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COMMENTARY

Amendment Paper to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill

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Minister of Revenue

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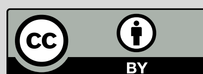
Amendment Paper to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill – commentary on the Amendment Paper



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OVERVIEW

Amendment Paper No 20 contains further measures to be added to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill.

The proposed changes would:

- phase back in the ability to claim interest deductions for residential investment properties
- repeal and replace the current 10-year, 5-year new build and 5-year bright-line tests with a new 2-year bright-line test
- remove depreciation deductions for buildings with an estimated useful life of 50 years or more
- limit the application of a valuation rule that deems a person who disposes of trading stock at below market value to derive as income the market value of the trading stock on the date of disposal to address instances of overreach
- introduce a new type of gaming duty in the Gaming Duties Act 1971, known as offshore gambling duty, and
- introduce a transitional rule to allow electronic marketplace operators to treat the GST platform economy rules, which take effect on 1 April 2024, as not applying to contracts for short-stay or visitor accommodation entered into before 1 April 2024.

Restoring interest deductibility

Restoring interest deductibility

Clauses 16BA, 21BA, 21BAB, 21BD, 21BE, 21BF, 21DB, 21DC, 22B, 59(1B) and (6C), 62B, and schedule 1A

Summary of proposed amendment

The amendment proposes to phase back in the ability to claim interest deductions for residential investment properties.

Effective date

The proposed amendment would be effective from 1 April 2024.

Background

The interest limitation rules were introduced in 2021 and deny a deduction for interest incurred for residential investment property.

For property acquired on or after 27 March 2021, interest deductions have been denied in full since 1 October 2021.

For property acquired before 27 March 2021, and borrowings drawn down before 27 March 2021, the ability to claim interest deductions has been phased out as follows:

Period that interest is incurred	Percentage of interest deductions allowed
1 April 2021 to 30 September 2021	100%
1 October 2021 to 31 March 2022	75%
1 April 2022 to 31 Mach 2023	75%
1 April 2023 to 31 March 2024	50%
1 April 2024 to 31 March 2025	25%
1 April 2025 onwards	0%

It is now proposed that interest deductibility be phased back in on the following basis:

Period that interest is incurred	Percentage of interest deductions allowed
1 April 2024 to 31 March 2025	80%
1 April 2025 onwards	100%

The above phasing will apply to all taxpayers, whether they acquired their property, or drew down their lending, before or after 27 March 2021.

The current rules determining which types of land and taxpayers are subject to the interest limitation rules and providing for specific anti-avoidance would continue to be necessary while deductibility is being reintroduced and would, therefore, be retained.

It is proposed that the interest limitation rules will be substantially repealed from 1 April 2025, when all taxpayers are allowed full deductions. However, the current rules that allow taxpayers whose disposals of residential land are subject to tax to claim a deduction for interest that was denied under the interest limitation rules at the time the property is disposed of, would be retained.

Key features

The key features of the proposed amendments are:

- The ability to claim interest deductions will be phased back in with 80% of deductions allowed from 1 April 2024 to 31 March 2025 and 100% allowed from 1 April 2025 onwards.
- Phasing back in of interest deductibility will be allowed for all taxpayers, whether they acquired their property, or drew down lending, before or after 27 March 2021.
- The current rules determining who, and what types of land, the interest limitation rules apply to will continue to apply. Any taxpayers, or types of land, that are currently exempt from the interest limitation rules will continue to be exempt.
- The interest limitation rules will be repealed from 1 April 2025 once all taxpayers are entitled to full deductibility.
- The rules that allow taxpayers whose disposals of residential land are subject to tax to claim a deduction for interest that was denied under the interest limitation rules at the time the property is disposed of, will be retained.

Detailed analysis

Application

It is proposed that the reintroduction of the ability to claim interest deductions for residential investment properties would apply to all taxpayers, whether they acquired their properties, or drew down lending, before or after 27 March 2021. This proposal will also apply to interest incurred to acquire an ownership interest in, or become a beneficiary of, an interposed residential property holder (ie, a company that holds residential land).

The interest limitation phasing rules will continue to apply based on interest incurred for the period 1 April to 31 March each year. For most taxpayers this will be the same as their income year. However, for taxpayers with non-standard balance dates, this will require them to calculate the amount of interest denied based on different percentages for different parts of their income year.

Example 1: Non-standard balance dates

Enia has a 30 June balance date. She owns several rental properties acquired before 27 March 2021.

For the 2023–24 income year, which ends on 30 June 2024, Enia would be allowed a deduction for 50% of her interest expenses for the period 1 July 2023 to 31 March 2024 and 80% of her interest expenses for the period 1 April 2024 to 30 June 2024.

Scope of the rules

It is proposed that there would be no changes to the types of properties, and taxpayers, that will be covered by the interest limitation rules. Until the ability to claim interest deductions is fully phased back in, the rules would continue to apply on the same basis as before. This means that land that is used, for example, as a business premises, build-to-rent land, land used for social, emergency, council or transitional housing, and land held by property developers would continue to be exempt from the rules.

In addition, the interposed entity and other specific anti-avoidance rules would continue to apply while the interest limitation rules are being phased out.

The rules will be substantially repealed from 1 April 2025 once the ability to claim interest deductions is fully phased back in.

Deductions on sale

Where gains on the sale of a disallowed residential property are ultimately subject to tax under the bright-line test or other land sales rules, the interest for which a deduction has been denied can be added to the cost of the property and deducted on sale (subject to loss ring-fencing rules) under current section DH 11. It is proposed that this rule would be retained so that it can continue to apply for future sales of properties that were subject to the interest limitation rules. The rule will be relocated to section DZ 24.

Example 2: Deductions on sale

Jack and Aria buy a rental property in November 2022 for $700,000. They borrow $400,000 at 4% interest to complete the purchase. In July 2024, they sell the rental property for $710,000. The sale is subject to the bright-line test.

Jack and Aria paid a total of $26,600 interest, that would have been deductible if the interest limitation rules had not applied because the property was used to derive taxable income. Therefore, the interest is potentially deductible in the year of sale.

The property was bought for $700,000 and sold for $710,000 20 months later. In the year of sale, the $710,000 sale price is income under the bright-line test, and the cost of the property may be deducted under section DB 23. Section DH 11(1) provides that the original cost of $700,000 is deemed to be increased by the disallowed interest of $26,600. However, section EL 20 provides that, in the year of sale, the amount of the deduction is limited to income from the sale ($710,000) plus net gains from other taxable land sales. If this is the only property Jack and Aria sold that year, the deduction would therefore be limited to $710,000 (resulting in no net income to be taxed or loss deducted). This would mean only $10,000 of the disallowed interest would be deductible. The excess amount of $16,600 would be carried forward and applied against any taxable land sale gains Jack and Aria have in later years.

Returning the bright-line test to two years

Returning the bright-line test to two years

Clauses 8(3), 9(1E), 29B, 59(5B), (5C), (5D), (11D) and (11E), 64D, 77D, and schedule 1C

Summary of proposed amendment

The amendment proposes that the current bright-line tests be repealed and replaced by a new 2-year bright-line test. This will return the bright-line test to its original purpose of ensuring land speculators pay their fair share of tax on gains from property sales.

As a result of this change, other consequential amendments to the bright-line test and associated rules are proposed to simplify their application. This includes removing the complex apportionment rules for the main home exclusion and expanding the rollover relief rules.

Effective date

The proposed amendment would take effect for disposals of residential land where the bright-line end date (generally the date a binding contract to sell is formed) occurs on or after 1 July 2024 (more information on the bright-line end date can be found below).

Background

The bright-line tests tax income from the sale of residential land where it is sold within a specified period. There are currently three different bright-line tests that could apply to the sale of residential land:

- the 10-year bright-line test applies to land acquired on or after 27 March 2021, which is not new build land, that is disposed of within 10 years
- the 5-year new build bright-line test applies to new build land (defined as land that has a self-contained residence or abode that received a code compliance certificate on or after 27 March 2020) acquired on or after 27 March 2021, that is disposed of within five years, and
- the 5-year bright-line test applies to land acquired on or after 29 March 2018 and before 27 March 2021 that is disposed of within five years.

"Residential land" is defined as land that has a dwelling on it, land for which the owner has an arrangement to erect a dwelling, or bare land that because of its area and nature is capable of having a dwelling erected on it. It does not include land used predominately as business premises or farmland.

It is proposed that the current 10-year bright-line test, 5-year new build bright-line test, and 5-year bright-line test be repealed and replaced by a new 2-year bright-line test. The proposed reduction in the bright-line period will allow a return to the original policy objective for the bright-line test. This objective is to improve compliance with the other land sale rules in the Income Tax Act 2007 by supplementing the intention test in section CB 6, which makes gains from the sale of land purchased with a purpose or intention of disposal taxable. This ensures that land speculators pay their fair share of tax on gains from property sales.

Given this objective, it is proposed that other policy settings are also returned to those that existed when the original 2-year bright-line test was introduced. In particular, it is proposed that the complex apportionment rules for the main home exclusion be removed. This will mean that the main home exclusion will apply if the land has been used predominantly (ie, more than 50% of the land area), for most of the time the person owned the land (ie, more than 50% of the period), for a dwelling that was the person's main home. The main home exclusion will also be modified so that the period when a dwelling is being constructed on the land is ignored in determining whether the land has been used predominantly as a main home for most of the period.

Consistent with the objective of simplifying the rules, and with returning to the original intention for the bright-line test, it is also proposed to extend the rollover relief rules. The rollover relief rules essentially allow a transfer between specified people to be ignored for the purposes of the bright-line test. The current rules only apply to a very limited set of transfers. It is proposed that these rules be extended to apply to all transfers between associated persons, provided they have been associated for at least two years prior to the transfer.

Key features

The key features of the proposed amendments are:

- The current 10-year and 5-year new build bright-line tests in section CB 6A would be repealed and replaced with a new 2-year bright-line test.
- The time and land area apportionment rules in section CB 6A would be repealed and replaced with simpler rules. These apportionment rules are currently used for determining the application of the bright-line test where the land is used partially as a main home.
- The main home exclusion in section CB 16A would be returned to its original form. The exclusion would apply if the land has been used predominantly (ie, more than 50% of the land area), for most of the time the person owned the land (ie, more than 50% of the period), for a dwelling that was the person's main home.

- A modification would be included in the main home exclusion in section CB 16A to allow periods where a dwelling is being constructed to be ignored.
- The current rollover rules for transfers with certain family trusts and other capacities in sections CB 6AB, FC 9B and FC 9C would be repealed and replaced with a new provision that would extend rollover relief to all transfers of residential land between associated persons.
- The current rollover relief provisions that apply to Māori rollover trusts (currently section CB 6AC) and Treaty of Waitangi settlements (currently section CB 6AE) would remain, but would be rewritten and relocated in subpart FD.
- The current 5-year bright-line test and associated main home exclusion in sections CZ 39 and CZ 40 would be repealed.

Detailed analysis

Returning to two years

It is proposed that the current 10-year bright-line test and 5-year new build bright-line test in section CB 6A, and the 5-year bright-line test in section CZ 39 be repealed and replaced by a new 2-year bright-line test.

This new test will apply if the person's bright-line end date for the land is within two years of the person's bright-line start date.

For standard sales of land, the bright-line start date will continue to be the date the transfer of the land is registered to the person under the Land Transfer Act 2017. As is the case under current law, the bright-line start date is modified in the following situations:

Type of acquisition	Bright-line start date
Land outside New Zealand	Date on which the instrument is registered under foreign laws
No instrument registered	Date the person acquired an estate or interest in the land
"Off the plans" acquisition	Date the sale and purchase agreement was entered into
Subdivided land	Bright-line start date for the undivided land
Freehold estate converted from a lease with perpetual right of renewal	Date of the grant of the leasehold estate

Type of acquisition	Bright-line start date
Joint tenancy converted to a tenancy in common or tenancy in common converted to a joint tenancy	To the extent the person's share in the land is unchanged, the bright-line start date for the land before the conversion
Change of trustee	Bright-line start date for the original trustee

The bright-line end date is the date that a vendor enters into a binding agreement for sale and purchase to dispose of the land, even if some conditions still need to be met (such as obtaining finance, a building report or a Land Information Memorandum). Where land is disposed of with no agreement to dispose of the property, the bright-line end date is the earliest of:

- the date on which a person makes a gift of the land
- the date on which the land is compulsorily acquired under any Act by the Crown, a local authority or a public authority
- if there is a mortgage secured on the land, the date on which the land is disposed of by or for the mortgagee
- the date on which the estate or interest is disposed of (usually the settlement date).

Application date

This new test will apply to disposals of residential land where the bright-line end date occurs on or after 1 July 2024. The new 2-year bright-line test will apply if the bright-line end date is within two years of the bright-line start date.

Example 3: Application date

Jonathan entered into a sale and purchase agreement to acquire residential land in late 2021 with the transfer being registered on the title on 5 January 2022. He used the land as a rental property. He enters into a sale and purchase agreement to sell the land on 20 June 2024. The current 10-year bright-line test will apply to tax the disposal of the land. The land was acquired after 21 March 2021, and the bright-line end date for the land (being the date the sale and purchase agreement was entered into), was prior to 1 July 2024.

Martin also acquired residential land with a bright-line start date on 5 January 2022, which he used as a rental property. He disposes of the land on 27 July 2024. Because the bright-line end date for the land is after 1 July 2024, the new 2-year bright-line test

will apply. But because the bright-line end date is more than two years after the bright-line start date, the disposal will not be taxable under the new 2-year bright-line test.

Main home exclusion

Under the 10-year bright-line test (and the 5-year new build bright-line test), the application of the main home exclusion depends on apportionment. There are currently two bases of apportionment:

- **Time apportionment:** the main home exclusion only applies for periods when a property is physically used as the owner's main home (subject to a "12-month buffer", where the use can be changed without consequence).
- **Land area apportionment:** apportionment is also required where the land area is used for dual purposes and is not predominantly used as a person's main home.

It is proposed that these apportionment rules be removed from the bright-line test. Instead, it is proposed that the main home exclusion in section CB 16A would apply if the land has been used predominantly, for most of the time the person owned the land, for a dwelling that was the person's main home.

The proposed requirement that the land is used predominantly for the person's main home means that most of the area of the land (ie, more than 50%) must have been actually used for the home. The test is based on a person's actual use of the property and not the person's intended use of the property.

The land also must be used for most of the time that the person owns the land as their main home. This requires the property to have been used more than 50% of the time as their main home for the period the person owns the land. The land does not need to have been used without interruption as their main home. For example, a main home can be rented out for short periods while the owner is on vacation or prior to settlement of the sale of the property, as long as the time is less than the private residential use.

This main home exclusion would either apply or it would not apply; it would not apply on a proportionate basis. As a result, when the property is used less than 50% for the main home of the person, either by land area or time, then the main home exception will not apply.

Example 4: Main home exclusion

Kate acquires residential land, with a bright-line start date of 28 March 2023. She occupies the property as her main home for 14 months. She then rents the property

out for four months prior to selling it. The bright-line end date for the land is 20 September 2024.

The main home exclusion will apply to Kate so that any gain from the sale of her property will not be subject to tax under the new 2-year bright-line test. This is because Kate occupied the property as her main home for more than 50% of the period that she owned it.

Example 5: Land not predominantly used for main home

Aroha owns a residential property with three townhouses located on it. The bright-line start date for the property is 30 January 2024. Aroha uses one flat as her main home. Aroha's flat occupies approximately 40% of the land area. Aroha rents out the other two flats.

Aroha disposes of the property in 2025 with a bright-line end date of 30 November 2025. Because Aroha did not use the property predominantly as her main home (ie, 60% of the land area was occupied by rented townhouses), the main home exclusion will not apply.

The main home exclusion continues to be subject to limitations so that it cannot be applied by a person more than twice in two years, or where a person (or group of persons) has engaged in a regular pattern of acquiring and disposing of residential land.

Construction periods

Consistent with amendments proposed for the 5-year bright-line test in the Bill as introduced, it is proposed that the main home exclusion would ignore the period during which the person's main home is constructed when determining whether the residential land was used as the person's main home for most of the bright-line period.

The ordinary meaning of "construction" would apply, which would encompass work to build or erect the main home, including the design phase. In many cases, construction would be considered complete once the code compliance certificate has been issued under the Building Act 2004. However, the exact length of the construction period would depend on the facts and circumstances of each case.

Example 6: Construction period

Raj owns a bare section of residential land with a bright-line start date of 17 May 2023. The section remains vacant for three months while Raj decides what to do with the property. Raj then enters into agreements to have a home constructed on the property. It takes 13 months for the home to be planned, consented, constructed and a code compliance certificate to be issued. Raj then lives in the property for six months before a change of job requires him to move to another city and he sells the property. The bright-line end date for the property is 1 January 2025.

The 13 months during which the home was being constructed on the property is ignored when considering whether the property was used as Raj's main home for most of the bright-line period. Looking at the remaining period, Raj occupied the property for six months, and the property was vacant for three months. Therefore, the main home exclusion will apply because Raj used the property as his main home for most of the remaining period.

Rollover relief

Rollover relief under the bright-line test ensures that certain transfers of residential land are not taxed at the time of the transfer. Instead, the recipient takes on the original owner's acquisition cost and bright-line start date. When the recipient disposes of the residential land, this cost and bright-line start date determines whether the disposal is taxed under the bright-line test and the amount of the gain that is taxable.

The bright-line test, as introduced in 2015, included limited relief for certain transfers: relationship property, inherited property and company amalgamations. In 2022, in the context of the 10-year bright-line test, additional rollover relief rules were introduced for a limited number of legal transfers of residential land when there is no underlying change in economic ownership.

It is now proposed to extend rollover relief further. From 1 July 2024, rollover relief would be provided for:

- all transfers between persons that are associated under any of sections YB 2 to YB 13, provided they have been associated for at least two years prior to the transfer, or
- a transfer to a trustee of a trust in which all beneficiaries are persons that have been associated with the transferor for at least two years (other than infants that are less than two years old and persons that are associated due to a recent marriage or adoption), or charities.

This recognises that transfers between associated persons do not represent the types of speculative transactions that the new 2-year bright-line test will be intended to capture.

The new rollover rule will apply to transfers between:

- two companies with 50% or more common ownership (section YB 2)
- a company and a person other than a company if the person has a 25% or more voting interest in the company (section YB 3)
- two relatives within two degrees of blood relationship (section YB 4)
- a person and a trustee of a trust if a relative of the person is a beneficiary of the trust (section YB 5)
- a trustee of a trust and a person who has benefited or is eligible to benefit under the trust (section YB 6)
- a trustee of a trust and a trustee of another trust if the same person is a settlor of both trusts (section YB 7)
- a trustee of a trust and a settlor of the trust (section YB 8)
- a settlor of a trust and a person who has benefited or is eligible to benefit under the trust (section YB 9)
- a trustee of a trust and a person who has a power of appointment or removal of the trustee (section YB 11)
- a partnership and a partner in the partnership (section YB 12)
- a look-through company and a person who has a look-through interest for the look-through company and who is a director or employee for the look-through company (section YB 13).

Where rollover relief applies, the transferor will be treated as transferring the land for an amount that equals the cost of the land to the transferor. This will mean that no tax consequences would arise for the transferor if the transfer was made within the relevant bright-line period. The transferee would take on the transferor's bright-line start date and cost base. In addition, any period of time where the land was used as a main home by the transferor will also be attributed to the transferee and can be taken into account when the transferee sells the land.

Example 7: Rollover relief

Jocelyn owns residential land with a bright-line start date of 4 June 2024. The land has a cost of $750,000. In December 2024, Jocelyn gets advice from her lawyer that it would be beneficial to transfer the land to her family trust. She has been a settlor, trustee and beneficiary of the family trust since it was established in 2020.

As a settlor and beneficiary of the family trust, Jocelyn is associated with the family trust. Jocelyn has been associated with the trust for more than two years. Therefore, a transfer of the residential land to the family trust will qualify for rollover relief.

Jocelyn will be treated as having transferred the land to the family trust for its cost ($750,000), such that no tax consequences will arise for her under the bright-line test. The trust will be treated as having acquired the land on 4 June 2024 for $750,000.

To ensure that the new rollover provisions cannot be used to avoid the application of the bright-line test in situations where it was intended the test should apply, there is also a limitation on the number of times rollover relief can be applied to a property. Rollover relief can only be claimed for a property under the associated person provision once in any two-year period.

Example 8: Limitation on rollover relief

Following the transfer from Jocelyn in Example 7 above, in June 2025 the trustees of the trust resolve to transfer the residential land to Jocelyn's sister, who plans to renovate and sell it. Jocelyn's sister has also been a beneficiary of the trust since it was established.

As a beneficiary of the family trust, Jocelyn's sister is associated with the family trust. Jocelyn's sister has been associated with the trust for more than two years. However, because the land has been transferred in a transaction that was subject to rollover relief within the last two years, the associated person rollover relief provision cannot be used again. Therefore, this transaction would be subject to the bright-line test.

The current rollover relief rules for family trusts and changes in capacity in section CB 6AB will be repealed. The current rollover relief rules for Māori authority trusts and Treaty of Waitangi settlements (currently located in sections CB 6AC and CB 6AE) will be retained. However, they will be rewritten and relocated to new subpart FD with the new associated person rollover relief rule. The other current rollover relief rules will also be retained.

0% depreciation rate for buildings

Removing depreciation deductions for buildings

Clauses 21BC, 22D, 22E, 22F, 22G, 22H, 22I, 22J, 22K, 25B, 25C, 25D, 59(6), (6B), (10BA), (11BA), (12BA), (13G) and (15CB), 64C, and schedule 1B

Summary of proposed amendment

As part of its Mini Budget in December 2023, the Government announced its intention to remove depreciation deductions for commercial and industrial buildings. These proposals give effect to that announcement.

Effective date

The proposed amendment would be effective for the 2024–25 and later income years.

Background

In 2010, with effect from the 2011–12 income year, the ability to claim depreciation deductions for long-lived buildings was removed. Building depreciation was reintroduced in 2020 for non-residential buildings with effect from the 2020–21 income year. It is proposed that the ability to claim depreciation deductions for non-residential buildings should be removed again with effect from the 2024–25 and later income years.

The proposal is to return to the pre-2020 settings when building depreciation was last set at 0%. The 0% rate means that buildings will remain depreciable property and historical depreciation deductions remain recoverable when the building is disposed of.

The 0% rate will apply to buildings with an estimated useful life of 50 years or more. The estimated useful life of a building is determined on a whole-of-life rather than remaining-life basis. The Commissioner of Inland Revenue (the Commissioner) will not be able to set special depreciation rates for these buildings.

A new transitional provision for commercial fit-out will be made available for buildings acquired in or before the 2010–11 income year. These building owners were previously provided with the ability to separate an amount representing the cost of commercial fit-out from the building's adjusted tax value, under former section DB 65 of the Income Tax Act 2007, so the fit-out could continue to be depreciated. A new provision (section DB 65B) is proposed to allow these owners to continue to do this. The main change from the previous provision is that depreciation deductions for fit-out will be calculated using a straight-line rate of 1.5% (rather than the 2% rate used in the original provision).

An additional proposed change to the former settings would require that deductions taken under former section DB 65 and new section DB 65B would be included when calculating depreciation recovery income for buildings sold from 1 April 2024.

Key features

The key features of the proposed amendment are:

- The depreciation rate for all buildings with an estimated useful life of 50 years or more would be set at 0%. The 0% rating means that buildings would remain depreciable property and historical depreciation deductions would remain recoverable when calculating depreciation recovery income.
- The 0% rate would apply to buildings regardless of when the building was acquired. The estimated useful life is determined on a whole-of-life rather than remaining-life basis.
- The ability of the Commissioner to set special depreciation rates in section EE 35(2) would be amended to make special depreciation rates unavailable for long-lived buildings.
- Owners of a building acquired in or before the 2010–11 income year would be able to deem a proportion of the building's adjusted tax value as the cost of commercial fit-out and continue to depreciate the fit-out separately under new section DB 65B.
- Deductions taken under former section DB 65 and new section DB 65B would be included when calculating depreciation recovery income for buildings sold from the 2024–25 income year.
- The rules for grandparented structures would be reintroduced with retrospective effect from 1 April 2020.
- Provisions relating to special excluded depreciable property, for buildings acquired in the 1992–93 income year, would be reintroduced.

Detailed analysis

Annual rate for buildings with long estimated useful lives

It is proposed that sections EE 31, EE 61, EZ 13 and EZ 14 be amended to provide that buildings with an estimated useful life of 50 years or more would have an annual depreciation rate of 0% for tax purposes. This 0% rate is a statutory rate and would override the rates set by determination.

An item's estimated useful life is the estimated useful life for that type of item, as set out in a determination issued by the Commissioner. When determining an item's estimated useful

life, a "whole of life" approach is taken. For example, if a person purchases a secondhand item with an estimated useful life of 50 years, its estimated useful life will still be 50 years, regardless of how old the item actually is.

Buildings will still be depreciable property, but with a 0% annual depreciation rate. This means that the other depreciation provisions, such as those providing for depreciation recovery still apply.

No special rates for buildings

Special depreciation rates are granted in situations where a specific item's economic depreciation rate is either faster or slower than the rate set by the Commissioner. It is proposed that section EE 35(2) be amended so that special depreciation rates would not be able to be set for buildings. The Commissioner would continue to be able to set provisional depreciation rates for buildings with an estimated useful life of less than 50 years.

Definition of a building

The Bill as introduced includes a definition of "building". This definition confirms that a building includes part of a building where the building is separated into unit titles.

It is proposed that the definition of "building" in the Bill be amended to exclude commercial fit-out. This will ensure that the value of items of commercial fit-out do not form part of the value of a building for the purposes of the tax depreciation rules and allows commercial fit-out to continue to be depreciated.

It is also proposed that the definitions of "residential building" and "non–residential building" contained in section YA 1 be repealed because they are no longer necessary.

The Commissioner's view on the "meaning of "building" is set out in Interpretation Statement IS 22/04 *Claiming depreciation on buildings*.

Commercial fit-out

While it is proposed that the depreciation rate for long-life buildings would be 0%, the depreciation rate for items used in, but not part of, these buildings would not be changed, and they would continue to be depreciated separately from the building itself. This includes commercial fit-out. As stated above, non-structural commercial fit-out would be expressly excluded from the definition of a building.

When the depreciation rate for commercial buildings was set to 0% in 2010, former section DB 65 was introduced to allow building owners who had not previously recorded commercial fit-out separately, to treat as fit-out up to 15% of the building's tax book value at the end of

the 2010–11 income year. Taxpayers who opted to use this rule could then depreciate their fit-out at the previous straight-line building depreciation rate of 2%.

The Amendment Paper proposes to reintroduce this rule for buildings acquired in or before the 2010–11 income year. The rule will not be available for buildings acquired after the 2010–11 income year where it has been more common to depreciate fit-out as a separate item. Taxpayers that acquired a building in the 2020–21 to 2023–24 income years and chose to depreciate fit-out as part of the building, can make an application under section 113 of the Tax Administration Act 1994 requesting that the Commissioner amend their assessments, so that fit-out acquired with the building can be depreciated separately. Taxpayers will need to have market valuations to determine the value to be attributed to the items of fit-out.

The proposed annual deduction would be 1.5% of the "starting pool". This is equivalent to the straight-line rate for buildings in the 2023–24 income year, and the straight-line rate that currently is being applied to this fit-out. It is proposed that the "starting pool" value would be the same amount as used for former section DB 65, being 15% of the building's adjusted tax book value for the 2010–11 income year, less the adjusted tax value as at the end of the 2010–11 income year of all items of commercial fit-out that were acquired after the building was acquired and depreciated separately. For this purpose, "building" is defined in section YA 1 as including commercial fit-out acquired as part of the building that has not been depreciated separately.

Proposed section DB 65B(5) provides a formula for determining the remaining value (similar to the adjusted tax value of a depreciable asset) of the fit-out. This is necessary because proposed new section DB 65B sits outside the ordinary depreciation rules. Where the remaining value allocated to the fit-out is less than 1.5% of the starting pool, section DB 65B(4) clarifies that the deduction for that year would be limited to the remaining value.

The remaining value of the fit-out would be calculated by deducting the following amounts from the starting pool:

- the total amount of all deductions allowed under former section DB 65
- the total amount of all deductions allowed under new section DB 65B, and
- an amount representing the imputed deductions that would have been allowed under section DB 65B if it had existed for the 2020–21 to 2023–24 income years. This is calculated using the formula: (1.5% x starting pool) x 4. This amount is a proxy for the depreciation deductions relating to the fit-out that have been taken as part of depreciating the whole building during this period.

Example 9: Commercial building owned since 2009 – section DB 65 deductions

Company ABC acquired a warehouse on 1 April 1999 for $1,000,000. Items of commercial fit-out within the building were not separately identified and depreciated

at the time the building was acquired. Twelve months later a refurbishment of the warehouse was completed. The refurbishment was itemised, and depreciation was applied to the various items of commercial fit-out.

At the end of the 2010–11 income year the adjusted tax book value of the warehouse is $640,000 and the adjusted tax book value of the associated commercial fit-out is $64,000.

The starting pool value is:

- (15% × 640,000) − 64,000 = $32,000

Therefore, the annual deduction for the 2024–25 income year is:

- $32,000 × 1.5% × 12/12 = $480

The remaining value of the fit-out at the end of the 2024–25 income year is calculated by deducting the following amounts from the starting pool value:

- the deductions made under former section DB 65
- the imputed deductions for the years 2020–21 to 2023–24
- deductions made under new section DB 65B.

Company ABC claimed the annual deduction for each of the years 2011–12 to 2019–20 under former section DB 65 amounting to:

- $640 × 9 = $5,760

If section DB 65B had existed from 2020 and Company ABC continued to claim deductions for fit-out at the building rate, its total deductions for the 2020–21 to 2023–24 income years (imputed deductions) would amount to:

- $32,000 × 0.015 x 4 = $1,920

Therefore, the remaining value of the fit-out at the end of the 2024–25 income year is:

- $32,000 − $5,760 − $1,920 − $480 = $23,840

When the annual deduction is more than the remaining value allocated to the fit-out for a given income year, Company ABC can take a final deduction amounting to the remaining value of the fit-out.

Fit-out deductions included when calculating depreciation recovery income

Depreciation recovery income arises if the amount received for the sale of the building (or treated as received when the use changes) is greater than the adjusted tax value of the

building. However, the amount of depreciation recovery income cannot be more than the total amount of depreciation loss that was available to the person for the building.

It is already the case that deductions under former section DB 65 are taken into account in determining the adjusted tax value of a building under section EE 60(1). It is proposed that this section will be amended to also take into account deductions taken under new section DB 65B.

In addition, it is proposed that deductions taken under former section DB 65 and new section DB 65B would be included as part of the building's depreciation loss. This change would apply to all buildings sold in or after the 2024–25 income year.

Example 10: Depreciation recovery income

Company ABC sells the building for $1,010,000 million on 1 April 2025. The adjusted tax value of the building when it is sold is:

> 2010–11 adjusted tax value − building depreciation claimed for the 2020–21 to 2023–24 income year − s DB 65 deductions − s DB 65B deductions = $640,000 − $5,760 − $60,000 − $480 = $573,760

The amount of depreciation recovery income is the lesser of:

- $436,240 being the difference between the sale price and the adjusted tax value when the building is sold, and
- $426,240 being the depreciation deductions on the building ($420,000) plus the deductions taken under section DB 65 ($5,760) and section DB 65B ($480).
- The amount of depreciation recovery income is therefore $426,240.

Grandparented structures

Grandparented structures are specific types of buildings that, prior to an Interpretation Statement issued by Inland Revenue in 2010 (*IS 10/02: Meaning of "building" in the depreciation provisions*), were considered to be structures not buildings. In 2010, special rules were enacted to allow grandparented structures acquired on or before 30 July 2009 to continue to be depreciated as structures rather than buildings.

These rules were inadvertently repealed as part of the reintroduction of building depreciation in 2020. It is proposed that these rules be reinstated with retrospective effect from 1 April 2020. These include:

- reintroducing the definition of "grandparented structure" in section YA 1
- excluding "grandparented structures" from the definition of "building", and

- amending section EE 37(3) so that improvements to grandparented structures made after 30 July 2009 are treated as separate depreciable property.

Special excluded depreciable property

"Excluded depreciable property" is defined in section EE 64. This is property for which an economic rate cannot be set. For these items the person must use the historic rates of depreciation. The annual rate for excluded depreciable property is the rate published by the Commissioner for the 1992–93 income year. The Commissioner has no power to change the rate.

To ensure that buildings that are excluded depreciable property are depreciated at the 0% rate and not the applicable 1992–93 rate, it is proposed that the definition of "excluded depreciable property" in section EE 64 be amended to exclude "special excluded depreciable property", and the definition of "special excluded depreciable property" be reinstated in section EE 67. "Special excluded depreciable property" would be defined as all buildings that are not items listed in schedule 39. Schedule 39, which lists buildings that would not be expected to be long-life buildings and should not be subject to the 0% rate, would also be reintroduced.

Disposals of trading stock at below market value

Disposals of trading stock at below market value

Clauses 12(1B), 19B, 21BB, 21EB, 22C, 27B, 30BAD, 30BAE, 30BAF, 30BAG, 59(15EB) and (15EC), 67BB and 76D

Summary of proposed amendment

To address an overreach of section GC 1 of the Income Tax Act 2007 (ITA), it is proposed to limit its application to the following instances:

- Where trading stock is disposed of to an associated person.
- Where a person disposes of trading stock to themselves for their own use or consumption.
- Where trading stock is not disposed of in the course of carrying on a business for the purpose of deriving assessable income or excluded income, or a combination of both.

The proposed amendment would also ensure section GC 1 does not apply to trading stock disposed of outside the course of business to a donee organisation (whether or not that donee organisation is associated with the person making the disposal). This amendment ensures section GC 1 does not disincentivise charitable giving by businesses.

Several consequential amendments are also proposed.

Effective date

The proposed amendment would take effect for all trading stock disposed of below market value on or after 1 April 2024.

Background

Under the ITA, a business is allowed a deduction for the costs of acquiring, growing or manufacturing trading stock in the year of disposal. Where a business disposes of its trading stock for less than market value, section GC 1 deems the business to have derived income equal to the market value of the trading stock on the date of disposal. The recipient of the trading stock is deemed to have acquired the trading stock at its market value on the date of disposal.

If the market value of the trading stock is greater than the allowable deduction for that stock, a business may have to pay tax on an amount of net income it does not economically derive.

This deemed income rule is appropriate in a number of cases (outlined below under key features). However, we consider that section GC 1 overreaches in relation to disposals that

are made in the course of carrying on a business between non-associated parties. Where prices are agreed at an arm's length a valuation rule is not required.

Section GC 1 also overreaches for disposals that are not made in the course of carrying on a business for the purpose of deriving income and that are donations to donee organisations. The deemed income rule can act as a disincentive to donate, can distort donation behaviour and is widely perceived to be unfair.

In 2021, the Government addressed these two issues by enacting temporary emergency provisions (sections GZ 4 and GZ 5 of the ITA) to support businesses as part of the COVID-19 response. This relief:

- excluded from section GC 1 donations of trading stock to donee organisations and public authorities
- excluded from section GC 1 disposals of trading stock to non-associated parties, and
- removed other donations from the application of section GC 1 and subjected them to a new valuation rule equivalent to cost or opening book value.

This relief addressed the two issues outlined above for times of emergency. However, it is due to expire on 31 March 2024.

Although this relief may be switched on by Order in Council in response to future emergency events, we consider a permanent rule is required to address these long-standing overreach issues. The issues exist whether there is an emergency event or not, although the donation overreach can be more pronounced in times of emergency.

Key features

We propose removing the temporary relief in sections GZ 4 and GZ 5 and replacing it with a permanent change to section GC 1.

The proposed amendments to section GC 1 would limit its application to the following instances:

- Where trading stock is disposed of to an associated person.
- Where a person disposes of trading stock to themselves for their own use or consumption.
- Where trading stock is not disposed of in the course of carrying on a business for the purpose of deriving assessable income or excluded income, or a combination of both.

The proposed amendment would also ensure section GC 1 does not apply to trading stock disposed of outside the course of carrying on a business to a donee organisation (whether or not that donee organisation is associated with the person making the disposal).

A consequential amendment to section FC 1 of the ITA is also proposed to exclude "gifts of trading stock" from the scope of section FC 2, which deems certain disposals to take place at market value and therefore covers the same ground as section GC 1.

Three amendments to the purchase price allocation rules in the ITA are also proposed to clarify their application and address issues arising from their interaction with section GC 1:

- Specifying that section GC 20 (effect of purchase price allocation agreement) overrides section GC 1, unless the relevant section GC 20 disposal is between associated parties for below market value consideration. In this case, section GC 1 would deem the parties to dispose of and receive the trading stock part of the transaction at market value.
- Section GC 21 (purchase price allocation required: no agreement) overrides section GC 1 under the current law, however, an amendment would clarify that section GC 1 still applies where the disposal is between associated parties for below market value.
- Repealing section EB 24 (apportionment on disposal of business assets that include trading stock), on the basis that since the enactment of sections GC 20 and GC 21 it has been redundant.

Detailed analysis

The proposed amendments to section GC 1 limit its application to cases where we consider there is a valid integrity concern or where an adjustment is necessary to reflect general income tax principles.

Associated person disposals

Where trading stock is disposed of to an associated party at below market value, section GC 1 will continue to apply, requiring the transferor to return as income the market value of the trading stock on the date of disposal, and the transferee to enter the equivalent value in their books on acquisition of the trading stock. Without a valuation rule, for example, associated parties could manipulate prices to achieve timing advantages or benefit from a lower tax rate. In this context the application of section GC 1 is a necessary integrity measure.

Trading stock taken for private use

Where trading stock is taken for private use, section GC 1 will also continue to apply under the proposed amendment. The person taking the trading stock for their private use is required to return income equivalent to the market value of the trading stock on the date they take it for their private use (this is considered a "disposal" for the purposes of section GC 1).

Donated trading stock

Where trading stock is donated, there may be a connection between the trading stock expense and the derivation of business income. For example, a donation may be made for promotional or marketing purposes, where there is a nexus between the cost of the trading stock and the income earning activities of the business. Under the proposal, a section GC 1 adjustment will not be required for these disposals because the trading stock is disposed of in the course of carrying on a business.

There are situations where a donation of trading stock will not have any connection with the derivation of business income. For example, when a farmer donates their livestock to a foodbank, on the face of it there is no connection between this donation and the derivation of farm income, although the exact connection between a donation and the derivation of business income will be fact specific. The proposed amendment to section GC 1 clarifies that when trading stock is disposed of outside the course of carrying on a business, a market value adjustment is necessary.

However, a proposed exception to this rule is where trading stock is disposed of to a donee organisation, whether or not the donee organisation is associated with the transferor. Donee organisations are, in most cases, a defined subset of registered charities that significantly benefit New Zealanders. We consider this exception would remove the disincentive to donate for many businesses, while addressing integrity concerns by limiting the exception to donee organisations. The proposed exception means that businesses can donate their trading stock to approved donee organisations without making an adjustment under section GC 1 and therefore claim a net deduction for the cost of their donated trading stock.

Consequential amendment to section FC 1

Current section FC 1 of the ITA outlines a number of types of disposal of property, including a "gift of property" (which includes trading stock), that are subject to a deemed market value adjustment in section FC 2(1) that is identical in effect to the valuation rule in section GC 1. Section FC 2 has the effect of deeming a business that gifts their trading stock (ie, disposes of it for less than market value) as having derived income at market value.

To uphold the policy intent of the proposed amendments to section GC 1, an amendment to section FC 1 is therefore necessary. The proposed consequential amendment would remove gifts of trading stock from the scope of section FC 2 entirely. This would clarify that gifts of trading stock are entirely governed by the rules in section GC 1.

Amendments to the purchase price allocation rules

The purchase price allocation rules interact with section GC 1 to the extent that they determine the price of trading stock disposed of to another party alongside other property.

We propose some minor changes to the rules to clarify their application and align them with the proposed changes to section GC 1.

We propose that section EB 24 be repealed. This section applies when trading stock is disposed of with other assets of a business. It has been superseded by the purchase price allocation rules, which provide a more specific method of apportioning the price between assets depending on whether there is an agreement between the parties.

Current section GC 20 specifies a method for allocating the price between two or more types of property that are disposed of together when there is an allocation agreement between parties. We propose that an override be included in section GC 20 so that where the parties to a disposal are associated, any trading stock is always deemed disposed of for market value. There is no effect on the amount allocated to other items of property. This would ensure that associated parties make a market value adjustment for trading stock even if they add another type of property to their transaction that causes them to fall under the purchase price allocation rules.

Current section GC 21 specifies a method for allocating the price between two or more types of property that are disposed of together where there is no allocation agreement between the parties. Section GC 21 overrides provisions of the Act requiring transfers to occur at market value, meaning that section GC 1 does not deem the trading stock portion of the section GC 21 disposal to occur at market value. To give effect to the policy intent of the section GC 1 changes, this override does not apply where the disposal is between associated parties. Where trading stock is disposed of alongside other business assets for less than market value, section GC 1 now deems the trading stock portion of the disposal to be at market value.

Offshore gambling duty

Offshore gambling duty

Clauses 89E, 89F and 89G

Summary of proposed amendment

Amendments are proposed to the Gaming Duties Act 1971 to introduce a new type of gaming duty, known as offshore gambling duty. It applies to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents.

The offshore gambling duty will be 12% of the offshore gambling profits arising on or after 1 July 2024. The offshore gambling profits exclude amounts from betting on sports and racing because there is an existing requirement to pay "point of consumption charges" to the Department of Internal Affairs on these amounts.

Effective date

The proposed amendments will be effective for offshore gambling profits arising on or after 1 July 2024.

Background

The National Party Tax Plan, endorsed by the Coalition Agreements, commits to a regulatory regime for online casino gambling, to ensure online casino operators pay their fair share of tax.

Currently, the only tax that applies to offshore online casinos is goods and services tax (GST). This means online casinos face significantly lower taxes than New Zealand land-based casinos, Class 4 operators (pokies in pubs and clubs), and online casinos in the United Kingdom and some European countries.

Under the Goods and Services Tax Act 1985 (GST Act) there are existing requirements for non-resident suppliers of remote services of gambling supplied to New Zealand residents to register and return GST on these supplies. The proposed offshore gambling duty will apply to these suppliers of remote gambling services if they are located outside New Zealand. Most of the offshore gambling duty rules have been designed to align with the existing rules for GST on remote services, to allow existing systems and calculations for GST to be adapted to apply the offshore gambling duty.

The main difference from the GST rules is that the proposed offshore gambling duty is calculated by excluding amounts for which the offshore operator is required to pay "point of

consumption charges" to the Department of Internal Affairs. Point of consumption charges are 10% charges on betting on sports and racing by New Zealand residents conducted through offshore operators.

From 1 July 2024, it is proposed that a 12% offshore gambling duty will apply to online gambling provided by offshore operators to New Zealand residents, other than bets placed on sports or racing events (because 10% point of consumption charges already apply to these bets).

Gambling provided by offshore gambling operators will remain subject to GST. The proposed offshore gambling duty will result in offshore gambling operators paying an overall tax rate of about 25% on gross betting revenue.[1] An overall tax rate of 25% would put New Zealand near the midpoint of jurisdictions that impose gaming duties on online casino operators.

Key features

The key features of the proposed offshore gambling duty are:

- It applies to GST-registered persons that are located outside New Zealand to the extent they make supplies of remote gambling services to New Zealand residents.
- The rate of offshore gambling duty is 12% of the offshore gambling profits.
- Offshore gambling profits are calculated as the amounts received from residents, minus the prizes paid to residents, minus any offshore betting amounts.
- Offshore gambling profits are calculated by subtracting any amounts of "offshore betting amounts" on which the offshore operator is required to pay "point of consumption charges" to the Department of Internal Affairs. Point of consumption charges are 10% charges on betting on sports and racing by New Zealand residents conducted through offshore operators.
- If the offshore operator has a negative amount of offshore gambling profits for a return period (because it has a greater amount of prize money paid or payable to New Zealand residents, than the amount of money it has received from residents) it will carry forward this negative amount to offset future offshore gambling profits in its next return periods.

[1] Gross betting revenue is measured by bets received minus prizes paid out. Because GST on gambling is applied to a GST-inclusive amount of consideration, GST is 3/23rds (approximately 13%) of the gross betting revenue. The proposed offshore gambling duty will be 12% of the gross betting revenue.

- The return periods and due dates for the proposed offshore gambling duty provide for the same three-monthly periods and due dates that already apply to non-resident suppliers of remote services in respect of their GST returns.
- The rules for the Commissioner of Inland Revenue (the Commissioner) making an assessment of offshore gambling duty and for recovering any amount of unpaid gaming duty as a debt to the Crown, are identical to the existing rules that apply for casino duty.
- The disputes process, penalties and interest rules that are prescribed by the Tax Administration Act 1994 (TAA) will apply to the offshore gambling duty.

Detailed analysis

Offshore gambling operators and related definitions

The proposed offshore gambling duty applies to **offshore gambling operators** who are defined as registered persons located outside New Zealand who conduct any offshore gambling. Proposed new section 12S(1) of the Gaming Duties Act defines offshore gambling operators along with the other key terms that are used to apply the offshore gambling duty.

Registered persons are persons who are either registered or liable to be registered under the GST Act. An offshore operator is required to register for GST if they make $60,000 or more of taxable supplies in a 12-month period, where taxable supplies include supplies of gambling to New Zealand residents (measured by the amount of money received from residents, minus prize money paid out to residents).

Offshore gambling means any gambling or prize competition that a person who is resident in New Zealand pays an amount of money to participate in through the supply of remote services that are physically performed outside New Zealand.

The proposed offshore gambling duty will not apply to existing online products offered by the Lotteries Commission (operating as Lotto NZ) and TAB NZ. This is because these operators use entities that are located within New Zealand to conduct their online gambling operations. Under the Gambling Act 2003, it is generally illegal for operators who are located within New Zealand to conduct remote interactive (ie, online) gambling, with exceptions for the Lotteries Commission and TAB NZ. However, it will apply to offshore websites owned by New Zealand casinos because this gambling is conducted by entities that are located outside New Zealand.

Remote services are defined using the same definition as how remote services are defined in the GST Act. Remote services are a service, that at the time it is performed, there is no necessary connection between the place where the service is physically performed and the location of the recipient of the service. That is, the service provider and the recipient could be in different locations. This definition includes online gambling services.

Aligning with the GST remote services rules

Most of the proposed offshore gambling duty rules have been designed to align with the existing rules for GST on remote services, to allow existing systems and calculations for GST to be adapted to apply the offshore gambling duty.

Proposed new section 12S(2) of the Gaming Duties Act provides that existing section 8B of the GST Act will be used to determine if a person is resident in New Zealand for the purposes of applying the offshore gambling duty. Section 8B of the GST Act requires the registered person to use at least two pieces of evidence, which do not conflict, that indicate the recipient of the service is a New Zealand resident. They can use the following as evidence:

- the recipient's billing address
- the internet protocol (IP) address of the device used by the recipient, or another geolocation method
- the recipient's bank details, including the account the person uses for payment or the billing address held by the bank
- the mobile country code of the international mobile subscriber identity stored on the subscriber identity module (SIM) card used by the recipient
- the location of the customer's fixed land line through which the service is supplied to them
- any other commercially relevant information.

Under section 8B, the Commissioner also has flexibility to prescribe or agree with the registered person an alternative method to determine a recipient's residence.

Calculating offshore gambling profits

The rate of the proposed offshore gambling duty is 12% of the offshore gambling profits.

Offshore gambling profits are calculated under proposed new section 12T of the Gaming Duties Act by using the following formula:

amounts received from residents − prizes paid to residents − offshore betting amounts

When measuring the “amounts received from residents” and “prizes paid to residents”, it is intended that the offshore gambling operator will be able to use the same values that they calculate for the GST remote services rules. This is because equivalent terms are used in the formula used to determine the amount of consideration in section 10(14B) of the GST Act.

However, a difference from the GST calculation is that the offshore gambling profits are calculated by subtracting “offshore betting amounts”. Offshore betting amounts are the total amount in money on which consumption charges are payable under section 113 of the Racing Industry Act 2020. The offshore betting amounts arise from bets placed by New

Zealand residents on sports and racing events where there is a requirement to pay "point of consumption charges" to the Department of Internal Affairs.

The offshore gambling profits are determined for supplies of offshore gambling for which the "time of supply" under section 9 of the GST Act has occurred for the return period. The GST remote services rules also use the same "time of supply" rules. Under these rules, the supply occurs for each amount received (the bet) on the date on which the first drawing or determination of the corresponding gambling result (or prize competition) commences.

The foreign currency rules in section 77 of the GST Act will apply for determining the New Zealand dollar amounts of offshore gambling profits. This is intended to allow the offshore gambling operators to use the same foreign currency conversions as they already use for GST purposes. Section 77 of the GST Act generally requires amounts of money be expressed in New Zealand dollars at the time of supply. Alternatively, the non-resident supplier (the offshore gambling operator) can make an election to express the amounts in a foreign currency. If they elect to use a foreign currency, they must use one of the methods in section 77(3) to convert the foreign currency amounts to New Zealand dollar amounts and must maintain the same conversion method for at least 24 months unless the Commissioner agrees otherwise.

Example 11: Online casino games only

An offshore gambling operator conducts online casino games that are supplied to New Zealand residents.

In the three-month period between 1 July 2024 and 30 September 2024, it receives $151.5 million of bets from New Zealand residents and these residents have been paid or credited prizes valued at $140 million.

Their offshore gambling profits for the return period are $11.5 million ($151.5 million minus $140 million). The 12% offshore gambling duty applies to the offshore gambling profits.

The operator files a return and pays $1.38 million of offshore gambling duty to Inland Revenue on or before 28 October 2024.

For the same three-month period, the operator files a GST return and pays GST of $1.5 million (3/23rds of the $11.5 million of consideration for the remote services of gambling by New Zealand residents) to Inland Revenue on or before 28 October 2028.

Example 12: Online gambling including sports betting

An offshore gambling operator conducts online casino games, tickets to instant prize competitions and sports betting.

In the three-month period between 1 July 2024 and 30 September 2024, it receives $246 million from bets/ticket sales to New Zealand residents and these residents have been paid or credited prizes valued at $200 million. These amounts include $100 million of sports bets and $70 million of prizes paid on the sports bets. The operator is required to pay point of consumption charges to the Department of Internal Affairs on the $30 million of offshore betting amounts ($100 million minus $70 million) from these sports bets.

Their offshore gambling profits for the return period are:

$246 million − $200 million − $30 million = $16 million

The 12% offshore gambling duty applies to the offshore gambling profits. The operator files a return and pays $1.92 million of offshore gambling duty to Inland Revenue on or before 28 October 2024.

For the same three-month period, the operator files a GST return and pays GST of $6 million (3/23rds of the $46 million of consideration for the remote services of gambling by New Zealand residents) to Inland Revenue on or before 28 October 2028.

For the same three-month period, the operator will pay point of consumption charges of $3 million (10% of the $30 million of offshore betting amounts from the sports bets) to the Department of Internal Affairs.

If the only gambling products that an offshore gambling operator supplies to New Zealand residents (for a return period) are sports and/or racing bets on which they are required to pay point of consumption charges, their offshore gambling profits will be nil. They will still be required to register for the offshore gambling duty and file a return including a nil value of offshore gambling profits for the relevant return period.

If the offshore gambling operator has a negative amount of offshore gambling profits for a return period (because it has a greater amount of prize money paid or payable to New Zealand residents than the amount of money it has received from residents), it will carry forward this negative amount to offset future offshore gambling profits in its next return periods.

Return periods and due dates for return filing and payment

The return periods and due dates for the proposed offshore gambling duty will be the same periods and due dates that already apply to non-resident suppliers of remote services in respect of their GST returns.

The **return periods** are the period of three consecutive calendar months ending on the last day of either March, June, September or December. In other words, they are for quarterly periods with the first period commencing on 1 July 2024 and ending on 30 September 2024.

Proposed new section 12V of the Gaming Duties Act requires that returns for offshore gambling duty must be filed on or before:

- 28 October for the return period and ending on 30 September
- 28 January for the return period ending 31 December
- 7 May for the return period ending 31 March, and
- 28 July for the return period ending 30 June.

Proposed new section 12W of the Gaming Duties Act requires that the offshore gambling duty must be paid to Inland Revenue no later than the relevant due date that the offshore gambling return must be filed for the corresponding return period.

Assessments, challenges, disputes process, penalties and interest

The proposed rules for the Commissioner making an assessment of offshore gambling duty and for recovering any amount of unpaid gaming duty as a debt to the Crown, are identical to the existing rules that apply for casino duty. This is provided for by proposed new section 12X of the Gaming Duties Act.

Similar rules also apply for gaming machine duty, aside from existing section 12K(2) of the Gaming Duties Act, which sets out a joint and several liability rule that only applies to gaming machine duty. Section 12K(2) does not apply to casino duty, nor will it apply to the proposed offshore gambling duty.

The disputes process and challenges rules that are prescribed by Parts 4A and 8 of the Tax Administration Act 1994 (TAA) will apply to the offshore gambling duty.

The tax penalties of the TAA also apply to gaming duties, including the proposed new offshore gambling duty. Existing section 15 of the Gaming Duties Act references the fact that Part 9 (Penalties) of the TAA applies to gaming duty.

Use of money interest applies to unpaid amounts of gaming duty under Part 7 (Interest) of the TAA. This is because the definition of "tax" in the TAA includes gaming duty.

Transitional rule for certain listed services

Transitional rule for certain supplies of listed services

Clause 91QB

Summary of proposed amendment

A transitional rule is proposed to ensure listing intermediaries and operators of electronic marketplaces do not have to account for goods and services tax (GST) on contracts for short-stay and visitor accommodation entered into before 1 April 2024, being the application date of the new GST rules for supplies of listed services.

Effective date

The proposed amendment would take effect on 1 April 2024, and would apply to contracts for taxable accommodation entered into before that date where the supplies are made on or after that date.

Background

Starting 1 April 2024, operators of electronic marketplaces (and, in some cases, listing intermediaries (see below)) will be required to account for GST on supplies of "listed services". These supplies include non-exempt accommodation such as short-stay and visitor accommodation (referred to in this item as "taxable accommodation"). Operators will be liable to account for and pay GST on these supplies to Inland Revenue if an invoice is issued or a payment is received in respect of these services on or after 1 April 2024, as per the standard time of supply rule for GST.

A transitional issue may arise for operators of electronic marketplaces and listing intermediaries because of this timing rule. The problem would arise when an operator of an electronic marketplace takes an accommodation booking before 1 April 2024 for a host or "underlying supplier" who is not registered for GST. In this case, it is likely the price of the accommodation was set on the assumption of GST not applying. This means if neither a payment is received nor an invoice is issued for the supply until after the new GST rules for listed services are in force, the supply will be deemed to have occurred when the new rules are in effect. In the absence of a transitional rule, the operator of the electronic marketplace (or, in some cases, a listing intermediary) would therefore have a GST liability for the supply, even though the price of the accommodation was not set with GST in mind.

"Listing intermediary" would be defined by proposed section 60CB(8) of the Goods and Services Tax Act 1985 (GST Act) as a registered person who lists services referred to in

section 8C(2)(a) of the GST Act on an electronic marketplace on behalf of an underlying supplier who makes those supplies through the electronic marketplace. The proposed definition would require that the person enters into an agreement with the marketplace operator to list or advertise the services provided by the underlying supplier.[2]

Key features

It is proposed that operators of electronic marketplaces (and, if applicable, listing intermediaries) would be able to apply a transitional rule to relieve them of their GST liability for supplies of taxable accommodation in situations where the contract for the services was entered into before 1 April 2024. The transitional rule would be optional for marketplace operators and listing intermediaries to apply.

The proposed transitional rule could be used for a supply of taxable accommodation in circumstances where:

- the supply is made through an electronic marketplace
- the supply is made under a contract entered into before 1 April 2024 (being the application date of the new listed services rules), and
- section 60C(2)(ab) of the GST Act would apply to the supply in the absence of the transitional rule (see further below).

Such supplies are referred to in this item as "transitional bookings".

The proposed transitional rule would provide that the operator of the electronic marketplace (or listing intermediary, as the case may be) may choose to treat section 60C(2)(ab) as not applying to the supply. If the person treats section 60C(2)(ab) as not applying, this would relieve them of the GST liability on the supply, including "switching off" all requirements relating to the flat-rate credit. Any GST liability for the supply would remain with the underlying supplier of the services, who would only be liable to account for and pay GST to Inland Revenue if they are a registered person.

Notification requirements

An additional condition would apply when the underlying supplier of the services has told the marketplace operator (or listing intermediary, if a listing intermediary would be responsible for output tax on the supply) that they are a registered person. In this instance, the marketplace operator or listing intermediary would only be entitled to apply the

[2] This amendment and the other proposed amendments relating to listing intermediaries are not included in the Amendment Paper but were added to the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill when it was reported back to the House by the Finance and Expenditure Committee.

transitional rule if they inform the underlying supplier within a reasonable timeframe that they will not be liable for GST on the transitional bookings and that this liability will remain with the underlying supplier. The marketplace operator or listing intermediary should also take reasonable steps to ensure the underlying supplier has sufficient information within a reasonable timeframe to correctly account for GST on the transitional bookings to Inland Revenue.

There may be situations where a transitional booking is for accommodation that was listed on the electronic marketplace by a listing intermediary, where:

- the operator of the electronic marketplace (if not applying the transitional rule) would be liable for output tax on the supply, not the listing intermediary, and
- the listing intermediary would be responsible for all requirements in respect of the supply that relate to the flat-rate credit, if applicable.

If the marketplace operator in this situation wants to use the transitional rule, it would need to inform the listing intermediary within a reasonable timeframe that it is doing so and provide the listing intermediary with sufficient information for the relevant supplies to be identified. This requirement to notify the listing intermediary would apply regardless of whether the underlying supplier is registered for GST. If the underlying supplier of the services is a registered person, the listing intermediary would need to pass this information on to the underlying supplier within a reasonable timeframe so the underlying supplier can correctly account for output tax on the relevant supplies to Inland Revenue.

If the underlying supplier is **not** a registered person, the listing intermediary would still need the same information from the marketplace operator so the listing intermediary would not incorrectly deduct input tax for the flat-rate credit in relation to the supply and pay the flat-rate credit to the underlying supplier.

Detailed analysis

The transitional rule in proposed new section 85E of the GST Act would apply when:

- the supply is of listed services referred to in section 8C(2)(a)
- the supply is made through an electronic marketplace
- the supply is made under a contract entered into before 1 April 2024
- the time of supply for that supply takes place on or after 1 April 2024
- an operator of an electronic marketplace or a listing intermediary would be treated by section 60C(2)(ab) as making the supply in the course or furtherance of its taxable activity in the absence of the transitional rule
- the person who would be treated as making the supply chooses that the transitional rule applies, and

- if the underlying supplier of the services is a registered person (or, as discussed below, in some cases if a listing intermediary is interposed between the underlying supplier and the operator of the electronic marketplace), the person applying the transitional rule takes reasonable steps within a reasonable timeframe to notify the underlying supplier or listing intermediary of their decision to apply the transitional rule, and to provide the underlying supplier with sufficient information for them to correctly account for GST on the supply.

If the above conditions are met, proposed section 85E(2) would allow the marketplace operator or listing intermediary to treat the services as not having been supplied by them. The transitional rule would be applied by not including the relevant supplies in the 'sales' box of the person's GST return, and by not deducting input tax for the flat-rate credit in respect of these supplies. The person would not need to notify Inland Revenue of their choice to apply the transitional rule, but they would need to keep evidence of their choice for a minimum period of seven years in accordance with the record keeping rules in the GST Act.

Supplies covered by the transitional rule

The above requirement that the supply is of listed services referred to in section 8C(2)(a) of the GST Act means the services are accommodation other than accommodation that is exempt from GST under section 14(1)(c) of that Act.

As outlined above, the transitional rule would only apply if section 60C(2)(ab) would apply in its absence. Section 60C(2)(ab) is a new provision in the GST Act that, as of 1 April 2024, will provide that listed services are treated as supplied by the operator of the electronic marketplace through which the supply of services is made if those services are performed, provided, or received in New Zealand.

Provided certain conditions are met, proposed section 60CB(7) would provide that a "listing intermediary" is treated as the marketplace operator for the purposes of section 60C(2)(ab), meaning that in some instances a listing intermediary (rather than the operator of the electronic marketplace) may be treated as making the supply of listed services. This means the transitional rule could only ever apply if the services would otherwise be treated as supplied in New Zealand by either an operator of an electronic marketplace or a listing intermediary. For instance, it would not be necessary to have the transitional rule apply to supplies by GST-registered underlying suppliers who have opted out of the application of the electronic marketplace rule in section 60C(2)(ab) using one of the available opt-out provisions.

Who can choose to apply the transitional rule

Only the person who would be treated as the supplier of the services if section 60C(2)(ab) applied to the supply would be able to choose to apply the transitional rule. In other words, the transitional rule could only ever be applied by an operator of an electronic marketplace or a listing intermediary, and only if that person would otherwise be treated as making the supply.

How the transitional rule would apply

When such a person chooses to apply the transitional rule, the choice they are making is that section 60C(2)(ab) does not apply to the supply. This means the rules for electronic marketplaces in section 60C (and, if applicable, the rules for listing intermediaries in proposed section 60CB) would not apply to treat the services as having been supplied by the person. Instead, the supplier of the services for GST purposes would be the underlying supplier (that is, the host or property owner who contractually provides the accommodation to the guest).

This means that:

- A person applying the transitional rule would not account for and pay output tax on the relevant supply to Inland Revenue. All requirements related to the flat-rate credit (which will only ever apply if section 60C(2)(ab) applies) would also not apply. This means the person applying the transitional rule would not deduct input tax for the flat-rate credit in relation to the supply and the flat-rate credit scheme would not apply.
- Any output tax liability on the supply of taxable accommodation would remain with the underlying supplier as per the pre-1 April 2024 rules. The underlying supplier would only be liable to account for and pay output tax on the supply to Inland Revenue if they are a registered person making the supply in the course or furtherance of their taxable activity.

A decision by a marketplace operator or listing intermediary to apply the transitional rule would not change the time at which the supply is deemed to occur. A GST-registered underlying supplier who is required to account for GST on the supply because of the transitional rule should therefore account for the output tax in their GST return for the taxable period in which time of supply occurred (being the earlier of when a payment was received or an invoice was issued for the supply).

Notification requirements

In situations where the transitional rule is applied for a supply and the underlying supplier of the accommodation is required to account for and pay GST on the supply to Inland Revenue, the underlying supplier would need to know they are liable for GST on the supply.

A marketplace operator or listing intermediary who wishes to apply the transitional rule would in some situations only be entitled to do so on the condition they take reasonable steps to notify the underlying supplier (or listing intermediary) of this decision. This notification must make it clear that the marketplace operator or listing intermediary will not be liable for GST on the supply, and that this liability will remain with the underlying supplier. Where this requirement applies, the notification must be made within a reasonable timeframe. The marketplace operator or listing intermediary should also take reasonable steps within a reasonable timeframe to ensure the underlying supplier has sufficient information to correctly account for GST on the supply to Inland Revenue.

Meaning of "reasonable steps"

There are two scenarios in which notifying the underlying supplier should be relatively straightforward:

- The first scenario concerns where an operator of an electronic marketplace would, in the absence of the transitional rule, be responsible for output tax on the supply, and there is no listing intermediary involved in the supply.
- The second scenario is where a listing intermediary would, in the absence of the transitional rule, be responsible for output tax on the supply. In other words, the listing intermediary and the operator of the electronic marketplace through which the supply is made have an agreement that the listing intermediary is responsible for output tax on supplies of listed services.

In the above scenarios, the person applying the transitional rule would be required to take reasonable steps to notify the underlying supplier only if the underlying supplier has told them they are GST-registered. As a result, some marketplace operators and listing intermediaries might only want to use the transitional rule for supplies where they are entitled to assume the underlying supplier is not a registered person. This approach would be acceptable, as the transitional rule is intended to be flexible enough to allow marketplace operators and listing intermediaries to apply it for all their transitional bookings or only a subset of them.

The person applying the transitional rule would also need to ensure the information they provide to the underlying supplier is sufficient for the underlying supplier to correctly account for output tax on the relevant supplies. The proposed amendment does not mandate that any specific type of information be provided, just that the information provided is sufficient for the underlying supplier to correctly account for output tax. This is broad enough to include any information the marketplace operator or listing intermediary could share or provide that would enable the underlying supplier to identify the relevant supplies, so that the underlying supplier knows those supplies are the ones they need to account for in their GST return. For example, if the marketplace operator or listing intermediary will not be accounting for output tax on any of the underlying supplier's

bookings taken before 1 April 2024, then they could make sure (in addition to telling the underlying supplier so) that they provide the underlying supplier with the dates those bookings were made, or some other statement or notification that a specific booking was made before 1 April 2024.

Information that is sufficient for the underlying supplier to correctly account for output tax on the supply would also include the price paid by the recipient for the supply. This is the price inclusive of any commissions, mark-ups or fees due to the marketplace operator for their services.

There is a third possible scenario in which the underlying supplier might need to be notified that the person is applying the transitional rule. This scenario would arise where a transitional booking is made for accommodation that was listed on an electronic marketplace by a listing intermediary and, in the absence of the transitional rule:

- the operator of the electronic marketplace would be liable for output tax on the supply, not the listing intermediary, and
- the listing intermediary would be responsible for all requirements in respect of the supply that relate to the flat-rate credit, if applicable.

This scenario (where the marketplace operator is responsible for output tax and the listing intermediary is responsible for all the requirements related to the flat-rate credit) is the default scenario under the proposed rules applying to listing intermediaries. Several conditions (that are not the subject of this item) would need to be met for a listing intermediary to assume the output tax liability on supplies of listed services.

In this default scenario, the marketplace operator (if applying the transitional rule) would be required to take reasonable steps to notify the listing intermediary within a reasonable timeframe that they are applying the transitional rule and to provide the listing intermediary with information that is sufficient for GST-registered underlying suppliers to correctly account for output tax on the supplies. The listing intermediary in this situation should pass the relevant information on to GST-registered underlying suppliers within a reasonable timeframe.

The marketplace operator would be required to take reasonable steps to provide the information to the listing intermediary regardless of whether the underlying supplier of the accommodation is a registered person. This is for two reasons:

1. In this situation, the marketplace operator is unlikely to know anything about the underlying supplier, including whether they are a registered person.
2. Even if the underlying supplier is not a registered person, the listing intermediary would still need the same information from the marketplace operator that, if the underlying supplier was GST-registered, would enable the underlying supplier to identify the supplies for which it should account for GST to Inland Revenue. In this case, the information would enable the listing intermediary to correctly identify for

which supplies it should not deduct input tax for the flat-rate credit. Therefore, the "reasonable steps" requirement to notify the listing intermediary serves a dual purpose.

Meaning of "reasonable timeframe"

A marketplace operator or listing intermediary choosing to apply the transitional rule would need to take reasonable steps to provide the necessary information to GST-registered underlying suppliers and/or to listing intermediaries within a reasonable timeframe. This means the marketplace operator or listing intermediary should make their best endeavours to ensure the information is provided as soon as practicable to allow a GST-registered underlying supplier to account for output tax on the relevant supplies in the correct GST return, before that return is due to Inland Revenue. At the very latest, Inland Revenue would expect the necessary information to be provided in advance of the due date for the April 2024 GST returns (being 28 May 2024).

Example 13: Marketplace operator applies the transitional rule, underlying supplier not registered person

In January 2024, Ben books accommodation at a Whangarei bach for several days in December 2024/January 2025 through Marketplace Co, an operator of an electronic marketplace. Will, the underlying supplier of the accommodation, is not registered for GST because his supplies are below the registration threshold.

The payment terms allow Ben the option of paying for the accommodation in instalments. Ben pays the first instalment in April 2024. No invoice has been issued, so this first payment means time of supply occurs in April 2024 when the new GST rules applying to listed services are in force.

Marketplace Co chooses to apply the transitional rule to this supply of accommodation, meaning that Marketplace Co would not account for GST on the supply. Marketplace Co applies the transitional rule by preparing and filing its GST return consistently with this position (that is, by not including the supply in the 'sales' box of its GST return, and by not deducting input tax for the flat-rate credit). Because there is no listing intermediary involved in the supply and Will has not notified Marketplace Co that he is a registered person, Marketplace Co is not required to take reasonable steps to notify Will of the decision to apply the transitional rule.

Example 14: Reasonable steps requirement, no listing intermediary involved

In November 2023, Martin books accommodation at an Auckland bed and breakfast for one night in September 2024 through Marketplace Co. Graeme’s Bed and Breakfast, the underlying supplier of the accommodation, is registered for GST.

The payment terms allow Martin to pay in full when he checks in at the bed and breakfast, which he will end up doing. As of April 2024, no invoice has been issued for the supply.

Marketplace Co intends to apply the transitional rule to all bookings made on its website before 1 April 2024 where time of supply will occur on or after 1 April 2024. This includes the booking made by Martin in November 2023.

In early April 2024, Marketplace Co provides communications to Graeme’s Bed and Breakfast explaining that Marketplace Co will not be accounting for and paying GST on bookings taken before 1 April 2024 to Inland Revenue, and that GST on these bookings remains the legal responsibility of Graeme’s Bed and Breakfast. The date on which Martin’s booking was made is visible to Graeme’s Bed and Breakfast via the Marketplace Co platform, so Graeme’s Bed and Breakfast knows that it is required to include the supply in its GST return for the taxable period in which time of supply occurs (being when Martin pays upon checking in at the bed and breakfast if no invoice is issued before then).

Marketplace Co has taken reasonable steps within a reasonable timeframe to notify Graeme’s Bed and Breakfast of the decision to apply the transitional rule and to ensure they have sufficient information to correctly account for GST on the supply. Marketplace Co is therefore entitled to apply the transitional rule for the supply.

Example 15: Marketplace operator takes reasonable steps to notify listing intermediary and underlying supplier

Jacob, a non-GST registered owner of a bach in Timaru, uses a listing intermediary to deal with the day-to-day management of his bach and to list it for short-term rental on the Marketplace Co website. In March 2024, a booking for a stay occurring at the bach for three nights in July 2024 is received through the Marketplace Co platform. Payment for the booking is not made until April 2024 and no invoice is issued before that, so time of supply is deemed to occur in April 2024.

In early April 2024, Marketplace Co provides communications to the listing intermediary explaining that Marketplace Co will not be accounting for and paying GST on bookings taken before 1 April 2024 to Inland Revenue, and that GST on these bookings remains the legal responsibility of the property owners or accommodation hosts. In these communications, Marketplace Co advises the listing intermediary that this information will need to be passed on to GST-registered property owners so they can comply with their GST obligations. Marketplace Co also advises the listing intermediary that other relevant information that the GST-registered property owners will need to identify the bookings made before 1 April 2024 should be passed on to them, such as the dates the bookings were made (which is information that is accessible to the listing intermediary through the Marketplace Co platform).

Marketplace Co has taken reasonable steps within a reasonable timeframe to notify the listing intermediary of the decision to apply the transitional rule and to ensure the GST-registered owners of properties listed on the platform by the listing intermediary have sufficient information to correctly account for GST on the supplies.

Because Jacob is not a registered person, the listing intermediary does not need to pass the information provided by Marketplace Co on to him. However, because Marketplace Co notified the listing intermediary that any GST liability for the transitional bookings will remain with the property owners (instead of those supplies being subject to the new GST rules for listed services) and has provided sufficient information to the listing intermediary to enable these bookings to be identified, the listing intermediary knows it should not deduct input tax for the flat-rate credit on the supplies.

Double tax agreement source rule

Double tax agreement source rule

Clause 61

Summary of proposed amendment

The proposed amendment would clarify the proposed exclusion from the double tax agreement (DTA) source rule for technical services fees that is currently in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Bill (the Bill).

Effective date

The proposed amendment would be effective for income years commencing on or after 1 July 2018.

Background

Non-residents are only taxed on their New Zealand-sourced income. The DTA source rule in section YD 4(17D) of the Income Tax Act 2007 deems an item of income to have a source in New Zealand if New Zealand has a right to tax that income under a DTA.

There are several exceptions to the DTA source rule that ensure income is not taxed where the income's connection with New Zealand is tenuous and New Zealand did not anticipate collecting tax on that income.

The Bill proposes two further exceptions to the DTA source rule to address two identified instances of overreach. One of these exceptions is for fees for technical services provided by a non-resident to a New Zealand customer.

However, the proposed drafting in the Bill requires further clarification to ensure that the exclusion captures the breadth of transactions in the nature of "technical services fees" that could be deemed to have a source in New Zealand under a DTA. This was recommended by the Finance and Expenditure Committee in response to a submission on the Bill, however, the amendment made in response to this recommendation did not fully capture the intended change.

Key features

The proposed amendment would broaden the reference to "technical services fees" to "fees for technical, management or similar services". This would ensure that this broader category of fees is excluded from the DTA source rule and the resulting tax overreach.