark Craig, Tatjana Windhager, Theresa Fraser, Tineke Webley, Toni Lexmond, Trent Butchart, Trish Williamson, Wendy Bates.

Reason 3: GST would result in lower incomes for hosts

Alex Ingle, Alison Dale, Allison Rowe, Amanda Connell, Ana Kennedy, Andrea Louth, Angela Mackay, Ann Adsett, Ann Dodds, Anna Bole, Anna Jacobs, Ann-Marie Smith, Anonymous, Barbara Mackenzie, Barry Jensen, Ben Pearson, Bianca MacNeill, Brian Standeven, Carol Divan, Carol Warner, Caroline Styles, Cathy Gilmour, Christine Brown, Christine Moses, Christine Tyler, Cynthia Hutton, Dave Stanton, David Webb, Delia Van der Vyver, Delwyn Blackburn, Diana Parr, Elizabeth Owen, Elizabeth Sexworth, Fiona Gunter-Firth, Gary Hendrikse, Gary Secker, Gina Brugh, Glenda Fraser, Grace Xie, Graham Hunter, Gregory Bowen, Harsheel Maharaj, Hayley Bowen, Helen Barnett, Helen Bloom, Helen Jakobi, Honor Mathieson, Ian Blackman, Jamie Urquhart-Hay, Jane McLaren, Janette Wallace Gedge, Janice Gammon, Jeanette Schlemmer, Jeannette Ter Veen, Jeff Grove, Jennifer Morris, Jenny Fraser, Jo and Lance Crump, Jo O'Connor, Joe Waide, John Berryman, John Carter, Josie Scott, Julian Batchelor, Julie Lawry, Julie Mayne, Juliet Hay, June Diane Yeldon, Justine Coudret, Justine

Crampton, Karen Adams, Karen Northey, Kath Lane, Kathryn Delaney, Kathy Langerak, Kay Paterson, Kaye Parker, Keith Hooker, Ken Harris, Keri Molloy, Kim Lund, Kim Spencer-McDonald, Kristian Jensen, Lake City Holiday Home Co, Larry Hill, Leanne Baker, Lee Barraclough, Lei Tan, Lesley Campbell, Lesley Jones, Liz Connelly, Lorraine Allardyce, Lorraine Wiseman, Louis Barrowman, Luan Rose, Lucy Darroch-Ellison, Lynette Merry, Majid Rassam, Margaret Fox, Marie Cooper, Marie Fairbairn, Mark Nickolls, Markus Meier, Martha Desimone, Mathilde Noordzij, Megan Church, Megan Shield, Megan Woodward, Melanie McKay, Melanie Paterson, Michelle Ingle, Moira de Koster, Neerja Diack, Neil and Karen Barr, Neil Robertson, Noeline Holt, Olivia Skene, Pat Tonizz, Paul Lake, Paul Sewter, Paul Wavish, Pete Simpson, Peter Webb, Philip Secker, Pip Steele, Rachel Clements, Rachel Tingey, Rebecca Dowling, Reed Helicopter Services Ltd, Riccie De Brouwer, Richard Simpson, Robyn Duffy, Rodger Coleclough, Roger Wyatt, Sam Downing, Sarah Hart, Sarah Keating, Sean Kearney, Selina Thompson, Shanti Smith, Sharon Lowdon, Shelley Kuenning, Sian Hazell, Steve Johnston, Steven Wilson, Sue Walls, Susan Wight, Suzie Wilcox, Symone and Mark Craig, Tania Cooper, Tatjana Windhager, Tim Elley, Tina Faith Hutchison, Tineke Webley, Trevor Pierce, Troy Moon, Vicki Rennie, Victoria Thompson, Wendy Bates, Wendy Lawrence, Zia Mandviwalla.

Reason 4: GST should not apply to services provided by sellers below the GST registration threshold

Annette Inglis, Adam Butcher, Adrian Penman, Alan Connolly, Alex Ingle, Alison Dale, Allan Mitchell, Alpacas Off Grid, Angela Mackay, Ann Bradley, Ann Dodds, Anne Barnett-Bell, Ann-Marie Smith, Anonymous, Barbara Mackenzie, Ben Pearson, Benjamin Sharpe, Bianca MacNeill, Catherine Louise Butcher, Cathy Gilmour, Charlotte Dunning, Cheryl Katz-Rae, Chrissy Freitas, Christine Tyler, Clare St Pierre, Cleone Blomfield, Cynthia Hutton, Dale Morrow, David Fredric, David Needham, David Webb, Deb Evans, Debbie Rehu, Debbie Sturge, Denise Stevenson, Denise Weaver, Dierdre Finin, Donna Naus, Doris Rosteck, Douglas Stuart, Elizabeth Owen, Elizabeth Sexworth, Erica Seville, Fiona Gunter-Firth, Frans de Jong, Gabriella Barbara, Gareth Edwards, Glenda Gibb, Grant McDonald, Grant Patteraon, Grant White, Harsheel Maharaj, Harthouse Cabins Ltd, J Griffiths, Janet Dolan, Jeanette Gordon, Jennifer Watt, Jo and Lance Crump, Joanna Fahey, John Berryman, John Brownlie, John Rose, Joselyn Valenzuela, Josie Scott, Judith Owen, Julia Alabaster, Julie Lawry, Juliet Hay, Justine Coudret, Karin Haigh, Kartika Willett, Katherine Milligan, Kathryn Bird, Kathryn Delaney, Kathy Cargill, Kathy Langerak, Kay Paterson, Kaye Parker, Keith Kietzmann, Kelvin Eden, Ken Harris, Keri Molloy, Kerry Frith, Kim Lund, Lake City Holiday Home Co, Leon Benade, Liesbeth van Bruchem, Linda Wright, Lois Wallace, Lucy Darroch-Ellison, Lynette Merry, Lynn Broad, Majid Rassam, Margaret Fox, Marie Cooper, Mark Curphey, Mark Taylor, Melanie O'Halloran, Melia Guthrie, Meredith MacKenzie, Michael Bohny, Michael Woods, Michelle Bose, Michelle Godsiff, Michelle Ingle, Naomi Nichols, Neerja Diack, Neil and Karen Barr, Noela Aitken, Noeline Holt, Paul Oulton, Paul Radich, Paul Wavish, Pavai Periyasamy, Pete Simpson, Peter Kempthorne, Rachel Shaw, Rachel Tingey, Rachel van der Werf, Rebecca Dowling, Riccie De Brouwer, Richard Simpson, Robbie Christiansen, Robyn Clements, Roger and Jan Marchant, Roger Wyatt, S Cross, Sandra MacKenzie, Sarah Keating, Saya Hashimoto, Sonya Crook, Sue Gill, Sue Rotto, Susan Ballantyne, Thomas Coburn, Tim Elley, Toni Lexmond, Tracey McNamara, Trish Williamson, Vickie Hanrahan, Yoke Chuan Lai

Reason 5: The proposals will result in increased compliance costs

Adrian Penman, Alex Ingle, Allison Rowe, Andrea Louth, Anna Jacobs, Barry Ball, Caroline Styles, Ken Harris, Kim Spencer-McDonald, Mark Taylor, Penelope Lawty, Piet Kil, Steve Johnston

APPENDIX TWO – FBT PUBLIC TRANSPORT

List of submitters

Issue: Support for the proposal

Ana Connor, Baucher Consulting Limited, Bus and Coach Association New Zealand, Campaign for Better Transport Incorporated, Chartered Accountants Australia and New Zealand, Chris Hill, Chris Morahan, Chrys Horn, Corporate Taxpayers Group, Dan Roberts, David Yates, Deloitte, Dylan Packman, Emily McGeorge, EY, Greater Wellington Regional Council, Greg Pollock, International Climate-Safe Travel Institute, Jeremy Wheeler, Jessica Kinred, Katherine Danaher, Kirk Archibald, KPMG, Logan O’Callahan, Melissa Smith, Nicola Clayden, OraTaiao: The New Zealand Climate and Health Council, Peter Ramage, Public Transport Users Association, PWC, Sara Templeton, Sheralee MacDonald, Simon Hubbard, Simon Louisson, Spokes Canterbury, The Lightfoot Initiative Charitable Trust, The Warehouse Group, Trevor James, Wellington City Council

Issue: FBT exemption for bicycles, including e-bikes

A Hansson, Action Bicycle Club, Active Transport Trust, Adam Dewey, Adrien Top, Aidan Smith, Aidy Sanders, Alana Johnson, Alex Dyer, Alex Stopforth, Alexandra Vernal, Alice Terrien, Alistair Gunn, Allan Taunt, Alvaro Lo Fo Wong, Alysha Jurgeleit, Amanda Brien, Amelia Lee Chee, Amy Jesensek, Amy-Grace McIlraith, Ana Connor, Anastasiia Chashchina, Andrea Donkin, Andrew Chinn, Andrew D, Andrew Ellis, Andrew Laurie, Andy Linton, Angela Evans, Angie Nelson, Anita van der Velden, Anke Hoffmann, Anna D’Arcy, Anne Heins, Anne Scott, Annet Rook, Antoine Fenix, Antony Shadbolt, Ants Field, Ash Holwell, Ashley Hooper, Ashok Hirani, Axel Downard-Wilke, Barb Gilchrist, Baucher Consulting Limited, Bella Cunnington Waugh, Ben Wooliscroft, Ben Wylie-van Eerd, Benjamin Blakely, Benjamin Woods, Benoit Depireux, Bevan Pratt, Big Street Bikers, Bike Kitchen New Plymouth, Biketober Christchurch, Billy Clemens, Blair McClelland, Brad Wallace, Bree Graczyk, Brent Thompson, Brett Mason, Briar Weaver, Bronwyn Bell, Bruce James, Bruce Jarvis, Cain C, Cameron Matthews, Cameron Sharpe, Campbell McGregor, Canela Ferrara, Caroline Brown, Cassandre Guinut, Catherine Bircher, Cathy Xiong, Chris Abbott, Chris Hill, Chris Mance, Chris Morahan, Chris Ong, Christina MacLeod, Christine McCormack, Christopher Dempsey, Christopher Hamblin, Christopher Miller, Christopher North, Christopher Town, Chrys Horn, Clare Goodwin, Claudia Grave, Colin Bower, Connor Ellison, Connor Read, Courtney Reid, Craig Cliff, Craig McCauley, Craig McLeod, Cybele Souza, Cycle Action Waiheke, Cycling Action Network, Damian Dobbs, Dan Brazier, Dan Roberts, Daniel Linden, Darren Conway, Daryl Warnock, Dave Harton, David Ives, David Ivory, David Johnston, David Laing, David Laxon, David Moorhouse, David Simpson, David Yates, Debbie Goodall, Deloitte, Derek Walsh, Dhanya Herath, Doctors for Active, Safe Transport, Dom Yates, Don Babe, Don Quick, Dylan Packman, E Allen, Eamonn Marra, Edward Pilbrow, Ekin Sakin, Elizabeth Barnao, Elizabeth Espin, Elliot Weir, Elsie Langdon, Emily Lane, Emily McGeorge, Emily Sutton, Eric Buscarino, Erica Mangin, Erland Howden, Esther Whitehead, Evan Keating, Faye Villegas, Fiona C, Fiona Jack, Fionnuala Bulman, Fran Cox, Frank Baby, Frankie McKeefry, Gaspar Sanvicens, Georgia Halley, Gerard Hyland, Giles Lesser, Glenn Martin, Glenn Riddell, GoEco,

Gordon Burt, Grady Connell, Graham Simmonds, Grant Clarke, Grant Edmonds, Greta Anderson, Gus Griffin, Hamish Forbes, Hanna Scott, Hannah Jemmett, Hannah Mackintosh, Heather Brown, Helen Greenep, Henrietta Reid, Hilary Fowler, Hilary Humphrey, International Climate-Safe Travel Institute, Isaac Freeman, Jacinta O'Reilly, Jack van Beynen, Jacqueline McInnes, Jaimita de Jongh, James Barber, James Burgess, James Burton, James Knudsen, James Ling, James Molony, James O'Donoghue, James Youldon, Jane Admore, Jane Anderson, Jane Henwood, Jarvie Tunnicliffe, Jasmine Seifert-Simpson, Jasmine Weaver, Jason Johnston, Jason Longworth, Jason Motha, Jennifer van Beynen, Jennifer Ward, Jenny Hawke, Jenny Mackie, Jeremy Wheeler, Jesse Northcoat, Jessica de Heij, Jessica Glen, Jessica Kinred, Jill Borland, Jill Ford, Jim van Rooyen, Jo Clendon, Jo Johnson, John Battles, John Lawson, John Lieswyn, John Rayner, John Taylor, John Taylor, Jon Adams, Jonathan Pooch, Joshua Waterman, Juan Parada, Jubb Avery, Juliana Hodgkinson, Juliette Wilson, Juliette Wilson, Justin Morgenroth, Kaaren Mathias, Kale Buchanan, Karina Leppik, Kate Clarke, Kate Henderson, Kate Skurr, Katherine Danaher, Katherine Pedley, Katia De Lu, Kayleigh Appleton, Kent Lundberg, Kerrie Wilson, Khoi Phan, Kimberley Kovacs-Wilks, Kiran Skelton, Kiri Barfoot, Kirk Archibald, Kirsten McKenzie, Kirsten Vibeke Brethouwer, Kirsty Baillie, Kirsty McKenzie, Koen van den Broek, Konni Pahlen, Kristen Bracey, Kyle Bluck, Laura Barron, Laura Hamilton, Lauren Jones, Laurence Harger, Leone Murphy, Lerk Stedman, Leslie Alldridge, Liam McCall, Lindsay Horton, Logan Elliott, Logan Fenton, Logan O'Callahan, Lucy Pink, Lucy Ruck, Luke Cairns, Luke Gilmore, Luke Tracey, Lynda Johnston, Lynda Lipinski, Lynda Morrison, Lynette Gubb, M McLaren, Macaila Pescud, Marjolein Schaddelee, Mark Baldwin, Mark Coburn, Mark Dignan, Mark Johnston, Mark Johnston, Mark Prins, Mark Vuletich, Matt van Roijen, Matthew Arat, Matthew Baird, Matthew Molloy, Matthew Rivers, Megan Gallagher, Melanie Parsons, Melissa Laing, Melissa Smith, Michael Ferigo, Michael Lowe, Michelle Cavenagh, Micromobility Industries, Mike Carroll, Mike Garnett, mSupply Foundation, Myfanwy James, Natalie O'Connell, Natalie Reeves, Neil Hudson, Niamh Buchanan, Nicholas Alpe, Nicholas Elmey, Nicholas Lane, Nicholas Latham, Nicholas Rakels, Nick Eichler, Nick Read, Nick Thurley, Nicola Clayden, Nilaanj Batavia, Nissa Anderson, Norm Robins, North Taranaki Cycling Advocates, Oliver Hutchison, Oliver McArdle, OraTaiao: The New Zealand Climate and Health Council, Patrick Gifford, Paul Glover, Paul Huggan, Paul Kean, Paul O'Donoghue, Paula Jones, Paula Luijken, Perin Gerrand, Peter Christensen, Peter Gent, Peter Holder, Peter Ramage, Peter Scott, Phil Evans, Philip Kenny, Polly Griffiths, Polly McAdam, R Duncan, Rana Hay, Raoul Verhaegen, Rata Chapman Olsen, Richard Clemo, Richard Smith, Rob Ryan, Robbie Peacocke, Robbie Webb, Robin Williamson, Roderick Yen, Ronan Whitteker, Rosalia Onderwater, Rosemarie North, Rosie Moore, Ross Gilbertson, Russell Dear, Ryan Jones, S Young, Sally McAra, Sam Blackmore, Sam Knowles, Sandra Cleland, Sara Templeton, Sarah Aitken, Sarah Elicker, Sarah Fredric, Scott Aitken, Scott Stocker, Seismic Shift Limited, Sharon Erdrich, Shaun Madgwick, Sheralee MacDonald, Shutl, Simon Garton, Simon Hubbard, Simon Louissou, Simon Ross, Simon Telfer, Sophie Cossens, Sophie McInnes, Sophie Watson, Spokes Canterbury, Stafford Hodgson, Stephen Coppard, Stephen Hay, Steve Cosgrove, Steve Robinson, Steven Muir, Stuart Pearson, Sue Crossan, Sylvia Maclaren, Tania Mead, Tanya Batt, Tegan McGowan, Teresa Maguire, Tessa Zant, The Lightfoot Initiative Charitable Trust, The Warehouse Group, Thomas Kay, Thomas Mitchell, Tim Curran, Timon Bakker, Timothy Ganly, Tom Murphy, Tony O'Halloran, Tony Oosten, Tony Peek, Trevor James, Tyler McMillan, V Gibbons, Waiheke Resources Trust, Wayne Phillips, Wellington City Council,

Werner Pretorius, William Miller, Wouter de Maat, Xan Hamilton, Yvonne McDonald

Issue: FBT exemption for other (non-bicycle) benefits

Alexa Forbes, Anne Scott, Brent Thompson, Bus and Coach Association New Zealand, Cameron Matthews, Cameron Sharpe, Christopher Miller, Cybele Souza, Dan Roberts, David Yates, Deloitte, Dylan Packman, Emily McGeorge, Faye Villegas, Greater Wellington Regional Council, Greg Pollock, Jane Henwood, Jill Borland, Kate Clarke, Kiri Barfoot, Kirk Archibald, Laura Barron, Lynette Gubb, OraTaiao: The New Zealand Climate and Health Council, Simon Hubbard, Spokes Canterbury, The Lightfoot Initiative Charitable Trust.

APPENDIX THREE – RETROSPECTIVE CLAUSES

The Committee requested an updated list of provisions with retrospective application from advisers as part of the departmental report, including a justification of why retrospective application was considered necessary. These are outlined in the table below.

Table 2: Retrospective clauses in the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill (No 2)

Clause #	Application date	Clause description Why retrospectivity is necessary
48 and 192	1 April 2008 and 1 April 2007	Financial arrangements – impaired credit adjustments This change would clarify an unintended outcome. The change is taxpayer friendly as it would align the legislation with existing practice and would legitimise tax positions taken by taxpayers.
88(1), (2)	1 October 2007	Provisional tax – standard uplift calculation method for second instalment The proposed amendment corrects a drafting error in the rewrite of the Income Tax Act 2007. Because this clarifies existing operational practice, it would not affect any taxpayers.
12, 80	1 April 2008	Trusts – imputation credits and distributions The proposed amendment corrects a drafting error in the rewrite of the Income Tax Act 2007. It is proposed that the change be backdated to the 2008–09 income year as it clarifies what the law should be.
34, 45, 46, 98(22), (23), (24)	1 April 2008	Distribution networks The Bill proposes requiring distribution networks that have applied the component items approach to do so from 1 April 2008 to align with the start of the Income Tax Act 2007. This treatment would validate the treatment these distribution networks have already applied. Taxpayers who have not applied this approach will have a 2024 application date.
159, 161, 168, 176, 183(2)	1 April 2009	Maintenance items These amendments remove redundant provisions and, in the case of clause 176, correct a cross-reference.
68	1 April 2011	Look through companies This amendment would have retrospective effect from 1 April 2011 to clarify the existing legislation. There is no expected impact on taxpayers.

Clause #	Application date	Clause description Why retrospectivity is necessary
105(5), 113(1), 118(2), (3)	1 April 2011	<p>GST apportionment and adjustment rules</p> <p>The Bill proposes that this election could be applied on a retrospective basis from 1 April 2011 to qualifying assets that were purchased and sold before the Bill is enacted, as this would align with the historical GST positions taken on the qualifying assets (which ensures these businesses do not incur additional GST and compliance costs). Submissions on the Bill and an earlier issues paper support this proposed election applying retrospectively.</p>
116(7), (8)	1 April 2011	<p>Input tax deduction for goods and services not yet 'available for use'</p> <p>This proposed amendment would apply retrospectively from 1 April 2011. This date is necessary to align the law with existing practices taken by taxpayers, which are consistent with established GST policy principles.</p>
116(18)	1 April 2014	<p>Input tax deductions for goods and services not yet available in making taxable supplies</p> <p>The proposed amendment to section 20(3L) would also take effect from 1 April 2014 to ensure it applies to an earlier version of that provision.</p>
116(1), (5), (19), (20)	30 March 2022	<p>Input tax deductions for goods and services not yet available for use in making taxable supplies</p> <p>A retrospective application date is necessary to align the law with existing practices taken by taxpayers, which are consistent with established GST policy principles.</p>
122(1), 123(2), (4)	30 June 2014.	<p>GST apportionment and adjustment rules</p> <p>A clarification to a definition used in a wash-up calculation would apply from 30 June 2014 (the date the calculation was originally enacted) to ensure it provides the same, correct result for registered persons who acquired a zero-rated supply as it does for registered persons who acquired standard-rated supplies.</p>
55, 56, 57	1 July 2014	<p>Foreign investment fund rules</p> <p>The Bill proposes that certain amendments to the foreign investment fund (FIF) rules apply retrospectively from 1 July 2014. This is necessary to bring in consequential amendments to allow the fair dividend rate method to be applied to Australian unit trusts that became subject to the FIF rules from 1 July 2014.</p>

Clause #	Application date	Clause description Why retrospectivity is necessary
		This amendment is taxpayer friendly and would affect a small number of taxpayers.
70(2), (4)	21 February 2017	Foreign trust disclosure rules – testamentary trusts The proposed amendment, which allows a will to be treated as a trust deed for the foreign trust disclosure rules, has retrospective effect to align it with the start of the foreign trust disclosure regime. This proposed amendment is taxpayer friendly.
63, 64, 77, 78, 79, 81, 83, 98(2), (9)	15 March 2017.	Dual resident companies The Bill proposes amendments to the loss grouping, consolidation and imputation credit rules to resolve eligibility issues brought about by changes to Australia’s corporate residency rules. These amendments would apply from 15 March 2017 to ensure New Zealand companies affected have uninterrupted access to these beneficial regimes.
88(3), (4), (5), (6)	1 April 2017	Provisional tax – standard uplift calculation for the second instalment It is proposed that the change be backdated to the 2017–18 income year as the change clarifies existing operational practice.
24, 29, 49, 76, 98(15), (21)	29 March 2018	Maintenance items These changes apply retrospectively to correct minor terminology to achieve the original policy intent of the items.
32(1), (2), (3), (4)	29 March 2018	Housing remedials – changes in co-ownership of land These changes correct terminology to achieve the original policy intent from the start of the 5-year bright-line test.
19, 43, 53, 98(16)	29 September 2018	Maintenance items These changes correct minor terminology to achieve the original policy intent.
30, 36	18 March 2019	Income tax treatment of grants paid by public purpose Crown-controlled companies These changes would apply from 18 March 2019 to align with the introduction of the tax exemption for public purpose Crown-controlled companies. The changes are taxpayer friendly.
54	26 June 2019	Meaning of highly effective hedging for non-ordinary shares The Bill proposes to clarify the meaning of highly effective hedging for non-ordinary shares. This would apply from 26 June

Clause #	Application date	Clause description Why retrospectivity is necessary
		2019 to align with the introduction of IFRS 9 and is consistent with the pre-IFRS 9 approach that taxpayers have continued to apply.
33, 73	1 April 2020	Maintenance items These changes correct minor terminology to achieve the original policy intent.
75	1 April 2020	Business continuity test These changes clarify the legislation to ensure the original policy works as intended.
157, 158	1 April 2020	R&DTI notification of changes in activities The Bill proposes removing a notification requirement in the R&D Tax Incentive regime from the 2020–21 income year, which would flow through to approvals covering the 2021–22 income year. Therefore, application from the 2020–21 income year ensures that tax credits can be paid out for the 2021–22 income year even if businesses have not made the requisite notification for the later year.
6(1), (3), (4), (5), (6), 7(2), (4), (5), 8(3), 9, 35, 37, 38, 39, 40, 41, 42, 98(4), (6), (18)	27 March 2021	Housing remedials – interest limitation, bright-line test and rollover relief These changes correct minor terminology to achieve the original policy intent. The proposed application date aligns with commencement of the relevant provisions in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022.
149	1 April 2021	Non-active estates and trusts The proposed amendment corrects an unintended overreach in the new trust disclosure rules. It is proposed this amendment be backdated to the year the new trust disclosure rules applied to ensure that smaller trusts do not have to incur expenses complying with the rules. This amendment is taxpayer friendly.
98(3), 100	1 October 2021	Build-to-rent exemption from interest limitation The Bill proposes to exempt build-to-rent assets from the interest limitation rules from 1 October 2021 to align with the introduction of the limitation rules. This retrospective application is taxpayer friendly as it allows taxpayers to continue to deduct interest expenses relating to build-to-rent assets

Clause #	Application date	Clause description Why retrospectivity is necessary
101(2)	15 January 2022	<p>Oversees donee status</p> <p>The addition of Heilala Vanilla Foundation would take effect on 15 January 2022 and end on 31 March 2026. This status has been backdated in response to work done during the Tongan state of emergency following the volcanic eruption and tsunami on 15 January 2022.</p>
66, 98(12), (26), 139(5)	20 January 2022	<p>OECD transfer pricing guidelines</p> <p>The Bill proposes to update the definition of “OECD transfer pricing guidelines” with retrospective effect to 20 January 2022, when the relevant guidelines were published. However, a savings provision for the 2022–23 and earlier income years is proposed to ensure that taxpayers have sufficient time to familiarise themselves with the new guidelines.</p>
101(4)	15 February 2022	<p>Oversees donee status</p> <p>The addition of New Zealand for UNHCR (United Nations High Commissioner for Refugees) would take effect on 15 February 2022. This earlier application date was granted for UNHCR’s relief to Ukraine.</p>
82	30 March 2022	<p>Petroleum decommissioning</p> <p>The Bill proposes allowing a refundable credit to petroleum miners in a specific situation where it was unintentionally disallowed. This would apply from 30 March 2022 to align with the application date of the amendment that created this disallowance.</p>
185	30 March 2022	<p>Maintenance item</p> <p>This corrects the application and commencement dates of the definitions of “cryptocurrency” and “non-fungible token”. This applies from 30 March 2022 to align with changes in the Taxation (Annual Rates for 2021–22, GST and Remedial Matters) Act 2022 to ensure the definitions apply from 1 January 2009.</p>
186, 187, 188, 189	30 March 2022	<p>Modernising information requirements for GST</p> <p>The proposed amendments would clarify several amendments to reform the tax invoicing rules made to the Goods and Services Tax Act 1985 by the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 and ensure the amendments take effect on the same date as the original reforms took effect.</p>

Clause #	Application date	Clause description Why retrospectivity is necessary
190, 191	30 March 2022	<p>Early payment discount and tax pooling</p> <p>This proposal would bring forward amendments made in the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022 to ensure taxpayers received the same treatment through Inland Revenue’s transition to new tax software. The original change applied from the 2019–20 income year, and the proposed amendments would apply from the 2017–18 income year to ensure the benefit is available to all taxpayers impacted.</p>
21, 69	1 April 2022	<p>Income of deceased persons received after date of death</p> <p>This amendment would apply retrospectively for the 2022–23 and later income years to reduce compliance costs for taxpayers who died in the 2022–23 income year. This amendment is taxpayer friendly.</p>
101(1), (6)	1 April 2022	<p>Oversees donee status</p> <p>Inland Revenue’s systems can work this recommended application date, as individuals would be able to claim the donations tax credit for receipted monetary donations as part of Inland Revenue’s 2022–23 return cycle, starting on 1 April 2023. Companies and Māori authorities would be allowed deductions for monetary donations made during the 2022–23 income year.</p>
101(8)	11 April 2022	<p>Oversees donee status</p> <p>The addition of Anglican World Aid (Aotearoa) Limited would take effect on 11 April 2022. This application date has been recommended as it is the date that the charity was created and gives the charity certainty for marketing and fundraising purposes.</p>
10, 11, 13, 15, 22, 47, 60, 61, 62, 84, 85, 87, 95, 96, 97, 98(7), (8), (19), 139(2), 146, 147, 148	30 August 2022	<p>Dual resident companies – integrity issues with dividends and corporate migration rules</p> <p>The Bill seeks to resolve issues with the domestic dividend exemption and corporate migration rules to minimise the opportunity for untaxed income to be paid offshore through a dual resident company. Because of the potential risk of publicising the integrity issues before the amendments come into force, the proposed amendments would apply from 30 August 2022, being the date of introduction of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill.</p>

Clause #	Application date	Clause description Why retrospectivity is necessary
133	30 August 2022	<p>GST status of legislative charges</p> <p>The proposed amendments that prevent amendments to historic assessments to prevent a potentially significant fiscal risk would take effect on 30 August 2022, being the date of introduction of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill. This is explained in more detail on pages 99-100 of the Commentary on the Bill.</p>
104	30 August 2022	<p>Associating members of an unincorporated joint venture with the joint venture</p> <p>This proposed amendment would apply to tax positions taken on or after 30 August 2022, being the date of introduction of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Bill. This application date is necessary to prevent a fiscal risk that could arise from the proposed amendment highlighting that members and joint ventures are not currently associated with each other for GST purposes.</p>
20, 44, 58, 98(10), (13), (14), (25)	1 January 2023	<p>Updating references to insurance accounting standard</p> <p>The Bill proposes amendments to update existing references to IFRS 4 and components of IFRS 4 in the Income Tax Act 2007 to IFRS 17 for income years commencing on or after 1 January 2023 to align with the introduction of IFRS 17.</p>
177	1 April 2023	<p>Tax debt write-off rules and ring-fenced residential rental losses</p> <p>This proposed amendment would apply prospectively for tax debts written off on or after 1 April 2023 but could impact ring-fenced residential rental losses accrued since 2019–20. This element of retrospectivity is necessary to ensure that all taxpayers who have debts written off on a certain date are subject to the same rules.</p>