DEPARTMENTAL REPORT

Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill

Departmental report to the Finance and Expenditure Committee on submissions on the Bill

- Generic response to emergency events
- Crypto-Asset Reporting Framework
- Amendments to Common Reporting Standard
- Qualifying recognised overseas pension schemes
- Other policy items
- Remedials
- Miscellanous submissions
- Matters raised by officials

Note that the final wording of any provision that is the subject of a recommendation in this report is subject to advice from legislative counsel. Legislative counsel may make other minor or technical changes to improve the workability of the Bill and the clarity of the drafting.

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Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill – departmental report on the Bill

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Minor editorial changes have been made to this Departmental Report after presentation to the Finance and Expenditure Committee and before publication on Inland Revenue's Tax Policy website. These changes do not affect the content of the report.

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Issue: Support for introducing generic response to emergency events

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, Jim Gordon Ltd, KPMG, New Zealand Taxpayers' Union, Office of the Privacy Commissioner, PwC)

Introducing a mechanism that would allow a set of tax relief measures to be activated through an Order in Council when an emergency event occurs will create a more efficient process and provide certainty for taxpayers.

Recommendation

That the submission be noted.

Issue: Support for tax relief measures

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, Jim Gordon Ltd, Office of the Privacy Commissioner, PwC)

Submitters indicated support for the tax relief measures included in the Bill. The proposals comprise measures used during past emergency events, such as the 2011 Canterbury earthquakes and the 2023 North Island flooding events.

Recommendation

That the submission be noted.

Issue: Support for step-down approach

Submission

(Chartered Accountants Australia and New Zealand)

Submitters agreed with the step-down approach to activate tax relief measures. The step-down approach means that tax relief measures that were previously implemented through primary legislation will now be activated through an Order in Council. Use-of-money interest (previously an Order in Council measure) will be at the Commissioner's discretion.

Recommendation

That the submission be noted.

Issue: Support for biosecurity measures

Submission

(Jim Gordon Ltd)

The Mycoplasma bovis outbreak illustrated the need for tax legislation to allow the spreading of taxable income generated from the forced sale of breeding livestock valued in the national standard cost (NSC) scheme or self-assessed costs (SAC) scheme. NSC and SAC costs for homebred livestock are almost always well below market value (as they should be for a cost-based regime), so a disposal at market value will result in taxable income.

Mycoplasma bovis-affected farms had to dispose of all their livestock and were reimbursed for this at market value. When the livestock was store or fattening livestock, the current Income Tax Act 2007 (ITA) provisions could adequately spread the taxable income generated by the forced sale.

However, when the sale was of breeding livestock, there was no way of spreading the taxable income generated by the forced sale to match it against the replacement livestock. Accordingly, special Mycoplasma bovis tax provisions were enacted to allow a spread of income to achieve the matching.

Proposed new section FP 16 of the ITA makes these provisions generic. This proposal protects against future biosecurity outbreaks.

Recommendation

That the submission be noted.

EMERGENCY RESPONSE MECHANISM

Clauses 8, 11, 17, 18, 20, 27(1), 28, 30, 44, 45, 53, 105(2), (8), (11), (13), (15), (19), (29) and (30), and 147

Issue: Support for emergency event definition

Submission

(Chartered Accountants Australia and New Zealand)

The submitter agrees with the decision to adopt an inclusive definition of "emergency event" and supports the inclusion of technological failure as a potential cause of an emergency event.

Recommendation

That the submission be noted.

Issue: Automatic triggering of provisions

Submission

(Chartered Accountants Australia and New Zealand)

a. The Government should consider, in the future, allowing some provisions to be automatically triggered by a government response declaring an emergency. However, it is understood that the Government wants to retain control of the process, particularly because these are new provisions.

b. The process should be reviewed after it has been used two or more times to assess whether there are some rules that could be triggered automatically on declaration. For example, an extension of time for filing in certain circumstances.

Comment

a. There are risks associated with changing Inland Revenue's emergency response from primary to secondary legislation in that it delegates power from Parliament to the Government. A key trade-off is between the efficiency of implementing tax relief and retaining government discretion in decision-making. The proposals manage this risk by requiring an Order in Council that would still require Ministerial agreement as to which, if any, measures should be activated in a specific emergency. Our proposals would supplement the existing legislation, so the risk is low.

Automatic triggering of some or all the measures would remove Ministerial discretion from the emergency response, which given the discretionary nature of most of the measures is not appropriate.

Further, it assumes an automatic response to an emergency event is appropriate. There are some types of emergencies when the measures would not need to be triggered. Officials are of the view that each tax relief measure should be selected as appropriate. An emergency event would simply set the boundary as to what events might ultimately lead to activation of tax measures but would not guarantee activation. This also manages expectations that the measures would be applied after every emergency event when that may not be necessary.

b. Officials agree that the generic response package is likely to be subject to refinement over time, informed by the experience gained from future emergency events to ensure the package of measures continues to be fit-for-purpose. As part of its process for responding to emergency events, Inland Revenue periodically reviews whether the measures it employs are the most appropriate.

Recommendation

a. That the submission be declined.

b. That the submission be noted.

Issue: Emergency event definition too narrow

Submission

(Deloitte, EY)

The scope of the proposal is too narrow. Taxpayers can suffer as much from region-wide cyclones as from localised events, and emergencies can encompass many more scenarios than the Bill commentary discussion underpinning these proposals allows.

The proposals that would allow taxation rollover relief for depreciation recovery income in the event of a declared emergency should also be:

- extended to any other situation, such as a major fire on a building site, when the taxpayer receives compensation, and
- incorporated into the general depreciation rules that apply to depreciation recovery income arising from receipt of compensation.

This would be a more equitable approach and would reduce compliance costs when there are protracted progress payments and recovery expenditures. Specifically, for all taxpayers who receive compensation following events that cause damage, this principle should apply anytime section EE 52 of the Income Tax Act 2007 (ITA) applies, rather than only for qualifying emergency events. This could be achieved by removing proposed new section FP 8 of the ITA and instead incorporating it as a subsection within section EE 52. (*Deloitte*)

EY do not perceive a broader scope to carry a materially higher risk for the Government, given most of the measures require an Order in Council to activate. The Commissioner should be given additional flexibility to respond with the same (or similar) relief to emergencies that are more localised (such as a factory fire or office flood) that impacts only one or a small number of taxpayers. Restricted definitions and references to civil defence legislation should therefore be supplemented with another category of crisis to allow additional flexibility. (*EY*)

Comment

From a tax policy perspective, creating a generic response for emergency events raises questions about the fairness and integrity of the tax system. In theory, a person that has their factory burnt down should have the same tax relief as someone who lost theirs in a widespread flood. Conceptually, these can be similar circumstances leading to depreciation recovery income and, therefore, should be treated the same by the tax system. This argument could also potentially apply to some of the other measures in the proposed set of generic measures.

However, there are other tax policy reasons for limiting tax relief to declared emergencies. It would be difficult to define and substantiate the scope of what would qualify as an emergency under the Deloitte option. It would effectively leave it to the taxpayer to self-assess an emergency, raising potential compliance issues as well as potential uncertainty for taxpayers. An emergency in such cases would essentially become any external event that irreparably damaged an asset. It would also differ from how other government departments define an emergency.

EY is suggesting a slightly narrower application than Deloitte in that the Commissioner would have a discretion over what events qualified. Officials would note that the current proposal is already wide enough to potentially cover localised emergencies so that we do not consider that additional flexibility is needed. Using an Order in Council process or the Commissioner’s discretion to provide wider application for very localised emergencies may limit the associated risks of a broad provision, but it could become very unwieldy/inefficient.

Therefore, the focus at this stage is on declared emergency situations.

Recommendation

That the submission be declined.

Issue: Additional flexibility required

Submission

(EY)

Additional flexibility should be given to all kinds of emergencies, not just those that focus on climatic impacts. For example, the rules should contemplate relief if records are lost due to a cyber-attack, or if business is disrupted due to a technology outage.

Climatic events such as cyclones, earthquakes and floods are not the only type of crisis or emergency that can disrupt businesses. Technology failure or disruption, including from cyber-attack or power outage, should equally be considered. As demonstrated by the recent CrowdStrike incident, we are now globally vulnerable to system failures. Reliance on technology, including artificial intelligence, is only going to increase in the future. The Government should have the same (or similar) tools available to respond to these sorts of crises when conditions warrant their use.

Comment

The proposal's definition of emergency event goes beyond climatic events. Information lost in a cyber-attack or technological failure would qualify for the emergency response as it comes under section 4 of the Civil Defence Emergency Management Act 2002. If a local or national emergency is declared under that Act for such an event, the proposals allow for tax relief to be considered.

Recommendation

That the submission be declined.

Issue: Emergency event definition too broad

Submission

(Legislation Design and Advisory Committee)

As currently drafted, the sole criterion for the exercise of the regulation-making power under section 6J is the existence of an emergency event. An "emergency event" is defined as an emergency (as defined in section 4 of the Civil Defence Emergency Management Act 2002) that is either:

- declared a state of emergency under the Civil Defence Emergency Management Act
- subject to a power exercised under section 121 of the Biosecurity Act 1993, or
- subject to a direction made under section 122 of the Biosecurity Act.

It should be explored whether an alternative or additional mechanism is needed to "turn on" the regulation-making power as declarations under the Civil Defence Emergency Management Act and use of biosecurity powers are inappropriate mechanisms, by themselves, to trigger tax relief.

- A declaration can be made at a local or national level, and there is wide variation in how and when different local authorities use declarations.
- Declarations are designed to provide emergency management groups with access to emergency powers to keep people safe. They are not indicative of the severity of, the damage likely to be caused by, or the economic cost of an emergency.
- There will be a wide range of situations when powers are exercised under section 121 or 122 of the Biosecurity Act 1993, and it is not clear when exercising those powers would qualify as an "emergency event".

Making regulations solely on the existence of an emergency event has the potential to create inequitable outcomes because similar scenarios could attract different tax treatment solely based on a decision to declare an emergency or the use of a Biosecurity Act power.

Comment

Inland Revenue are not the experts in determining what qualifies as an emergency event. Accordingly, officials used the Civil Defence Management Act and sections 121 and 122 of the Biosecurity Act in the definition of an emergency event because they are identified/defined in statute. That approach was supported by the stakeholder groups with whom we consulted. However, it is important to note that the legislation is not automatically triggered simply by an emergency event having been declared under the Civil Defence Emergency Management Act or powers exercised under the Biosecurity Act.

Instead, the draft legislation provides Ministers with the discretion to decide when to recommend to the Governor-General that an Order in Council be made. Normal government decision-making processes would then apply in making that decision, including the consideration of advice provided by officials.

This approach is not inherently inequitable because equity is a standard factor that Ministers consider as part of the standard decision-making process.

This proposed process is designed to balance the need for legislative safeguards with providing flexibility to respond quickly when needed. Adding prescriptive criteria, as suggested by the submitter, is unlikely to lead to better decision-making and could result in delays as some information, for example, on the full economic impact of an emergency, is often not known until well after the event.

Recommendation

That the submission be declined.

Issue: Precise definition of “purposes”

Submission

(Legislation Design and Advisory Committee)

The Bill should clearly and precisely define the purposes for which tax relief should be triggered.

The Bill does not currently outline the purposes for which the regulations that trigger the tax relief measures would be made. It is therefore unclear what is intended to trigger the use of the tax relief measures.

Not every “emergency event” will justify the use of these powers. The severity of the emergency event and/or its impact on incomes will presumably be relevant factors. However, this is not clear in the drafting of the Bill. It is also unclear whether these are the only factors or whether some wider policy consideration is required.

The current threshold of an emergency event alone is inadequate.

Comment

Given the variety of event declarations, this submission is suggesting that the discretionary process be codified, by specifying the criteria that would be considered, to ensure equity across emergency events. Inevitably, the process of deciding on the appropriateness of activating a measure for a particular event involves a measure of judgement. We are concerned that the criteria could be either too vague to be meaningful or could act as an impediment to timely activation of the relevant measures.

The underlying reason for applying measures such as rollover relief and income spreading is that the emergency event has resulted in unexpected taxable income for a material number of taxpayers. Not all declared emergencies would meet this implicit criterion. It is somewhat different from focusing on the economic impacts of an emergency that would likely be far more varied. However, codifying this implicit criterion would limit the efficiency of implementation because it could require waiting for data or forecasting to lessen the risk that a decision could be challengeable on statutory interpretation grounds.

Therefore, officials consider:

- The criteria are more appropriate as Ministerial discretions, rather than legislative requirements that could be overly prescriptive in a variety of emergency events.
- The appropriate checks and balances for the proposal in the Bill can be achieved through requiring Ministerial and Cabinet approval as part of normal government decision-making processes for all measures that were previously made through primary legislation.

Recommendation

That the submission be declined.

Issue: When does an emergency occur

Submission

(EY, Legislation Design and Advisory Committee)

There are references in the Bill to "the income year in which the emergency first occurred" and the "first day of the emergency event". The first day of an emergency is not necessarily the date that a state of emergency is declared.

The current framing suggests that an emergency event will have a clearly identifiable start date, which may be the case for an earthquake, but other emergency events (for example, cyclones, flooding or coastal erosion) will have less identifiable starting points). This is particularly relevant in respect of the powers or directions made under the Biosecurity Act 1993.

The proposed provisions are based on the Severe Weather Emergency Recovery Legislation Act 2023, but that Act explicitly defines the dates of the severe weather to which the Act applied. The current Bill provides no such clarity.

Therefore, consideration should be given to whether it would be feasible for the mechanism used to turn on the triggering power to also state the first date of the emergency event. (*Legislation Design and Advisory Committee*)

Provisions that apply from the "the first day of the emergency event" may work well for a series of earthquakes or floods that occur over a period of time. For example, with the Canterbury Earthquakes the damage was not entirely sustained at the first earthquake. (*EY*)

However, the "start date" may not always be readily available or universally agreed, which could create unnecessary complexity. (*EY*)

Comment

The proposed measures, if activated, would generally apply from the income year that includes the emergency event. Officials agree the reference to the "first day" should be removed given the uncertainty it could create. Instead, a start date for the relevant emergency event could be specified (if it is not already specified in another piece of legislation) through the proposed regulation-making power that allows the period for which the provisions apply to be chosen.

Recommendation

That the submission be accepted.

INFORMATION SHARING

Clause 153

Issue: Support for information-sharing proposal

Submission

(Office of the Privacy Commissioner)

The proposed approach of aligning new powers for emergency information sharing to the existing provisions under the Privacy Act 2020 is welcomed.

The proposed approach of aligning the requirements to trigger this information sharing to the existing provisions under the Civil Defence National Emergencies (Information Sharing) Code 2020 issued under the Privacy Act is also welcomed.

Aligning these conditions allows for consistent processes and standards to apply both under general privacy law and the more specific confidentiality requirements that apply to Inland Revenue in this context.

The Office of the Privacy Commissioner is ready to work with officials and the broader emergency response sector to ensure the Civil Defence Code remains fit-for-purpose. However, on current resourcing, it may be difficult for the Office to prioritise any work on this Code in the near term.

Comment

The proposed amendment to schedule 7 of the Tax Administration Act 1994 (TAA) would specifically override the general confidentiality provisions under section 18 of that Act. This override would enable information sharing under the Civil Defence Code, which is needed to enable Inland Revenue to supply information to other government agencies that are providing assistance to persons seriously impacted by an emergency event.

Under the proposed amendment, making regulations to override section 18 of the TAA and to enable information sharing would require that a state of national emergency had been declared under the Civil Defence Emergency Management Act 2002.

Recommendation

That the submission be noted.

Issue: Against information-sharing proposal

Submission

(New Zealand Taxpayers' Union)

The information-sharing powers proposed for Inland Revenue are not appropriate. Inland Revenue holds personally sensitive data on all taxpayers and there is no need for this to be disclosed to anyone else after a natural disaster.

Comment

The proposal would put Inland Revenue in the same position as other government agencies with safeguards set out under legislation, legal contract and the Civil Defence National Emergencies (Information Sharing) Code 2020.

Inland Revenue is not required to share information; it is at the discretion of the Commissioner of Inland Revenue to assess whether information sharing is appropriate after a qualifying national emergency event.

The sharing of information is to assist taxpayers. The information sharing could include providing phone numbers and addresses for taxpayers who are not contactable following an emergency event. This information could support wellness checks or delivery of assistance. A prime example of when information was unable to be shared in a previous emergency event was when Inland Revenue could not provide contact information to the Ministry of Primary Industries when it was providing grants following the 2023 North Island floods.

Similar information sharing was used during COVID-19 when a specific legislative override was provided.

The proposal in the Bill is supported by the Privacy Commissioner, and Inland Revenue is committed to ongoing compliance with the Civil Defence National Emergencies (Information Sharing) Code 2020.

Recommendation

That the submission be declined.

ADDITIONAL MEASURES SUGGESTED

Issue: Cash flow and other income-smoothing measures

Submission

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

The emergency response provisions do not contain adequate measures to provide cash-flow support for impacted taxpayers/businesses. The submitters encourage the consideration of ideas to provide such measures. Current fiscal constraints may mean the Government may not look to use such measures in the short term, but this should not preclude the work being done now rather than once a major emergency has occurred. Officials should be asked to consider and design options that could be switched on should future fiscal settings allow. (*EY*)

The Government should also include an optional income-smoothing measure as part of the permanent disaster recovery provisions. It is preferable to enable a business to "self-help", including by way of utilisation and removal of available losses, rather than to provide support with no requirement for repayment. (*Chartered Accountants Australia and New Zealand*)

Specific cash-flow support mechanisms that should be considered/developed further are:

- Designing/refining a tax loss carry-back mechanism that would allow a business impacted by an emergency event to offset its current year losses against its prior year taxable income. (*Chartered Accountants Australia and New Zealand, EY, PwC*)
- Another income-smoothing mechanism, for example, a wider version of the Income Tax Act 2007 section EI 8 spread. (*Chartered Accountants Australia and New Zealand*)
- Allowing tax losses to be cashed out. (*EY*)
- Accelerated depreciation for replacement assets. (*Corporate Taxpayers Group, EY*)
- A more flexible tax treatment for government grants. (*EY*)

These measures are discussed further in the following submissions.

Comment

The proposed emergency response provisions improve the process for activating tax relief provisions after emergency events. This allows the Government to select tried and tested tax relief measures through an Order in Council process. Accordingly, the measures included in the Bill are those that have been used in previous major emergency events. This approach still enables the Government to add further measures to the package at a later stage, if necessary, through a subsequent Bill. Any new measures would require policy development and adequate consultation beforehand. Whether resources should be allocated to considering such measures would need to be assessed against the tax and social policy work programme.

Officials do not recommend adding measures to the package that would have a significant fiscal impact if implemented. Moreover, should a comparable event to COVID-19 occur, any additional specific measures for such an event should be subject to Parliamentary scrutiny through emergency legislation.

Recommendation

That the submission be noted.

Issue: Loss carry-back

Submission

(Chartered Accountants Australia and New Zealand, EY, PwC)

Officials should consider designing/refining a tax loss carry-back mechanism that would allow a business impacted by an emergency event to offset its current year losses against its prior year taxable income.

Comment

Conceptually, loss carry-back can be a way to get a better balance between income tax being assessed on an annual basis and the fluctuations that can occur in a company's income over time. Restrictions on cashing out tax losses and shareholder/business continuity requirements for carrying forward tax losses have been traditionally put in place for fiscal reasons and to address integrity concerns.

Loss carry-back can also be an economic stabiliser by providing increased cash flows to businesses during a downturn.

The loss carry-back option was used during the COVID-19 pandemic as a temporary measure to provide cash flow assistance to businesses.[1] As submitters note, there were various reasons for it not being widely used, including design limitations – access to losses depending on the timing of the event relative to the taxpayer's income year, availability of losses generally, and complexity of the rules, particularly in a group context. It was acknowledged at the time that the scheme as designed would provide limited assistance to owner-operated businesses, particularly when prior year profits had been paid out as salary to the owners (a common SME practice). The wage subsidy may have also provided businesses with an alternative cash flow option.

The fiscal cost arises from the immediate refund of prior year tax to the extent of the losses. There would also be an offsetting impact on subsequent income years because the losses would no longer be available for offsetting against profits in later years.

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[1] Australia and the United Kingdom have also provided temporary tax loss carry-back measures.

Officials consider COVID-19 to be a high bar for emergencies rather than the default setting. Therefore, should a comparable event to COVID-19 occur again, any additional specific measures for such an event should be subject to Parliamentary scrutiny through emergency legislation.

Moreover, Parliamentary scrutiny would also seem to be important given a loss carry-back scheme would likely be fiscally expensive and complex. Also, as submitters have acknowledged, it would require further development if it were to be included as a measure. Such work is not on the current tax and social policy work programme. Given it would involve resourcing decisions, any further policy work on a loss carry-back mechanism would need to be considered against work programme priorities.

Recommendation

That the submission be declined.

Issue: Other income-smoothing mechanisms

Submission

(Chartered Accountants Australia and New Zealand)

If loss carry-back is not adopted, the Government should consider developing another income-smoothing mechanism for inclusion in the package of generic measures to assist business cash flow. For example, the income earned in the immediate years following the emergency could be spread. This would be more "self-help" than a government grant.

Comment

Such a scheme would involve policy development. Some forms of income spreading already exist (for example, taxation rollover relief, income equalisation for farming, horticulture, aquaculture, fishing, and forestry). While those existing spreading provisions are not as expansive as the submitter would like, we consider that they may help towards providing some cash flow assistance, and the Government also has other options for providing cash assistance to affected parties.

Recommendation

That the submission be declined.

Issue: Cashing out of losses

Submission

(EY)

Consideration should be given to the cashing out of losses as an alternative to cash grants to provide a boost to cash flow. Loss cash-out could potentially be limited by caps or targeted at certain kinds of costs incurred to remediate damage caused by an emergency event.

Comment

Officials do not favour this as a generic measure, for the same reasons as for loss carry-back. Cashing out tax losses could be very fiscally costly (more so than loss carry-back because businesses would not need to have made a prior profit), so this should be a matter for Parliament to consider if the Government were proposing that option. It is currently allowed for certain R&D expenditure but is carefully ringfenced. It is not a measure that has been used in other circumstances, including past emergency events.

Recommendation

That the submission be declined.

Issue: Accelerated depreciation

Submission

(Corporate Taxpayers Group, Deloitte, EY)

If assets need to be replaced following an emergency, the submitters suggest that consideration be given to a measure that would allow accelerated depreciation (including potentially 100% immediate deduction) for the cost of the new asset. This would recognise the large impact that the need to fully capitalise replacement assets has on post-emergency cash flow.

Allowing accelerated depreciation in such cases ensures that businesses get quicker recognition of those replacement costs and, therefore, can shelter early post-emergency income earned.

An accelerated rate of depreciation was used in some overseas jurisdictions during COVID-19, particularly for the first year of purchase.

Comment

Once a new asset has been obtained, it is conceptually difficult to justify why accelerated depreciation should apply. Having other than economic rates of depreciation risks distorting investment decisions and raises equity issues given that businesses not impacted by the emergency would not get similar concessionary treatment. If the sole reason is for cash flow purposes during recovery, officials consider that other incentives, such as government grants, are a more appropriate mechanism to assist cash flow.

Further, immediate deductions or accelerated depreciation would be fiscally costly and, given the conceptual reservations, should be a matter for Parliament to consider if the Government were proposing that option.

Recommendation

That the submission be declined.

Issue: More flexibility around tax treatment of grants

Submission

(EY)

A framework that allows options for how cash grants are taxed should be developed. For example, at times it may be useful to be able to characterise (or re-characterise) a grant as exempt (not taxed, and no allowed deductions) or excluded (not taxed, but allowing related deductions), or to treat them as taxable.

This approach would provide the Government with an ability to clearly indicate, on a grant-by-grant basis, what category each grant should fall into and consequently what tax treatment should follow.

Stating the tax treatment more clearly allows the Government of the day the greatest flexibility when designing grants while ensuring the greatest level of certainty for taxpayers and consistency of tax treatment.

An ability to re-characterise grants (up or down the scale) can be used to provide additional cash flow support (through additional deductions or a tax exemption) in times of crisis.

Comment

The current approach relies on the taxpayer checking a grant’s terms and conditions and comparing them to Inland Revenue guidance, which the submitter argues can result in significant uncertainty for grant recipients. A tax relief measure for grants was not eligible for consideration as a generic emergency measure because it has not been used during previous emergency events. The Government could consider a revised framework for the taxation of government grants in the future; however, this would require prioritising and resourcing as part of the Government’s tax and social policy work programme, and it is an issue wider than emergency events, as the submission acknowledges.

Recommendation

That the submission be declined.

Issue: Recognising expenditure deductions for suspended activities

Submission

(Chartered Accountants Australia and New Zealand)

Proposed new section FP 6 of the Income Tax Act 2007 (ITA), relating to expenditure deductions when an income-earning activity is temporarily suspended, should be modified to allow deductions in the year the expenditure is incurred rather than when the activity is resumed.

The submitter notes that deductions are allowed for depreciation during the interruption period under another generic emergency response provision. They note that a different treatment for other expenses could lead to inadvertent non-compliance.

Comment

The purpose of proposed new section FP 6 is to ensure that expenditure incurred when an income-earning activity is suspended because of an emergency event can nevertheless be deducted. The deduction is timed for the year of activity resumption to avoid situations when deductions are taken but no income-earning activity resumes because the business is ultimately considered unviable. That possibility may be less relevant if the business has other premises from which it can operate in the meantime. Overall, however, officials consider that the approach adopted for past major emergencies of allocating the deductions to the year of resumed activity remains appropriate.

Recommendation

That the submission be declined.

Issue: Bad debt deductions

Submission

(Corporate Taxpayers Group, Deloitte)

Section DB 31 of the Income Tax Act 2007 should be amended to allow a deduction for bad debts when these bad debts are written off within three months after balance date. As an example, the timing of the floods during Cyclone Gabrielle, particularly for balance dates falling around that time and the next few months following the event, meant that there may have been a noteworthy increase in bad debt balances. However, there was uncertainty over whether these could be written off before balance date.

Comment

We agree that deductions for bad debts after an emergency event is a useful tool to provide flexibility for taxpayers. For the 2023 North Island flooding events, the Tax Administration (Extension of Due Dates) Order 2023 extended the timeframe to three months after balance date.

More generally, the Governor-General, by Order in Council, has the power to extend the time for matters covered by the Tax Administration Act 1994, including deductions for bad debts.

Therefore, there is already a tool in Inland Revenue's emergency response to address the submitter's concern. If appropriate, this measure can be used for future emergency events. Therefore, no amendment needs to be made to section DB 31.

Recommendation

That the submission be declined.

Issue: Extend tax-free period

Submission

(Corporate Taxpayers Group, Deloitte, EY)

The proposal that allows for tax-free receipt of welfare contributions is overly restrictive in that it applies only to payments received within the eight-week period following the emergency event. This period should be extended, or there should be the ability to extend this period further when the impacts of an emergency event last for an extended period of time. (*Corporate Taxpayers Group, Deloitte, EY*)

The ramifications of emergency events such as the Christchurch earthquakes and Cyclone Gabrielle were still being dealt with long after eight weeks had passed. (*Corporate Taxpayers Group, Deloitte*)

Tax considerations may not be front of mind following an event and employers may not be aware of the strict eight-week requirement. Employers may wish to support employees with a payment later, for example, by paying for an immigration consultant to support workers who have "overstayed" due to the emergency to rectify their visa circumstances. A period that is "reasonable in the circumstances" should suffice because employers are unlikely to be seeking to "structure" remuneration packages to circumvent the PAYE base by offering employees competitive benefits that apply only in an emergency. (*EY*)

Comment

The eight-week rule for tax-free cash payments and fringe benefits provided to employees impacted by an emergency is not intended to cover the entire duration of the emergency, just the immediate aftermath of recovery when tax relief is most needed. Any employer exemptions beyond this period run the risk of being used as salary substitution and have avoidance concerns. Officials' concern is not about structuring salary packages in advance but rather about salary substitution following the event. The same limitation has applied in other major emergencies.

Furthermore, adding an ability to extend the time period would likely lead to uncertainty for taxpayers and administrative complexities for Inland Revenue.

Recommendation

That the submission be declined.

Issue: Exemption thresholds

Submission

(Corporate Taxpayers Group, Deloitte)

The legislation should include flexibility to alter, by Order in Council, the total value of monetary remuneration or fringe benefits that can be provided tax free to employees under sections FP 13 and FP 14 of the Income Tax Act 2007.

This would provide flexibility for the amount to be scaled upwards in proportion to the emergency event. Depending on the extent or severity of the emergency event, the proposed $5,000 threshold may not be sufficient for employers to provide employees in impacted areas with the appropriate level of support that may be required.

This approach also provides protection against inflation.

Comment

Officials consider the $5,000 exemption threshold for income or fringe benefits should be amended through primary legislation. The ability to extend a threshold to any amount through an Order in Council may be too broad. Any extension beyond this should be subject to Parliamentary scrutiny.

Any adjustment of this rate due to inflation should be done as a part of a government decision to adjust thresholds generally for inflation.

Recommendation

That the submission be declined.

Issue: Meal allowances

Submission

(Corporate Taxpayers Group, Deloitte)

It would be useful to clarify that the income tax exemption could be utilised for meal allowances, noting that the provision of meal allowances was widespread after Cyclone Gabrielle with recovery workers needing to be based at temporary accommodation without adequate cooking facilities. (*Corporate Taxpayers Group, Deloitte*)

Comment

Payments to employees seriously impacted by an emergency event are intended to be included in the $5,000 threshold.

However, officials do not consider that the three-month meal allowance period that applies generally to payments to cover meals for employees working away from home should be extended. The provision of meals is inherently private expenditure that is incurred by every worker regardless of their location.

Accommodation allowances differ because the provision of accommodation is an extra cost for an employee, particularly when they continue to maintain a home in another location. Meal allowances do not follow this profile and consequently we see these as quite distinct.

Recommendation

That the submission be declined.

Issue: Donations when in tax loss

Submission

(Corporate Taxpayers Group, Deloitte)

There is a restriction on taxpayers claiming tax deductions for donations when these are equal to or greater than a taxpayer's taxable income in the year. This restriction could be removed or amended. There are many businesses that could donate cash but may be in a tax loss position for any number of reasons. This may impact on the amount that they can donate because there would be no tax benefit.

If donations are being made to registered charities, then there should not be any reason that deductions are limited to a taxpayer's taxable income and cannot be carried forward as a tax loss like any other expense.

Comment

Currently, there is a requirement that businesses in tax loss need taxable income in the year of donation sufficient to offset the donation deduction. Officials consider this donation cap should be maintained.

All donations of money are subject to caps, which are generally equivalent to the donor's taxable/net income. Caps ensure the Government can limit expenditure on these tax concessions and minimise integrity risks.

Other countries cap business donations. For example, in Canada, a deduction may be claimed on donations totalling up to 75% of a corporation's taxable income.

Officials have heard that, generally, businesses will not "donate" money but instead make payments in the ordinary course of business and require some reciprocity, such as public recognition. This means business payments in response to an emergency are often not donations but are deductible payments under ordinary tax concepts. The volume of actual "donations" of money from businesses is expected to be low.

From 1 April 2024, businesses have been able to donate trading stock to donee organisations and these donations are not subject to a cap. The only reason a cap was not applied to trading stock was because of the complexity and compliance/administrative costs of applying a cap to trading stock that is subject to a valuation rule.

Recommendation

That the submission be declined.

Issue: Administrative dates

Submission

(Corporate Taxpayers Group, Deloitte)

There should be greater leniency with filing dates and adjusting the time bar rules in light of adverse events.

Comment

The submitters' concern is that when an event occurs close to a major return filing date, such as 31 March, there is little time for accountants and businesses to file on time, particularly when there are issues accessing records. If a new filing due date is set in the subsequent income year, it can result in an additional year being added to the period before the time bar period applies. (The Commissioner is precluded from increasing the amount of assessed tax once the time bar period has lapsed.) To avoid this outcome, the submitters have suggested that one option would be that Inland Revenue have the ability to set a new due date, and if the due date is met, the taxpayer be deemed to have filed their return on or before the relevant 31 March to keep the time bar to four years.

During COVID-19, the Commissioner did not extend the due date but instead undertook, under care and management, not to do auditing in the “5th” year provided the taxpayer was compliant. That outcome essentially achieves the same outcome as deeming a return to be received on time.

Officials also note that the remission of late filing penalties, which the Commissioner has done in emergencies, helps in avoiding the need to change filing dates. Changing filing dates can be administratively problematic because it impacts on the calculation of interest.

Recommendation

That the submission be declined.

Issue: Build in ability to declare extension

Submission

(Deloitte)

The five-year window for resolving insurance and recovery activity set out in proposed new subpart FP of the Income Tax Act 2007 is reasonable for most significant emergency events. However, in the case of the Christchurch earthquakes, the relevant legislation was applicable for 13 years after the event. A five-year window may therefore not always be appropriate.

Given the effort that has gone into drafting proposed subpart FP, which can be invoked by the Governor-General making regulations under section 6J of the Tax Administration Act 1994, Deloitte’s recommendation is that a mechanism is created at this time for declaring an extension to the rollover relief concessions if the recovery is prolonged. This would remove the complications and time pressures for arranging and enacting extension legislation through Parliament.

Comment

Officials agree that extending the time period by primary legislation could be complex. This complexity comes from having to change time periods for one emergency event in the context of a generic provision. Having the flexibility to extend the five-year period in the legislation by an Order in Council process could avoid complications later.

Recommendation

That the submission be accepted.

Issue: Lump sum or pooled approach

Submission

(EY)

The proposals operate on the assumption that taxpayers will always be able to discern which insurance proceed amounts relate to which assets but that may not always be possible. The provisions should therefore contemplate a lump sum or pooled approach to insurance proceeds and asset matching for scrapped or irreparably damaged assets.

The practical reality of post-event accounting is that records may not be sufficiently detailed to allow for asset-by-asset allocation, and the proposed provisions should contemplate this. Insurance cover may relate to all contents and may not necessarily have different line items identified that correlate to different assets. An option for taxpayers to aggregate assets and pay-outs together should be contemplated.

Comment

The proposed emergency response provisions are based on measures used for the Canterbury and Kaikōura earthquakes and the 2023 North Island floods when a variety of assets were destroyed and taxation rollover relief was provided. As in those cases, the proposed generic rules allow asset adjustments to be recorded in the taxpayer's tax accounts on a pooled asset basis as well as individually for depreciation purposes. Officials consider this approach to be sufficient.

Recommendation

That the submission be declined.

IMPLEMENTATION AND REVIEW

Issue: Post-implementation review

Submission

(EY)

The emergency response regime should be subject to a post-implementation review.

Inevitably another emergency event will take place involving scenarios that have not been contemplated by the proposed generic response measures. Alternatively, scenarios may arise that fall within the regime, but the implementation and/or application of the measures does not meet desired expectations.

One option for a review is to seek data directly from impacted taxpayers, for example, through a virtual survey or suggestion box. This would require Inland Revenue's system to capture adequate information to allow the impacted taxpayers to be identified.

Comment

Officials consulted with selected stakeholder groups in the initial development of the proposals in May 2024. Stakeholders provided feedback on our consultation paper that explained Inland Revenue's draft proposals for the Order in Council mechanism, including the generic tax relief measures and the rationale of our suggested approach.

The groups consulted were those that had been consulted, or provided submissions, on the 2023 North Island flooding events tax relief measures, given many of the proposed measures are comparable. We used this consultation round to test and refine our advice to Ministers.

However, officials agree there would be value in reviewing the emergency response measures after several events in which the relevant measures have been activated to assess whether they are fit-for-purpose.

Recommendation

That the submission be noted.

Issue: Use of data

Submission

(EY)

Inland Revenue's systems should be adapted to ensure taxpayers who have relied on the use of the proposed provisions are suitably identified and acknowledged.

It is unclear whether the proposals adequately contemplate emergency event identification from a systems perspective. It is crucial that Inland Revenue can adequately capture information in its system to show (on the taxpayer's record) when a taxpayer has been impacted by an emergency event and whether certain concessions have been taken or elections made under this set of proposals.

Taxpayers should have the ability to submit a request in myIR indicating their involvement with an emergency event. Alternatively, Inland Revenue may prefer to allow for the inclusion of new emergency disclosures for taxpayers to complete when filing their returns through myIR. Allowing notification and/or disclosure would help ensure the myIR system and its algorithms are not misled flagging obvious changes resulting from the emergency event.

Comment

Inland Revenue's systems team is working on how to utilise the data collected from taxpayers following an emergency event. The data collected gives insight on the location and frequency of calls to Inland Revenue about emergency events. For example, there was some collation of taxpayer data in response to the 2010−11 Canterbury earthquakes.

Elections for taxation rollover relief can be recorded by the taxpayer in myIR when they file their relevant tax return.

Recommendation

That the submission be noted.

DRAFTING OF PROPOSALS

Issue: Restriction for projects of limited duration

Submission

(EY)

There is a reference in the Bill commentary (page 27) that suggests the relief provided for employer accommodation provided for "projects of limited duration" should be limited to projects that commence within six months of the emergency. This comment does not appear to be reflected in proposed new section FP 15 of the Income Tax Act 2007 as drafted. That section refers to commencement within five years, which in our view is far more reasonable.

Comment

This was an error in the Bill commentary. The tax relief period intended for employer accommodation provided for projects of a limited duration is five years, as reflected in the proposed legislation, provided the project relates to an emergency event.

Recommendation

That the submission be noted.

Issue: List of qualifying emergencies

Submission

(EY)

Inland Revenue's systems should be adapted to ensure taxpayers who have relied on the use of these provisions are suitably identified and acknowledged. It is not apparent from the Bill commentary how Inland Revenue plans to notify taxpayers of the qualification of a particular event as an emergency to which these rules apply.

While most of the proposals require an Order in Council, which itself has notification procedures, we submit that this may not be sufficient if there are frequent events.

Taxpayers should be able to access a single source of truth for which events and which periods are covered by the proposed relief. That may be a single regulation that is added to over time or a webpage dedicated to emergency relief that lists all eligible events.

Comment

The Inland Revenue webpage will provide this information to taxpayers. There will be a page dedicated to emergency relief that will include eligible measures.

Recommendation

That the submission be noted.

Issue: Biosecurity proposal needs amendment

Submission

(EY)

Proposed new section FP 16 of the Income Tax Act 2007 (ITA) requires a minor drafting correction to ensure it applies to all stock types that may be required to be culled. Proposed section FP 16 references both "mixed-aged female breeding animals" and "breeding stock". To ensure clarity of application, it would be preferable for the provision to clarify what is meant by "breeding stock".

For example, non-mixed-aged females, such as ewe hoggets, and rams and bulls, may also be destroyed in a biological emergency event and need to be replaced (at a high cost) if all livestock is valued under the national standard cost approach.

Comment

A basic definition of breeding stock is provided in proposed section FP 16(9)(b)(i) and (14)(a)(i); that is, breeding stock or stock that the person expected to be capable of, and intended to be used for, breeding upon reaching maturity.

The legislation uses the term "breeding stock" or "breeding animals" rather than the above fuller phrase at times. However, because the wider term is used in the paragraphs relating to the formula, there would not be a difference to the final outcome for a farmer.

The breeding stock classes and types of livestock relevant to the biosecurity event would be declared in the Order in Council for that event. For example, for the 2017−18 Mycoplasma bovis tax relief measures, the breeding stock that qualified comprised mainly mixed-aged cows, in combination with any other classes of breeding stock (rising one- and rising two-year heifers, and breeding bull). Given a future biosecurity event could also affect other types of livestock listed in schedule 17 of the ITA (sheep, deer, goats, and pigs), the generic legislation does not specifically list the classes ahead of the event.

Other types of livestock used for breeding would have a far shorter replacement period so the existing income equalisation scheme could be used in those cases to spread any additional income.

Point of difference

However, there are a couple of areas where we agree clarification would be beneficial:

- Proposed section FP 16(1)(c) and (17) refers to "mixed-aged female breeding animals". This term is only intended to apply to mature classes of animals. Therefore, we recommend clarifying that this term means, as the case may be, mixed-age cows, mixed-age hinds, mixed-age ewes, mixed-aged does (goats) and breeding sows (whether less than or greater than one year), in accordance with schedule 17 of the ITA.
- Officials also recommend clarifying that the tests in proposed section FP 16(1)(c) and (17) apply in relation to the type of livestock needing to be culled as a result of the emergency event.

Recommendation

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

Issue: Simplification of legislation

Submission

(Chartered Accountants Australia and New Zealand)

More can and should be done to standardise and simplify the proposed emergency measures, particularly in relation to claiming rollover relief:

- The substantive provisions are complex, and the level of detail required in the disclosures is excessive.
- Notice of election requirements should be the same for all types of property being replaced and could reasonably be limited to the first year only.

Claiming rollover relief is compliance intensive. The requirements for the notice of election differ depending on the type of property being replaced, that is, whether it relates to revenue account property, depreciable property or farmland improvement. The notice of election for each property type must be filed every year and requires significant detail.

The taxpayer is not claiming a benefit, but merely being returned to the position they would have been in but for the natural disaster or emergency event. If Inland Revenue has concerns about a particular taxpayer or group of taxpayers claiming rollover relief to which they are not entitled, it has the power to ask for the information directly. It is likely that the vast majority of election notices will be filed and ignored.

Comment

The proposed draft legislation comprises previous wording from past emergency event tax relief measures. Officials agree that the draft legislation is complex and have taken the opportunity to reorganise the draft legislation, which should provide some simplification.

Officials are liaising with stakeholders on whether the redraft is a significant improvement on the draft as introduced.

The taxation rollover relief provisions differ largely because:

- The unexpected income being suspended differs because the underlying tax rules vary for the three types of assets.
- The contents of the notice of election similarly reflect the various categories of assets and depreciation methods that are available for the taxpayer to use.

This adds complexity but it is a result of the underlying rules rather than the taxation rollover relief provisions.

Abstracting from these inherent complexities, the purpose of the annual election requirement is to ensure that taxpayers turn their minds annually to whether they have replaced the asset or no longer intend to do so. If the requirement applied only for the first year, taxpayers/tax advisers would likely forget that the calculation needed to be done. The information sought is basically the amount of suspended income and the cost of the replacement assets acquired in the relevant income year.

Point of difference

While officials agree that some simplifications can be achieved through rewriting the draft, we do not agree with the submission suggestions that the election/notification provisions be changed.

Recommendation

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

Issue: Record retention requirements

Submission

(EY)

The proposals should contemplate the likelihood of tax record damage, destruction or loss, as a result of emergencies, and clarify the response for impacted taxpayers. Relief should be provided for taxpayers who are unable to meet the tax administration requirements with respect to record retention due to an emergency event.

Comment

Administrative policy allows flexibility in record retention after an emergency event. However, Inland Revenue will look at providing guidance on its website to assist taxpayers.

Recommendation

That the submission be noted.

Issue: Notification requirements

Submission

(EY)

While the policy intent of the notification requirements is supported, the provisions should merely require notice in the prescribed form and empower the Commissioner to prescribe notification requirements, including specific data points that need to be supplied administratively. This would avoid unnecessary rigidity and complexity, and safeguards can be achieved administratively. The Commissioner may not have contemplated all the information that may be desired in different kinds of emergency events. Indeed, taxpayers may not have considered whether they will be in a position to provide all the required data points.

Comment

Keeping notification requirements in the legislation has several benefits. It reduces the administrative onus on Inland Revenue to establish requirements after each emergency, and it limits the possibility of variability between comparable emergency events. It also provides certainty to taxpayers about their notification requirements ahead of time. These requirements have applied to a range of past emergencies so have been tested.

Recommendation

That the submission be declined.

Crypto-Asset Reporting Framework

CRYPTO-ASSET REPORTING FRAMEWORK (CARF)

Clauses 117(3), (4), and (5), 135(2), 137, 138, 144, 145, 148, 150, and 151

Issue: CARF privacy considerations

Submission

(Office of the Privacy Commissioner)

The submitter advises that they are not opposed to measures enabling reporting on crypto-assets for tax purposes but considers that more detailed analysis of the potential privacy impacts and mitigations is necessary before the Bill proceeds into law.

The submitter advises they are concerned given recent reports that the value of crypto-currency hacking thefts has doubled to US$1.4 billion in the first half of 2024 and that the increased value of tokens is likely to further motivate criminals to pursue information on holders of these assets. The submitter notes that information shared by tax authorities on crypto-asset users could be a target for these criminals.

More analysis is needed to understand specific privacy risks in relation to:

- requiring users of crypto-asset services to provide information to third parties, with penalties for non-compliance
- providing information on New Zealand taxpayers to overseas tax authorities, and
- ensuring that all local and international systems involved meet high standards of data security and integrity to safeguard New Zealanders against privacy and cybersecurity risks.

Comment

OECD-developed information exchanges have been a popular concept in recent years to ensure that tax authorities worldwide have increased visibility over incomes derived by taxpayers. New Zealand implemented the OECD Common Reporting Standard in 2017, which imposes information-gathering and reporting obligations on financial institutions in relation to financial account information and enables this information to be shared with tax authorities in participating jurisdictions. Further to this, Inland Revenue has also successfully implemented OECD information exchanges in relation to the platform economy and country-by-country reporting.

There are multiple privacy safeguards in place to ensure that the privacy of individuals that are subject to these information exchanges is protected. These are as follows:

- Inland Revenue is a tax authority and has the system capabilities and experience to handle sensitive tax information. Inland Revenue is subject to general tax secrecy provisions that ensure that taxpayer information is secure.

- There are additional safeguards in place for OECD information exchanges, including the CARF. Jurisdictions must have their confidentiality and data safeguards reviewed by the Global Forum on Transparency and Exchange of Information for Tax Purposes at the OECD. Inland Revenue has been reviewed and has passed the international standard in this regard.
- Information received under OECD information exchanges, such as the CARF, are ring-fenced to a specialised unit within Inland Revenue. Wider Inland Revenue staff have no access to this information.
- Information on non-resident crypto-asset users will only be exchanged with treaty partners that have met the Global Forum's standard on confidentiality and data safeguards. If a treaty partner has not been cleared by the Global Forum, Inland Revenue will not exchange CARF information with them. Inland Revenue will check the status of each jurisdiction before commencing any exchange.
- Information that is exchanged is encrypted and transferred via the secure OECD Common Transmission System. This has been used with success since the Common Reporting Standard was implemented in 2017 to exchange sensitive financial account information.
- The legal instrument under which the CARF information is exchanged (the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* or bilateral tax treaties, further buttressed by the CARF Multilateral Competent Authority Agreement) specifies strict conditions on use of the information by exchange partners.

Officials also note that New Zealand resident crypto-asset users are already required to provide reporting crypto-asset service providers with personal information so that the crypto-asset service providers can comply with anti-money laundering and countering financing of terrorism (AML/CFT) requirements. The CARF further builds on this layer of regulation by ensuring that tax authorities have visibility over incomes that users derive through crypto-assets, thereby supporting tax compliance. As the above points demonstrate, the privacy of these users has been carefully considered as part of implementing the CARF and safeguards have been put in place to ensure that privacy is protected through every step of the process.

Officials have subsequently met with the Office of the Privacy Commissioner following their submission on the Bill. They noted their appreciation for the confidentiality and data safeguards in place, which are subject to independent review, and advised that this does help to mitigate potential privacy concerns, particularly those relating to cybersecurity risks. They also noted Inland Revenue's secrecy laws and other legal requirements, which protect personal information it collects.

Recommendation

That the submission be noted.

Issue: Support for adopting CARF in New Zealand

Submission

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

The submitters support the introduction of the CARF to New Zealand. In their view it is in the public interest for taxpayers to comply with the law. Implementation of the CARF should also encourage voluntary compliance.

Recommendation

That the submission be noted.

Issue: Minimise compliance costs

Submission

(Chartered Accountants Australia and New Zealand)

Compliance costs should be kept to a minimum for reporting crypto-asset service providers.

Comment

One key benefit of the OECD CARF is that it provides a standardised rule set for jurisdictions to implement. This reduces compliance costs for reporting crypto-asset service providers (RCASP) in New Zealand and internationally. This is because an RCASP will only have one reporting obligation to the jurisdiction in which it is tax resident (or has the strongest reporting nexus), and this information is then exchanged with other jurisdictions to the extent it relates to residents in that jurisdiction. This is preferable to requiring RCASPs to have multiple reporting obligations or to require RCASPs to comply with differing reporting obligations and rule sets worldwide, which could occur if jurisdictions developed their own bespoke reporting obligations.

Recommendation

That the submission be noted.

Issue: Give RCASPs sufficient implementation time before the CARF applies in New Zealand

Submission

(Chartered Accountants Australia and New Zealand, PwC)

Officials should ensure that exchanges have sufficient time to implement the necessary system changes.

Both submitters appreciate the lengthy lead-in time from the introduction of the Bill through to implementation. The proposed timeline of 1 April 2026 implementation, with first reports due to Inland Revenue by 30 June 2027 in respect of the 2026–27 tax year, will give reporting crypto-asset service providers (RCASPs) sufficient time to make necessary system changes to comply with the CARF.

Comment

Officials agree that the proposed timeframe should provide affected RCASPs with sufficient lead-in time to make the necessary system changes to comply with the CARF. In addition, officials note that targeted consultation was undertaken with relevant New Zealand RCASPs as far back as 2022, which provided RCASPs with further opportunity to submit on New Zealand's proposed implementation of the CARF.

This implementation timeframe is broadly in line with the lead-in time between enactment and application for other OECD initiatives (such as the information reporting and exchange for the platform economy).

Recommendation

That the submission be noted.

Issue: Automatic flow-through of changes to frameworks

Submission

(Corporate Taxpayers Group, Deloitte, EY)

Officials should be cautious about the automatic flow-through of changes to frameworks at OECD level to New Zealand legislation. This cedes a level of sovereignty to the OECD and officials should remain vigilant to OECD changes and consultation on these changes to ensure that any changes New Zealand does not want to implement are blocked via Order in Council. (*Corporate Taxpayers Group*, *Deloitte*)

Incorporation by reference ensures that New Zealand's rules are equivalent with other OECD member countries, but it is a risk to New Zealand's tax sovereignty and autonomy because

Parliament loses the ability to vote on any changes to the rules before they come into effect. Any updates to the rules could still be incorporated by way of reference if appropriate, but only following the completion of the full legislative process. This approach would help protect New Zealand's tax sovereignty and ameliorate many of the issues associated with incorporation by reference discussed above. (*EY*)

Comment

The purpose of incorporation by reference and automatic flow-through of changes made at OECD level into New Zealand law is to ensure that New Zealand has equivalent rules with other jurisdictions that are adopting the rules. This is necessary to ensure that we can exchange information under the CARF.

This automatic flow-through approach is consistent with the approach taken for other OECD information-reporting and exchange frameworks, such as the Common Reporting Standard, and in the context of the platform economy.

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

The regulation-making power contained in section 226E of the Tax Administration Act 1994 provides a mechanism to block changes from having effect in New Zealand that may be inappropriate. This could include, for example, changes that are optional and that the Government decides should not have legislative effect.

Officials note the point raised by EY that any updates to the CARF could still be incorporated by way of reference if appropriate, but only following the completion of the full legislative process. Officials consider that this approach as a default proposition could be undesirable and inefficient because it would require the Government to introduce legislation for minor clarifications to the CARF. Officials consider that any changes made to the CARF, by their nature, would likely be minimal and clarifying in scope, or providing for other technical clarifications.

Moreover, additional changes to OECD standards following enactment are relatively uncommon. For example, the Common Reporting Standard (which New Zealand implemented in 2017) has not been subject to any amendments since implementation until the changes contained in this Bill.

If any major changes to the CARF were to be introduced in the future, these could be blocked via the regulation-making power in lieu of following the complete legislative process. It is noted that the approach currently proposed by the Bill provides flexibility to go down this route if extensive consultation on any changes were required.

Recommendation

That the submission be noted.

Issue: Penalties when RCASPs fail to comply

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters consider that the penalty provisions in proposed new section 142L of the Tax Administration Act 1994 (TAA) that apply to reporting crypto-asset service providers (RCASPs) are confusing and contradictory. Section 142L(1) applies when an RCASP does not comply with the requirements of the CARF. Section 142L(2) applies a $300 penalty for each occasion the RCASP does not comply. Section 142L(4) provides that the RCASP is liable to pay a penalty ($20,000 on the first occasion and $40,000 thereafter) if it does not take reasonable care to comply with the requirements of the CARF **and no penalty is imposed under subsection (2)**. Both penalty provisions are subject to caps per tax year under section 142L(5).

Under the submitters' interpretation of the rules, the $300 penalty must apply under section 142L(2) before the $20,000 penalty can apply under section 142L(4). This is on the basis that, in the submitters' view, section 142L(4) is only applicable if the RCASP does not take reasonable care to comply with the requirements of the CARF **and** no penalty is imposed under subsection (2).

The submitters go on to say that neither the Bill nor the Bill commentary, as they are currently written, can be interpreted as providing the Commissioner with discretion to select which penalty is to be imposed. If this is the intention, it should be made more explicit. The submitters think it is a risk to the integrity of the tax system if the Commissioner can bypass section 142L(2). This is because there would be an incentive for the Commissioner to do that so the Commissioner can retain both the ability to impose large penalties and the larger maximum total penalties imposable under section 142L(5).

Furthermore, the submitters refer to an example in the Bill commentary that imposes penalties on an RCASP under section 142L(2) for failure to obtain valid self-certifications. In this example, the penalty hits the $10,000 cap per tax year for penalties under that section after receiving numerous $300 penalties. The RCASP continues not to obtain valid self-certifications in respect of its users, so the Commissioner imposes a penalty under section 142L(4). In the submitters' view, this should not be permissible because the wording of section 142L(4) states that a penalty under that section cannot be imposed if a penalty has been imposed under section 142L(2) for the same offence that the reasonable care relates to. The submitters consider that it should be clarified if it is a new "occasion on which they do not comply" that then allows the greater penalty to be imposed.

Comment

Officials consider that it is clear from the draft legislation and Bill commentary that the penalties are discretionary. Proposed new section 94E(1) of the TAA provides that the Commissioner may make an assessment of the amount of the penalty under proposed new sections 142L and 142M that, in the Commissioner's opinion, ought to be imposed on a person, and the person is liable to pay the penalty assessed. It follows that there is no requirement on the Commissioner to first apply a penalty under section 142L(2) before applying a penalty under section 142L(4). Although section 142L(4) makes it clear that a penalty would only apply under that section if no penalty has been imposed under section 142L(2), this does not require the Commissioner to first impose a penalty under section 142L(2) in respect of the non-compliance.

Section 142L(2) provides that an RCASP is liable to pay a $300 penalty for each occasion on which it does not comply with the CARF. This penalty applies at a much lower threshold. This is reflected in Example 14 of the Bill commentary whereby the penalty was applied for every instance that the RCASP did not obtain valid self-certification in respect of its users.

Section 142L(4) applies in circumstances when an RCASP does not take "reasonable care" to comply with the requirements of the CARF. This "reasonable care" is at a much higher threshold, hence the greater penalty amount. This intent is reflected in Example 14 whereby a penalty was levied under this section for a New Zealand-based RCASP that blatantly refused to collect information under the CARF in respect of its reportable users, and then further was applied to an RCASP that continued not to obtain valid self-certifications from its users, despite receiving many individual penalties for each occasion of non-compliance under section 142L(2) and written correspondence from Inland Revenue advising it of its non-compliance.

The word "occasion" in section 142L(2) takes on its ordinary meaning. In the officials' view, it is not a tenable interpretation of the legislation to state that continual non-compliance by an RCASP to obtain self-certification for a large number of users amounts to "an occasion". This would result in an absurd outcome whereby an RCASP could continually fail to obtain self-certification from its users and would only be liable for a $300 penalty until this was picked up by Inland Revenue.

Jurisdictions are required to have effective penalty provisions in place to bolster compliance with the CARF, particularly in relation to ensuring that RCASPs receive valid self-certification from users. That said, the penalties are discretionary, and Inland Revenue intends to work with New Zealand-based RCASPs to help them to comply with the CARF.

Considering the above, officials do not consider that any legislative clarification is required. However, further examples will be included in a *Tax Information Bulletin* item to make it clear how the penalty provisions are intended to apply.

Recommendation

That the submission be declined.

Issue: Further guidance needed on application of penalty provisions

Submission

(EY)

The Commissioner should issue clear guidance setting out how the discretionary penalties applicable for a failure to apply the new reporting and disclosure requirements will be assessed.

Under proposed new section 94E of the Tax Administration Act 1994 (TAA), civil penalties for non-compliance with the CARF in proposed new sections 142L and 142M of the TAA may be assessed at the Commissioner's discretion. It will be important to provide guidance around the situations in which the Commissioner will assess a penalty, especially given that in some situations total penalties can be as high as $100,000 per tax year. To adopt the updates to the rules, new legislation should be enacted to that effect.

The interaction between penalties for reporting crypto-asset service providers (RCASPs) under section 142L(2) ($300 penalty per occasion of non-compliance capped at $10,000 per tax year) and penalties under section 142L(4) (penalties for lack of reasonable care – $20,000 on the first occasion and $40,000 thereafter, capped at $100,000 per tax year) should be clarified. Clear guidance should be provided around the circumstances in which the Commissioner will assess a penalty under one provision as opposed to the other given the significant difference in quantum between the penalties under the two provisions.

Comment

Proposed section 142L(2) provides that an RCASP is liable to pay a $300 penalty for each occasion on which it does not comply with the CARF. This penalty applies at a much lower threshold. Proposed section 142L(4) applies in circumstances when an RCASP does not take "reasonable care" to comply with the requirements of the CARF. This "reasonable care" is at a much higher threshold, hence the greater penalty amount. This difference is explained in greater detail in response to another submission, see Issue: Penalties when RCASPs fail to comply.

Example 14 in the Bill commentary attempts to provide some examples that explain this difference. However, officials acknowledge that this could have been made clearer and that further guidance is needed. A *Tax Information Bulletin* item will contain further examples and guidance to explain the differences between the two penalty provisions.

Recommendation

That the submission be noted.

Issue: No liability for failure to obtain self-certification if reasonable effort made

Submission

(EY)

A reporting crypto-asset service provider (RCASP) should not be liable for a penalty when it has taken reasonable steps to obtain a valid self-certification. This approach recognises the broader context that crypto-asset investment and use is overall subject to less regulation globally when compared with traditional fiat currency investments. While that is likely to change in time, the provisions should recognise that the requirements imposed by the CARF may be the first time that users are being asked to provide their personal information to their providers or Inland Revenue. As such, providers could face a degree of hesitancy from customers/investors at first while they adapt to the change in the regulatory landscape.

Comment

The CARF makes it clear that an RCASP **must** obtain valid self-certification in respect of users. Further to this, the CARF requires jurisdictions to implement a penalty framework to address instances of non-compliance and to encourage effective implementation of the CARF. The CARF itself also specifically calls out the importance of self-certification, stating that "*Jurisdictions should also have in place strong measures to ensure valid self-certifications are always collected*" and goes on to suggest ways of achieving this outcome, such as to "*introduce legislation making the effectuating of transactions conditional upon the receipt of a valid self-certification*" and/or "*imposing significant penalties*".

For New Zealand to be subject to the information exchange under the CARF, New Zealand must have equivalent rules with other jurisdictions. Self-certification is a vital component of the CARF because it ensures that crypto-asset users are sufficiently identified and therefore visible to tax authorities.

Officials note that the information contained in a valid self-certification includes personal information such as name, address, date of birth and tax identification number. RCASPs already have existing obligations under AML/CFT law to collect most of this information. It follows that compliance with the CARF is unlikely to result in significantly more regulation for these entities.

Considering the above, officials do not consider that "reasonable efforts" to obtain valid self-certification is a sufficient standard to implement, and this would also fall short of OECD guidance on the matter. Ultimately, whether an RCASP is liable for a penalty remains solely in its hands. This is on the basis that RCASPs can prevent a crypto-asset user from transacting through them if that user has not provided valid self-certification. This action would be sufficient to avoid any penalty.

Recommendation

That the submission be declined.

Issue: Additional support for RCASPs on self-certification requirements

Submission

(EY)

To support providers to obtain self-certification from investors, the Commissioner should produce adequate materials that clearly explain the new obligations. This could include self-certification standard forms. Adequate marketing campaigns should be undertaken to put investors on notice.

Additional support should be given to providers to ensure they are well placed to obtain the required self-certification from investors and users who may not be aware of this regulatory change, such as:

- materials clearly explaining the new requirements
- forms showing the requirements are government-imposed, and
- broad-reaching advertising campaigns via media that crypto investors and users are likely to access to notify them that these requirements exist and are subject to penalties, etc.

This approach will assist reporting crypto-asset service providers (RCASPs) to complete the required due diligence and provide support should they face push-back from investors. As noted above, a degree of education of requirements should be tolerated with the change in regulatory landscape.

A useful comparison may be drawn from the adoption of the Common Reporting Standard (CRS) and the experience of large financial institutions who dealt with customer queries at the time. Officials are encouraged to undertake targeted consultation with both RCASPs in scope of the CARF and reporters subject to the CRS to better understand what materials would be of greatest use.

Comment

Officials undertook targeted consultation with New Zealand-based RCASPs in 2022 regarding New Zealand's intention to implement the CARF. These providers were largely supportive of New Zealand implementing the CARF.

Inland Revenue will continue to work with the OECD and other jurisdictions that have implemented the CARF to ensure that there is sufficient guidance to address any questions that RCASPs may have. Because the CARF is effectively a multilateral solution to crypto-asset income reporting, it is important that detailed guidance flows from an OECD level to ensure that rules are interpreted consistently across jurisdictions.

The CARF itself includes detailed commentary to the rules and this is complemented by an XML schema and user guide, which provide jurisdictions with guidance on implementation, and also various sets of FAQs.

Officials also acknowledge that there is only a limited number of RCASPs operating in New Zealand. Inland Revenue welcomes providers to reach out and intends to work closely with providers on a one-on-one basis to assist them with implementation. Due to the limited number of providers, Inland Revenue has been able to efficiently deal with any queries to date directly.

It is not anticipated that self-certification requirements would impose any undue compliance costs on RCASPs or their customers. This is on the basis that most of the information contained in a valid self-certification (personal information such as name, address, date of birth, etc) is already collected by RCASPs under existing AML/CFT law. Although the CARF will require self-certification for pre-existing users, RCASPs have ample time to obtain this (these are not required until 1 April 2027 at the latest, or 12 months following the implementation of the CARF in New Zealand).

Although Inland Revenue is unable to provide detailed guidance that sits outside OECD material for the reasons described above, OECD guidance will be detailed, and Inland Revenue will further provide RCASPs with one-on-one support to ensure effective implementation.

Recommendation

That the submission be noted.

Issue: New Zealand should adopt "fast follower" approach to CARF adoption

Submission

(PwC)

New Zealand should generally adopt a "fast follower" approach, which would be helpful to learn from the experience of other jurisdictions. However, the submitter appreciates that New Zealand is likely to be a net recipient of information under the CARF, and early adoption will be necessary to receive information from other jurisdictions.

Comment

As the submitter indicates, New Zealand is a net recipient of information under the CARF. Inland Revenue analytics suggest that approximately 80% of New Zealanders' crypto-asset activity occurs through offshore exchanges. It is imperative that New Zealand is an early adopter to ensure that information received under the CARF can be used to support tax compliance.

Recommendation

That the submission be declined.

Issue: Need for detailed guidance

Submission

(PwC)

Detailed guidance on the "Model Rules for Digital Platforms" (which were similar to the CARF in that they are reporting rules developed by the OECD and incorporated by reference) has not been provided. It is understood that this is (at least in part) because Inland Revenue considers that producing detailed guidance could risk providing a view that is inconsistent with the OECD. The submitter strongly disagrees with the premise of this position. Although the rules may have been developed by the OECD, by incorporating it into New Zealand legislation, the Government has a responsibility to ensure that it is providing sufficient guidance to impacted operators. This is particularly important given New Zealand is one of the first countries to adopt these rules. In our view, the lack of detailed New Zealand-specific guidance for the platform reporting rules gave rise to uncertainty as to how Inland Revenue would administer and enforce the rules. Based on that example, and as the lead government agency responsible for the implementation of these rules, Inland Revenue should ensure that it provides detailed guidance on how the CARF should be applied in New Zealand.

Comment

For New Zealand to be subject to the information exchange under the CARF, New Zealand must have equivalent rules with other jurisdictions. As the submitter correctly identifies, if New Zealand produces detailed guidance, there is a risk that this is inconsistent with the OECD CARF and could result in New Zealand not being subject to information exchange. Jurisdictions are subject to a detailed checklist at OECD level to ensure that their rules are equivalent, and providing detailed guidance that sits outside this can increase the risk of the CARF being applied differently in New Zealand. This goes against the purpose of a multilateral solution to information reporting, which aims to reduce compliance costs worldwide for reporting crypto-asset service providers (RCASPs) and tax authorities alike by providing a standardised reporting framework.

That said, officials also agree with the submitter that when incorporating the CARF into New Zealand law, the Government has a responsibility to ensure that it is providing sufficient guidance to impacted operators.

The CARF itself includes detailed commentary to the rules and this is complemented by an XML schema and user guide, which provide jurisdictions with guidance on implementation, and also various sets of FAQs. Further to this, Inland Revenue is committed to working with New Zealand-based RCASPs one-on-one to ensure successful implementation of the CARF. Inland Revenue will also continue to work with the OECD and other jurisdictions that have implemented the CARF to ensure that there is sufficient guidance to address any questions that RCASPs may have. The combination of these efforts will ensure that RCASPs can effectively implement any system changes required by the CARF in New Zealand.

Inland Revenue will also provide further guidance in a *Tax Information Bulletin* item to provide further clarity to RCASPs on how the penalty provisions will apply. Inland Revenue intends to adopt a "light touch" approach and will work with RCASPs in the first instance to ensure successful implementation.

Recommendation

That the submission be declined.

Issue: Application of changes to CARF

Submission

(PwC)

Adoption of the CARF by reference in domestic law has certain benefits in that it ensures that New Zealand's rules are aligned completely with the OECD. However, the ambulatory approach gives rise to some difficulties as well.

If the CARF is updated during a reporting period, clarity should be provided to affected New Zealand operators whether the changes should be reflected as a mid-year change, or if they should take effect from the next reporting period onwards, and whether it is the transaction date or the filing date that is the trigger for the effective date.

Comment

It is highly likely that any changes made to the CARF at OECD level would be subject to extensive consultation, require unanimous agreement among OECD members (including New Zealand), and be expected to take effect prospectively from the beginning of the next reporting period at the earliest.

In the unlikely event that any changes to the CARF affecting New Zealand operators were to apply mid-year, this would be made abundantly clear to reporting crypto-asset service providers.

Recommendation

That the submission be noted.

Amendments to Common Reporting Standard

AMENDMENTS TO COMMON REPORTING STANDARD

Clauses 117(3) and (8), 149, and 152

Issue: Compliance costs associated with additional reporting requirements

Submission

(Corporate Taxpayers Group, Deloitte, KPMG)

The OECD's updates to the Common Reporting Standard (CRS) are automatically incorporated into New Zealand law by virtue of the reference to the OECD standard. Despite this, efforts should be made to minimise the increased compliance costs associated with the additional reporting requirements.

Comment

Officials note that many financial institutions that are required to report under the CRS in New Zealand operate internationally. Because these institutions operate in more than one jurisdiction, it is highly likely they are already required to make the changes under the laws of the other jurisdiction.

Further, for financial institutions that are already required to report under the existing CRS (prior to the 2023 amendments), officials do not anticipate a significant increase in compliance costs associated with the additional reporting requirements for the following reasons:

- Financial institutions are now required to include contextual information about the account holders and controlling persons, as well as the type of financial accounts they own (eg, depository or custodial accounts, pre-existing or new accounts). However, these institutions are already likely to possess the additional information. Furthermore, although the reports are annual, the system change would be a one-off exercise.
- The change broadens the scope of the CRS to include digital financial products, namely electronic money products and central bank digital currencies, as well as relevant crypto-assets. While this means that the institutions potentially need to include more items in the report (or come within the scope for reporting another way), they should already be in possession of the required information. Otherwise, they would now be required to obtain self-certifications to obtain this information. This would likely also involve a one-off system change. Furthermore, depository accounts representing electronic money products are excluded if the aggregate balance is not above the minimum threshold.

- Some of the changes are intended to reduce the compliance burden. One example is the introduction of a new excluded account category for capital contribution accounts (see Issue: Exclusion for capital contribution accounts following).
- Additional details have been included in the amended Commentary to the CRS to increase consistency in the application of the CRS and to incorporate previously released frequently asked questions and interpretative guidance. This should reduce ambiguity and help institutions to comply with the requirements.
- The OECD made available the updated XML schema to aid implementation. Additionally, Inland Revenue intends to publish guidance on the new standards, which should make it easier to comply with them.

The increase in compliance costs is likely to be more significant for financial institutions that are not currently reporting under the CRS. However, the amended provisions would only apply on 1 April 2026 with the first reports under the amended CRS due on 30 June 2027. This is intended to allow sufficient lead time for the reporting institutions to comply with the requirements.

Recommendation

That the submission be noted.

Issue: Exclusion for capital contribution accounts

Submission

(Corporate Taxpayers Group, Deloitte)

The maximum period that capital contribution accounts can be treated as excluded should be extended from 12 months to 24 months to give taxpayers greater flexibility as part of incorporation and capital increase activities.

Comment

The 12-month maximum period is intended to ensure that capital contribution accounts are only used for the purpose that warrants the exclusion from CRS requirements: namely, to block funds for a limited period of time in view of the incorporation of a new company or a pending capital increase. Extending the maximum period would undermine this consideration.

Furthermore, the maximum period was agreed by consensus through the OECD process. Relaxing the rule would result in New Zealand being deemed not to meet the international standard.

It should also be noted that the provision is already concessionary compared to the status quo, which requires such accounts to be reported.

Recommendation

That the submission be declined.

Issue: Guidance on changes

Submission

(Corporate Taxpayers Group, Deloitte)

Guidance about the CRS changes would be particularly useful given the complexity of the legislative amendments and the lack of adequate guidance in the Bill commentary.

Comment

As noted above and in the Bill commentary, Inland Revenue intends to update its CRS guidance to clarify the application of the amendments to the CRS.

Recommendation

That the submission be noted.

Qualifying recognised overseas pension schemes

TAXATION OF TRANSFERS FROM OVERSEAS PENSION SCHEMES – "SCHEME PAYS"

Clauses 13, 87, 93, 94, 95(1), (3), and (4), 104, 105(4), (24), (27), (32), (33), and (34), 113(2), 117(2), (7), (9), and (10), 119, 120, 121, 122, 123, 124, 133, 139, and 140

Issue: Support for proposal

Submission

(Booster, Chapman Tripp, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, Te Ara Ahunga Ora Retirement Commission)

The submitters support the proposal to introduce a "scheme pays" option for the payment of tax due when an overseas pension fund is transferred to an in-scope New Zealand scheme.

"Scheme pays" will help those people who may struggle to pay their New Zealand tax liability and will remove a barrier to those people wanting to transfer their United Kingdom pension funds to New Zealand. (*Booster*)

The proposal will be welcomed by immigrants to New Zealand. The submitter considers it is also in the public interest to encourage superannuation portability, so supports the change. (*Chartered Accountants Australia and New Zealand*)

Recommendation

That the submission be noted.

Issue: Requirement for all QROPS and KiwiSaver schemes to offer "scheme pays"

Submission

(Financial Services Council, KPMG)

It should be optional for qualifying recognised overseas pension schemes (QROPS) and KiwiSaver scheme providers to offer "scheme pays". Imposing this requirement on all schemes would potentially impose unnecessary regulation and compliance costs for little benefit in some cases. (*Financial Services Council*)

The submitter could see the rationale for mandating "scheme pays" for QROPS but thought that requiring all KiwiSaver schemes to participate would be likely to increase compliance costs for scheme providers when very few individuals may actually be impacted. They submitted that KiwiSaver schemes should be able to opt in based on commercial considerations. (*KPMG*)

Comment

Unlike transfers to QROPS, there are not known to be any difficulties with the payment of tax on transfers to KiwiSaver schemes, because the KiwiSaver rules permit a withdrawal from the scheme to pay a tax liability. The benefit of extending "scheme pays" to KiwiSaver schemes would be to give individuals transferring overseas funds to those schemes access to the proposed mechanism for paying the tax and to the 28% flat rate, providing equity with QROPS investors. It would also improve tax compliance in relation to these transfers.

On balance, officials consider it would be reasonable for "scheme pays" to be optional for KiwiSaver funds to reduce their compliance costs. The above benefits would still be realised when KiwiSaver schemes make the commercial decision to offer the service. However, if tax issues like those that arise in connection with transfers from the United Kingdom (UK) are identified in future, officials may reconsider whether a mandatory requirement is justified.

Point of difference

There are several rationales for requiring all QROPS to offer "scheme pays". First, the mechanism is designed to address a known and inherent problem with the payment of tax on transfers of UK pension funds to QROPS, and for many years the QROPS industry has advocated for Inland Revenue to develop a solution. Second, Inland Revenue is aware of concerns that there has been significant non-compliance with payment of tax on overseas pension transfers. The new reporting requirements that will be brought in with "scheme pays" are expected to assist in addressing these compliance concerns and making the requirement mandatory would reduce the risk of tax arbitrage. Finally, Inland Revenue will incur administrative costs in building and running the system necessary to accommodate "scheme pays", and these costs may not be justified if only a few QROPS choose to offer the service. For these reasons, officials consider that it should remain mandatory for QROPS to offer "scheme pays".

Recommendation

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

Issue: 28% flat rate of transfer scheme withholding tax

Submission

(KPMG)

The submitter stated that allowing individuals to use their prescribed investor rate (PIR) would be more equitable than a 28% final tax, which may overtax in certain instances. It was also not clear to the submitter that the proposed rule to allow the Commissioner to assess the tax due, which could be different to that calculated by the individual, could not also result in a breach of United Kingdom (UK) rules.

Comment

A flat rate is simple for schemes to comply with and for Inland Revenue to administer, and it is expected to be beneficial to the majority of affected taxpayers. When taxpayers think they would pay less tax at their marginal rate, they may choose to pay this via their self-assessment tax return and personal funds.

Further, imposing the tax on transfer at the individual's PIR rather than a flat 28% rate would create additional complexity that officials do not consider to be warranted. PIRs are subject to an end-of-year square-up to resolve any underpayments or overpayments during the year. Individuals may be on an incorrect PIR, since the rate is based on the individual's taxable income in the previous two income years. Refunds of overpaid tax are paid directly to the individual's bank account as part of their general income tax refund for the year. If such a refund arose from over-taxation of their pension transfer under "scheme pays", this would result in an "unauthorised payment" to the individual in breach of UK rules. To prevent such breaches, Inland Revenue would have to build and maintain a parallel system solely for "scheme pays". This would increase administrative costs and complexity.

It is more straightforward to keep "scheme pays" in a separate administrative system with a simpler, lower cost. This system would be used when the individual declares, or the Commissioner assesses, underpayments or overpayments of tax. Officials expect these scenarios will be relatively infrequent.

Officials also note that a correction at scheme level is within UK rules. They key point is that the individual does not receive money from the scheme prior to their entitlement crystallising under UK rules.

Recommendation

That the submission be declined.

Issue: Compliance costs of "scheme pays"

Submission

(Financial Services Council, KPMG)

The Financial Services Council encourages consideration of the cost to the providers of updating systems for reporting to Inland Revenue and updating documents to gather the additional information from members. It welcomes further engagement with Inland Revenue in this space.

KPMG submitted that it understood the rationale for requiring the scheme to report the taxable amount to Inland Revenue, regardless of whether transfer scheme withholding tax (TSWT) is deducted or the individual elects to pay the tax instead. This is again likely to increase compliance costs through changes to investment income reporting systems. This is particularly the case if "scheme pays" applies more widely than just for QROPS.

Comment

A certain amount of information is required for the "scheme pays" proposal to work, and officials do not consider the quantity of information required to be onerous. The key information requirements include the investor's name and IRD number, as well as the amount of the transfer and whether the election has been made. This is indicated in the proposed legislation in new section 25LB of the Tax Administration Act 1994, as well as in prior consultation. Further, when an individual elects for "scheme pays", they will not need to file a self-assessment tax return simply to report the pension transfer, which may lower overall compliance costs.

Inland Revenue will continue to engage with scheme providers as it develops the system for "scheme pays", and it will notify providers of any changes to the information requirements.

Recommendation

That the submission be noted.

Issue: Information requirements for assessable withdrawal amounts

Submission

(Corporate Taxpayers Group, Deloitte, Financial Services Council)

a. The Financial Services Council submitted that accuracy of monthly reporting under "scheme pays" and the amount of tax due depends on the scheme member providing the relevant information required accurately and in a timely manner. They thought that it would be useful to see the list of information required from the member and the timeframes involved to comment on these issues.

b. The Corporate Taxpayers Group and Deloitte raised a concern that the requirement that the individual calculate and notify the scheme provider of the assessable withdrawal amount under proposed new section 31D of the Tax Administration Act 1994 (TAA) did not allow enough time to accurately quantify the taxable amount. In particular, the New Zealand dollar value of the transfer would only be known on the date the funds are transferred into the transfer scheme.

   The submitters suggested that the timeframe for making the notification of the assessable withdrawal amount should be extended to 10 working days after the transfer.

c. KPMG agreed that the New Zealand scheme should not be responsible for the calculation of the taxable amount. They recommended that Inland Revenue release practical guidance to assist individuals to comply.

Comment

a. As noted above, the information requirements have been indicated in earlier consultation and in proposed new section 25LB of the TAA. The most complex information required to be provided is the assessable withdrawal amount, under proposed new section 31D. However, requiring the member to provide this amount means that the scheme providers do not have to calculate the amount, reducing their risk of error in complying with the "scheme pays" proposal.

b. Officials agree that it would not be possible for the individual to notify the scheme of the assessable withdrawal amount before the time of the transfer because the New Zealand dollar amount of the transfer will only be known when it is received by the scheme. Therefore, we agree that the timeframe for making the notification should be extended. Ten working days from the date of the transfer should be sufficient time for the individual to do the calculation and report it to the scheme. Practically, the scheme will have to ensure that it keeps enough of the transferred funds on hand to meet the tax liability when it is due.

c. With respect to practical guidance, officials note that there is already Inland Revenue guidance available on the tax rules for foreign superannuation lump sums, such as fact sheet IR1024. The Tax Information Bulletin will also include examples of how "scheme pays" will work in practice.

Recommendation

That the submission be accepted.

Issue: Meaning of "foreign superannuation withdrawals from which the TSWT has been withheld"

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed new section 57C of the Tax Administration Act 1994 will require the transfer scheme to file a return at the same time as the payment of the transfer scheme withholding tax (TSWT), with the return showing the amount being withheld.

The submitter's interpretation is that "foreign superannuation withdrawals from which the TSWT has been withheld" in proposed new section 57C(2)(b) is intended to mean "assessable withdrawal amount". If this is the case, for consistency, the term "assessable withdrawal amount" should be used instead. If the term "foreign superannuation withdrawals from which the TSWT has been withheld" is intended to mean something else, this term should be defined accordingly.

Comment

Officials agree with the submitter's interpretation. The section should be amended, together with any similarly necessary changes.

Recommendation

That the submission be accepted.

Issue: Commissioner's assessment of TSWT

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed new section 98C of the Tax Administration Act 1994 provides the Commissioner with the power to make an assessment of the transfer scheme withholding tax (TSWT) that ought to be imposed. Proposed section 98C will only apply when an individual has elected into "scheme pays". The submitters seek clarification and/or guidance on the types of situations when the Commissioner may reassess the TSWT. The submitters' interpretation of the proposed amendments and Bill commentary is that proposed section 98C would be applicable when:

- the assessable withdrawal amount is overstated, in which case a refund can be issued to the scheme (although not the individual), and
- the assessable withdrawal amount is understated, so the scheme may be asked to pay the assessed shortfall.

One submitter would be interested if there are any other situations when proposed section 98C would or could be invoked. *(Corporate Taxpayers Group)*

Comment

The submitters' interpretation of the proposed amendment is broadly correct. As noted, proposed section 98C would only apply when the individual has elected into "scheme pays". It is a reassessment power on the scheme.

Officials will consider including examples in the *Tax Information Bulletin* or other future guidance on "scheme pays".

Recommendation

That the submission be noted.

Issue: Implementation – schedule method tool

Submission

(Corporate Taxpayers Group, Deloitte)

For those individuals who opt to calculate their assessable withdrawal amount using the schedule method, a tool should be built and made available on the Inland Revenue website to help individuals determine the correct schedule method percentage to apply to the transfer amount. It should be designed for common and simple situations and flag when individuals should seek additional advice. The alternative is for individuals to formally confirm the implications of the transfer, which can be costly.

Comment

Officials agree it would be useful to build a tool to help individuals calculate their tax liability under the schedule method. Inland Revenue will consider this as part of the implementation process.

Recommendation

That the submission be noted.

Issue: Amended definition of "schedular income"

Submission

(Matter raised by officials)

Clause 105(32) of the Bill inserts proposed new paragraph (n) in the definition of "schedular income" in section YA 1 of the Income Tax Act 2007. It would be helpful to add the following wording to this definition: "…that is an assessable withdrawal amount for which the person chooses to have a transfer scheme pay an amount of TSWT…".

Recommendation

That the submission be accepted.

Issue: Meaning of "reportable income"

Submission

(Matter raised by officials)

Clause 119(1) of the Bill amends section 22D(3)(a) of the Tax Administration Act 1994. Proposed new subparagraph (vi) should make clear that it is an assessable withdrawal amount for which no election has been made.

Recommendation

That the submission be accepted.

Issue: Liability for TSWT shortfalls resulting from individual's understatement of assessable withdrawal amount

Submission

(Matter raised by officials)

If an individual elects "scheme pays", the transfer scheme is liable for transfer scheme withholding tax (TSWT) on the assessable withdrawal amount reported to it by the individual. The individual is responsible for the correct calculation of the assessable withdrawal amount.

A new provision should be inserted to make it clear that, if an individual has elected "scheme pays" under proposed new section RI 2(2) of the Income Tax Act 2007 but has notified an incorrectly low assessable withdrawal amount to the scheme under proposed new section 31D(2)(a) of the Tax Administration Act 1994, then the individual is liable for the shortfall at the 28% "scheme pays" rate. Further, the Commissioner would be able to assess the individual for the TSWT shortfall at 28%.

Recommendation

That the submission be accepted.

Issue: Include TSWT in withholding taxes for knowledge offence relating to withholding tax

Submission

(Matter raised by officials)

Section 143A of the Tax Administration Act 1994 (TAA) sets out failures that constitute "knowledge offences". These rules should apply to a transfer scheme that withheld transfer scheme withholding tax (TSWT) but did not pay it to the Commissioner. TSWT should be included as a tax that is a "withholding or deduction of tax" in section 143A(5) of the TAA to ensure that the rules work correctly.

Recommendation

That the submission be accepted.

Issue: Application of TSWT to foreign superannuation withdrawals

Submission

(Matter raised by officials)

Proposed new subpart RI of the Income Tax Act 2007 provides for the obligation to pay transfer scheme withholding tax. Proposed section RI 2(1)(c) refers to when "part of the foreign superannuation withdrawal is an assessable withdrawal amount for the person". However, it is technically possible for 100% of the foreign superannuation withdrawal to be assessable income. Proposed section RI 2(1)(c) should be amended so that "scheme pays" is still available when all the person's foreign superannuation withdrawal is assessable.

Recommendation

That the submission be accepted.

Issue: Tax credit cross-reference

Submission

(Matter raised by officials)

Proposed new section LB 6BA of the Income Tax Act 2007 (ITA) provides that a person has a tax credit for the amount of transfer scheme withholding tax (TSWT) shown as withheld by the scheme. This credit should be offset against the person's tax liability for the year, so they have no further tax to pay on the assessable withdrawal amount. However, this credit is not currently listed in section LA 6 of the ITA, which provides for the Commissioner's use of credits. Proposed section LB 6BA should be added to the list of sections referenced in section LA 6(1) so that it is clear how the credit for TSWT is to be used.

Recommendation

That the submission be accepted.

TAXATION OF TRANSFERS FROM OVERSEAS PENSION SCHEMES – LOCKED-IN KIWISAVER

Clauses 188, 190, and 191

Issue: Support for proposal

Submission

(Booster, Chapman Tripp, Chartered Accountants Australia and New Zealand, Te Ara Ahunga Ora Retirement Commission)

The submitters support the proposal to allow individuals who transferred their United Kingdom pension fund to a KiwiSaver scheme prior to 17 June 2015, and affected scheme providers, to transfer that fund to a New Zealand qualifying recognised overseas pension scheme.

Recommendation

That the submission be noted.

Issue: Opposition to proposal

Submission

(Martin Dick)

In the submitter's view, the proposal should not proceed because there are no tax implications in the majority of cases because the last qualifying recognised overseas pension scheme (QROPS) transfers were received into KiwiSaver schemes in 2015. Only a small number of investors would now be affected, and they knew what they signed up for when they moved the funds to a KiwiSaver scheme. They can transfer between KiwiSaver providers if the provider supports the old QROPS payments.

Comment

Officials agree that the number of individuals affected now is likely to be small, due to the United Kingdom's (UK) five-year non-residence rule. However, officials do not agree that individuals knew what they signed up for. Individuals transferred their UK funds to a KiwiSaver scheme on the basis that KiwiSaver funds were QROPS when the funds were transferred. The UK later ceased to recognise KiwiSaver schemes as QROPS. Moreover, affected individuals cannot transfer between KiwiSaver providers without UK tax implications. Further, affected schemes have ongoing UK tax obligations.

The proposed change simply allows individuals or providers to elect to transfer the historic UK funds from the KiwiSaver scheme to a QROPS if they wish to do so. Given that it is relatively simple, and no obligations are created, officials consider that the change is justified despite the small number of people affected.

Recommendation

That the submission be declined.

Issue: Calculation of locked-in amount (QROPS accumulation)

Submission

(Booster, Chapman Tripp, Financial Services Council)

The submitters raised practical and drafting issues about the “QROPS accumulation” definition (the amount of qualifying recognised overseas pension scheme (QROPS) funds locked into a KiwiSaver scheme).

One submitter understood that the “locked-in” funds will comprise the original amount transferred into the KiwiSaver scheme from the United Kingdom (UK) pension scheme along with any accumulated investment returns on that amount. The submitter would welcome clarification and guidance on how investment returns and funds are calculated. (*Booster*)

Two submitters are concerned that the “QROPS accumulation” definition as currently drafted is too narrow and has unintended consequences for schemes that lead to the following issues:

a. The reference to “the KiwiSaver scheme” in the definition could potentially exclude QROPS money that has been legitimately transferred between more than one QROPS or KiwiSaver schemes after it has come into New Zealand.

b. The proposed amendment refers to the “net value” of the amount of the foreign superannuation withdrawal; this does not correlate with the QROPS rules in the UK legislation. “Net value” has a specific meaning under the KiwiSaver Act 2006. However, to align with the QROPS rules in the UK legislation, the “QROPS accumulation” definition should refer to the original amount transferred from the UK pension scheme (ignoring fees and positive and negative returns) but reduced by any withdrawals following receipt of the original amount transferred from the UK pension scheme.

c. For some providers, the records of the ring-fenced QROPS amounts are less than complete in some cases. In their view, the “QROPS accumulation” definition needs to incorporate the manager’s reasonable estimate of these amounts.

The submitters suggest alternative drafting to accommodate these issues. (*Chapman Tripp, Financial Services Council)*

Comment

a. Officials agree that the current drafting of the "QROPS accumulation" definition may unintentionally exclude amounts transferred through multiple schemes rather than directly from the UK to the current locked-in KiwiSaver scheme. The definition should be amended to include such amounts.

Officials note that, in some circumstances, the amount transferred will have been reduced by withdrawals.

Point of difference

b. Inland Revenue does not intend to prescribe a specific methodology for calculating the amount to be transferred from the locked-in KiwiSaver scheme to a QROPS. Scheme providers are best positioned to determine the most practical methodology, using the information available, account transactions, and having regard to UK and New Zealand requirements.

c. Officials understood from earlier consultation that scheme providers might not know the precise original amount transferred from the UK to the New Zealand scheme, but they would at least know the current amount incorporating investment returns.

It is true that the QROPS rules in UK legislation regulate the original amount transferred from the UK scheme, so this is the amount in respect of which UK tax charges would apply in the event of an unauthorised payment. However, HMRC's concern is that no *less* than the original amount of UK funds should be subject to QROPS rules; it is not of concern if the amount is more. Incorporating investment returns would virtually always result in a larger amount. Broadly speaking, including investment returns would enable the individual to be put into the position that they would have been in had their UK pension fund originally been invested in a complying QROPS.

If some providers do not know the current accumulation attributable to the historic UK transfer, then officials note that a reasonable estimate of the original amount may be required. As above, officials do not intend to prescribe the methodology but note that scheme providers can ask members for evidence to help them establish the correct amount under existing KiwiSaver rules.

Recommendation

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

Other policy items

APPROVED ISSUER LEVY RETROSPECTIVE REGISTRATION

Clauses 128(3), 141, and 199

Issue: Support for proposal

Submission

(Bell Gully, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, EY, KPMG, Mayne Wetherell, New Zealand Law Society, PwC)

It is appropriate to provide for retrospective registration of a security for approved issuer levy (AIL) because:

- The New Zealand Parliament has determined it is appropriate that interest paid by a New Zealand borrower to a non-associated, non-resident lender should be subject to tax at 2%. (*Bell Gully*)
- Currently, an oversight in AIL registration may result in a more than sevenfold increase in the rate of tax applicable to the interest payment. (*Bell Gully*)

Recommendation

That the submission be noted.

Issue: Scope generally

Submission

(EY, New Zealand Law Society)

The narrow scope of the provision, including the prospective application date, may be due to fiscal constraints. However, the reformed provision is of little utility as currently drafted and will not achieve the desired compliance cost reduction. (*EY*)

A wider scope for retrospective AIL registration would better align this provision with the broader policy intent underpinning the AIL regime, that is, to reduce the cost of capital for New Zealand taxpayers. AIL replaces the higher rate of non-resident withholding tax (NRWT) that would otherwise apply, so the ability to register for AIL should not be overly restrictive. The net result of failing to obtain AIL registration is that the New Zealand taxpayer suffers additional costs because the payments to the offshore lender are not reciprocally reduced (the interest payment is merely grossed up). (*EY*)

The proposals in the Bill are too restrictive and effectively allow NRWT to continue to apply as an excessive penalty in situations when AIL could apply. While as a matter of law NRWT generally applies as the default position, in practice utilisation of the AIL regime (when available) is almost always the intended tax position. Imposition of NRWT at 10% or 15% in such situations (when a person would expect AIL to apply at 2%) is unnecessarily punitive. (*New Zealand Law Society*)

Comment

Officials acknowledge that the proposal may be unnecessarily restrictive and are recommending some changes to expand its availability.

Recommendation

That the submission be noted.

Issue: Two-year timeframe for retrospective registration

Submission

(Chartered Accountants Australia and New Zealand, EY, KPMG, Mayne Wetherell, New Zealand Law Society)

The requirement that application for retrospective registration be made within two years of the first interest payment on which the borrower had a non-resident withholding tax (NRWT) liability should be omitted.

The regulatory impact statement acknowledges that the most common scenario involves an individual with a foreign mortgage on an overseas property who does not realise until sometime into the term of the mortgage that they have New Zealand tax obligations in relation to the interest payments. In practice, many of these borrowers will not discover they have an obligation within the two-year window. Not allowing retrospective registration for these borrowers is unfair. (*Chartered Accountants Australia and New Zealand*)

Instead, there could be a restriction that prevents the approved issuer levy (AIL) registration date being greater than two years before the date of application. An NRWT liability would arise in respect of the period before AIL registration. (*Chartered Accountants Australia and New Zealand*)

The two-year restriction for retrospective registration is unnecessary. The Commissioner requires taxpayers to apply for approval as an issuer so the Commissioner has full oversight over use of the provision. It would be preferable for there to be a provision providing the Commissioner with additional flexibility to accept retrospective registration even beyond the two-year period if it would be reasonable in the circumstances, would not undermine the integrity of the tax system, and if the taxpayer otherwise has a good compliance history. (*EY*)

Limiting the backdating to applications made within two years of the first payment of interest (or, if later, 1 April 2025) would impose a disproportionate liability on borrowers for failure to register for AIL and risks undermining (rather than enhancing) the incentive for taxpayers to rectify errors. Further, any application to backdate a registration will be subject to Inland Revenue's discretion, which can be exercised against a taxpayer in cases of serious or deliberate non-compliance as opposed to cases of oversight or genuine error. (*Mayne Wetherell*)

If Inland Revenue wants to ensure timely compliance and rectification of errors, a fixed penalty for each period in which a person pays interest and seeks to apply the AIL regime without appropriate registrations in place could be considered. There is precedent for this in the form of the $250 per period penalty for non-payment of non-resident contractors' tax when there is ultimately no tax shortfall. (*Mayne Wetherell*)

The consequence if the borrower is not registered as an approved issuer and/or the security is not a registered security is that, rather than AIL applying at 2%, the borrower is potentially subject to an NRWT liability of up to 15%. Such a penalty (as it in effect is) is disproportionate in cases of genuine oversight (which, by definition, will be all cases to which proposed new section 86H(3) of the Stamp and Cheque Duties Act 1971 could apply), and disproportionate to the mischief (if any) caused by delayed AIL registration. (*Mayne Wetherell*)

If Inland Revenue wants to encourage timely compliance and rectification of mistakes, imposing an arbitrary time limit of this nature risks having the opposite effect and undermining the perception of fairness in the tax system. A taxpayer that discovers their error more than two years after the first payment of interest is made, or a taxpayer that has already made a payment of interest prior to 1 April 2025, will be deterred from rectifying their error by the potentially punitive and disproportionate NRWT liability. (*Mayne Wetherell*)

When retrospective AIL registration is requested by a person, that retrospective registration for AIL should be automatic (as it is for current applications) and not subject to any application window, albeit subject to a one-off fixed-amount penalty akin to a late filing penalty. Such a late filing penalty or, in this case, a late application penalty should create the necessary incentives for taxpayers to comply with the AIL regime. (*New Zealand Law Society*)

Alternatively, if a time limit for applications for seeking retrospective registration is required, a longer period is appropriate. The time period in which a taxpayer may apply for retrospective registration should align with the time period that generally applies to Inland Revenue's enforcement activities (the time bar). Applications for retrospective registration should be permitted until four years have passed from the end of the period in which the first interest payment was made. (*New Zealand Law Society*)

The Commissioner should be entitled to exercise discretion to allow a retrospective application outside of the two-year time limit. At a minimum, AIL should be able to be retrospectively paid in respect of interest amounts dating back up to two years from the date of the retrospective application, if that is made outside of the two-year time limit. (*KPMG*)

Comment

On further consideration, officials agree with submitters that there are sufficient disincentives against flouting the AIL regime without imposing a two-year time restriction on retrospective registration. In particular, the fact that retrospective registration will be at the Commissioner's discretion, and therefore not guaranteed, will mean it is still important to register on time.

Officials do not consider that a new civil penalty for late AIL registration is necessary at this time. However, if compliance concerns emerge in future, despite the disincentives mentioned above, a penalty could be reconsidered.

Point of difference

While agreeing that the two-year time restriction can be removed, the amount of time between the borrower's first interest payment and their application for retrospective registration (the duration of the delay) is still a relevant consideration. Therefore, it should be included in the list of factors the Commissioner may consider in determining whether the cause of the delay was an oversight. This would signal that Inland Revenue expects any mistakes with AIL registration to be identified and disclosed as soon as possible. The sooner the error came to light, the more likely the Commissioner would regard it as an oversight (the logic being that as time goes on, the borrower has had longer to become aware of their error and disclose it). However, like the other factors, the duration of the delay would be just one of several considerations, and not determinative; a borrower could apply for retrospective registration four years late and still be approved if the Commissioner was satisfied the delay was an oversight.

Recommendation

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

Issue: Delays in registration not due to "oversight"

Submission

(EY, PwC)

The proposal is unnecessarily limited to circumstances when registration is delayed due to oversight. The ability to accept retrospective approved issuer levy (AIL) registrations should be extended to taxpayers that make every effort to comply but are unable to do so. Widening the provision would ensure taxpayers who mistakenly fail to comply with their obligations do not receive more favourable treatment than taxpayers who proactively comply but experience delays as a result of the Commissioner's administrative processes. (*EY*)

There should be a default period (not subject to Commissioner discretion) for retrospective registration within a certain grace period (just after the first interest payment period). Currently, registration for AIL requires a signed loan agreement and Inland Revenue processing times are 20 working days from receipt of an application. Therefore, even in circumstances when taxpayers are aware of the need to register for AIL (ie, there is no oversight), the current administrative procedures create time pressure for both taxpayers and Inland Revenue. On this basis, retrospective registration should be available as a matter of course for applications made within a certain time period following the first interest payment. Retrospective registrations beyond that grace period could still be subject to the Commissioner's discretion currently proposed in the Bill. (*PwC*)

Comment

Officials acknowledge that in some cases, a borrower may make an effort to register a security on time but fail to do so due to administrative delays or other extenuating circumstances. Such delays are clearly unintentional but are not "oversight", since the borrower was aware of their obligations. These situations may be resolved pragmatically at an operational level. However, for the sake of taxpayer certainty, the Commissioner's discretion to allow retrospective registration should be extended to cover them.

Officials expect that, in most of these cases, the Commissioner will already be aware that the borrower had attempted to register the security on time because the borrower will have been in contact with Inland Revenue. This will make it straightforward for the Commissioner to approve the borrower's application for retrospective registration. In the event the borrower has not been in contact with Inland Revenue, the Commissioner may consider some of the factors given for evaluating "oversight", such as the borrower's explanation of the cause of the delay.

Point of difference

Officials do not recommend a grace period within which retrospective registration is automatically granted. An expansion of the discretion to cover the appropriate cases is more principled and avoids a possible unintended consequence of disincentivising timely compliance.

Recommendation

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

Issue: Commissioner's discretion

Submission

(Bell Gully)

Retrospective registration should not be at the Commissioner's discretion in all cases.

Relying on human judgement to determine whether a taxpayer should be permitted to retrospectively register for approved issuer levy (AIL) (and thus pay tax at 2% as opposed to 10% or 15%) undermines the integrity of the tax system. It creates scope for arbitrary outcomes due to the variability in the way different decision makers may exercise the discretion and the fact that taxpayers who have access to greater financial resources will typically be in a better position to advocate for their interests than taxpayers with fewer resources. This is at odds with a person's right to have their tax affairs treated with no greater or lesser favour than the tax affairs of other persons.

The rationale for the discretion is to prevent borrowers deliberately not complying with the AIL regime in the knowledge that, if audited, they will get the same basic outcome as if they had registered for and paid AIL on time (even though interest and penalties could also be payable in the former case). However, there is nothing to distinguish this particular risk of non-compliance from any other non-compliance that results in an underpayment of tax. It is the role of the penalties regime and, to a lesser extent, the use of money interest regime to incentivise compliance. Timely payment of AIL does not require a bespoke compliance approach. The imposition of non-resident withholding tax (NRWT) should not be used as a pseudo-penalty to promote compliance when other mechanisms exist for that purpose.

If there is a compliance concern, it would be more appropriate to introduce a new civil penalty for late registration.

Nevertheless, the Commissioner's discretion has a role to play in some cases. A more balanced approach would be for retrospective registration to be automatically effected if applied for within two years of the first interest payment under the security, but otherwise for it to be at the Commissioner's discretion.

Comment

There are numerous Commissioner's discretions across the revenue Acts. Operational guidelines are developed to guide staff in how to apply the discretions consistently.

In officials' view, it is appropriate that retrospective registration be at the Commissioner's discretion in all cases to ensure the concession is targeted at unintentional errors. It is preferable that the borrower registers the security for AIL before the first interest payment because this gives the Commissioner oversight of the security and an opportunity to intervene early if the borrower should be paying NRWT instead (ie, when there is any related-party borrowing). Accordingly, it is not desirable that borrowers who intentionally delay their AIL registration for any reason be entitled to retrospective registration.

Recommendation

That the submission be declined.

Issue: Retrospective registration when failure to deduct and pay NRWT caused by oversight

Submission

(New Zealand Law Society)

Retrospective approved issuer levy (AIL) registration should be available not only when the delay in making the application for registration is the result of an oversight, but also when the failure to deduct and pay non-resident withholding tax (NRWT) was caused by an oversight. There may also be situations when a person was unaware of an obligation to deduct and pay NRWT, and retrospective AIL registration should also be available in this situation.

Comment

The proposed legislation already allows retrospective registration for AIL in this situation; the application of the Commissioner's discretion depends on the nature of the borrower's delay in registration, not whether they have paid tax. Officials expect that in many, if not most, cases when borrowers request retrospective registration, no tax will have been paid on the security; the mistake that led to the failure to register the security for AIL is likely to have led to the failure to pay tax altogether. If the borrower has paid anything, it will most likely have been AIL, and officials note that this is a factor the Commissioner may take into account in evaluating whether the cause of the delay was an oversight (if the borrower has paid AIL, it is likely the delay was an oversight).

Recommendation

That the submission be noted.

Issue: Factors indicating "oversight"

Submission

(EY, KPMG)

The list of factors in proposed new section 86H(4) of the Stamp and Cheque Duties Act 1971 are not all helpful indicators of oversight, and some are entirely impractical in the context. It would be preferable for this list to be removed because it is not clear there is a need to legislatively set the kinds of criteria the Commissioner may consider. The Commissioner should be provided with additional flexibility to accept retrospective registration in all cases when:

- it is reasonable in the context
- it would not undermine the broader integrity of the tax system, and
- the taxpayer otherwise has a good compliance history. (*EY*)

If the above submission is not accepted and the Government wishes to progress the proposal unchanged, further changes are needed. In particular, proposed section 86H(4) should clarify that the listed factors are indicators only, with other relevant information also able to be considered. It should also be clarified that none of the criteria will be considered determinative or any more or less conclusive than the others. While the Bill commentary indicates that the provision is intended to work in this way, this position has not been reflected in the drafting. (*EY*)

Noting the potential for inconsistent application and weighting of the factors, Inland Revenue should publish clear guidance on how it will consider these factors. (*KPMG*)

Comment

Officials agree that the listed factors are not exhaustive, with other relevant information also able to be considered. This is implicit in the proposed legislation, but further amendments can be made to clarify this position.

Point of difference

Officials consider that the list of factors will help guide taxpayers and operational staff on how the discretion is to be applied and should be retained.

While it is expected that no factor will be individually determinative and that building an accurate picture of the nature of the error would involve consideration of multiple factors, this does not necessarily mean that no factor will be considered more or less conclusive than the others. The relative importance of the factors listed, as well as other relevant information not listed among the factors, will depend on the individual circumstances leading to the error. It should be at the Commissioner's discretion to weigh the facts and circumstances leading to the error in determining whether to allow retrospective AIL registration.

A future *Tax Information Bulletin* will include examples to illustrate how the various factors will be considered by the Commissioner.

Recommendation

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

Issue: Borrower's compliance history

Submission

(New Zealand Law Society)

The Bill commentary (page 69) on proposed new section 86H(4)(b) of the Stamp and Cheque Duties Act 1971 indicates that when the relevant borrower has a poor compliance history (either with approved issuer levy (AIL) and non-resident withholding tax or tax obligations generally), Inland Revenue "would be less inclined to regard the cause of the delay leading to retrospective registration as an oversight". If anything, a poor compliance history would suggest failing to register was a mistake rather than point to an intentional decision (in relation to AIL). Retrospective registration should be granted in such circumstances.

Comment

Officials disagree with the proposition that a poor compliance history would suggest that a failure to register a security for AIL was a (genuine) mistake rather than an intentional decision. Repeated failure to meet tax obligations shows a general lack of effort to comply, which may either be due to carelessness (oversight) or a deliberate decision to flout the rules. The more times a taxpayer fails to comply, the less plausible it becomes that the next transgression is truly unintentional because they have had a longer period of time to become aware of their obligations.

Conversely, if a borrower has an otherwise perfect history of compliance with their tax obligations, it is more likely their failure to register a security for AIL was an oversight; the mistake is inconsistent given their usual behaviour.

Recommendation

That the submission be declined.

Issue: AIL clause in loan agreement

Submission

(EY)

Proposed new section 86H(4)(c) of the Stamp and Cheque Duties Act 1971 states "whether the documentation recording the money lent includes a clause dealing with approved issuer levy". This should instead refer to whether the documentation places a gross-up obligation on the payer.

Approved issuer levy (AIL) applies to amounts borrowed from foreign lenders, and therefore eligible securities are commonly documented without reference to specific New Zealand regimes such as AIL. Most reasonable persons would infer that if a person were obliged to either gross up a payment by non-resident withholding tax at 10% to 15% or by AIL at 2%, the person would register for AIL unless some form of oversight occurs. The absence of any reference to AIL should not be relevant when analysing foreign lending documentation considering AIL is a New Zealand tax concept unlikely to feature in foreign contracts.

Comment

Officials acknowledge that securities may be documented without reference to specific New Zealand tax regimes such as AIL. If the loan agreement places a gross-up obligation on the borrower, the borrower *should* rationally register for AIL. However, the presence of a gross-up obligation does not indicate that the borrower has considered AIL and intends to pay it in the way that an AIL clause does.

The factors listed in paragraphs (a) to (g) of proposed section 86H(4) are provided to help the Commissioner discern whether the borrower's delay in registration was unintentional – not to draw inferences about what the borrower should have done.

Recommendation

That the submission be declined.

Issue: Natural person

Submission

(Bell Gully, Corporate Taxpayers Group, EY)

It is not relevant whether the person is a natural person. The Bill commentary states that the rationale for the inclusion of this factor in proposed new section 86H(4)(f) of the Stamp and Cheque Duties Act 1971 is that "a natural person is less likely than an entity to be well-advised, making it more likely that their delay in registering a security was an oversight". But this acknowledges that the issue is not whether the person is a natural person, but whether they were adequately advised regarding their tax obligations. There are natural persons who have access to comprehensive and expert tax advice and corporates that do not. (*Bell Gully*)

Moreover, it is not clear why it should be relevant whether a person has received advice in relation to their approved issuer levy obligations. A person may receive advice but still fail to register a security due to an oversight. It might even be argued that the fact a person has obtained advice indicates that they are a person that takes their tax compliance obligations seriously, and therefore it is more (rather than less) likely that the failure to register was due to an oversight. (*Bell Gully*)

Genuine errors will occur regardless of whether the person is a natural person or an entity. (*Corporate Taxpayers Group*)

The relevant consideration is the size and complexity of a business. A close company with a single natural person shareholder is likely to be no more sophisticated than a natural person. The submitter suggests the size and complexity of an enterprise is the relevant consideration, not the type of entity or person involved. (*EY*)

This factor should be deleted from the Bill. (*Bell Gully, Corporate Taxpayers Group*)

Comment

On further reflection, officials accept that the natural person factor may not meaningfully help the Commissioner discern whether the borrower's delay in registration was likely to have been unintentional and this factor should be removed.

Point of difference

Officials do not think it is necessary to list "size and complexity of the business" as a factor because this may feature in the borrower's explanation of the cause of the error.

Recommendation

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

Issue: Commissioner's decision not challengeable

Submission

(Chartered Accountants Australia and New Zealand, KPMG)

A decision by the Commissioner in relation to retrospective registration should be challengeable.

The reason provided on page 71 of the Bill commentary for the proposed amendment that a decision by the Commissioner is not challengeable is that "retrospective registration is a concession, and it is not desirable that the Commissioner be required to devote additional resources to engaging in a dispute with a borrower if they have not made a satisfactory case for accessing the concession". This statement incorrectly assumes that a satisfactory case has not been made. There is no justification for this assumption and the outcome is unfair. (*Chartered Accountants Australia and New Zealand*)

This rule is not necessary or reasonable. Ultimately the application is at the Commissioner's discretion and the rules give the Commissioner considerable leeway to assess the facts and circumstances and arrive at a decision. It is not reasonable for the legislation to prescribe a "once and done" approach. For example, consider the previous scenario of an individual who relocates to New Zealand with a foreign mortgage and inadvertently does not comply with their non-resident withholding tax obligations on interest payments to their foreign bank. When the person independently identifies the issue, they may seek to immediately disclose this to Inland Revenue and seek to file a retrospective approved issuer levy registration, without necessarily understanding the full requirements. If they provide insufficient detail or explanation to accompany their request and the application is denied as a result, they would be precluded from making a further application (this time with the assistance of a tax advisor who is better placed to prepare a complete application containing all the facts and circumstances for Inland Revenue to consider). An additional issue is that different Inland Revenue personnel could take inconsistent positions when assessing applications, and there would effectively be no way to seek a review or reassessment of applications to ensure consistency. (*KPMG*)

Comment

Inland Revenue will assess applications for retrospective registration in good faith and may request or accept additional information from the borrower in support of their case if important information is missing from the initial application. Inland Revenue can still reconsider a decision if further information shows that the decision was made on incorrect facts. If the borrower is not satisfied with the way their application has been handled, they may engage Inland Revenue's internal complaints process. If the borrower is still unsatisfied following the complaints process, they will have recourse to other processes that exist to resolve disagreements about how statutory discretions have been exercised, such as the Ombudsman and judicial review.

It is customary for matters left to the discretion of the Commissioner not to be challengeable because the challenge procedures were designed to deal with interpretative disagreements relating to a person's tax assessment and not the application of administrative discretions. This is reflected in section 138E(1)(e) of the Tax Administration Act 1994, which lists a large number of discretions for which no right of challenge is conferred.

Recommendation

That the submission be declined.

Issue: Processing time of applications for retrospective registration

Submission

(Corporate Taxpayers Group)

It is proposed that the Commissioner have no legislative deadline to approve or decline applications. If this is the case, it will be important that the Commissioner aims to review applications without any undue delay because the amount of tax at stake (particularly if the application is declined) can be significant and taxpayers need certainty within a reasonable timeframe.

Comment

Officials agree, noting that this is an operational matter.

Recommendation

That the submission be noted.

Issue: Commissioner's evaluation of error

Submission

(Corporate Taxpayers Group)

The Bill commentary states:

> "These factors would not be exhaustive because the Commissioner might want to consider other factors not initially contemplated. Similarly, no factor would be individually determinative; building an accurate picture of the nature of an error would involve consideration of multiple factors."

It is important that this is upheld in practice. If it is clear there has been a genuine error in these cases, the application should be approved, even if many of the listed factors to consider are not met.

It will also be important that the Commissioner does not seek comment on all these factors when they may not be relevant and does not place reliance on certain factors over the others when there is no reason to do so. Moreover, the statement that "the Commissioner might want to consider other factors not initially contemplated" should apply equally to factors raised by the Commissioner and those raised by taxpayers.

Comment

Officials agree with the submitter's statements, noting that these are operational matters.

Recommendation

That the submission be noted.

Issue: Tax pooling

Submission

(Chartered Accountants Australia and New Zealand)

Approved issuer levy (AIL) should be added to the list of taxes in section RP 17B(14) of the Income Tax Act 2007 so that tax pooling can be used to settle the AIL liability that will arise when the Commissioner grants retrospective registration for AIL.

When inserting section RP 17B(14) in 2022, Inland Revenue considered that AIL could not be included in the categories of tax because failure to pay AIL on the due date defaulted the taxpayer into non-resident withholding tax. A result of the proposed amendment is that this reasoning will no longer apply.

Comment

Officials agree that the Commissioner should have the discretion to allow a borrower who is granted retrospective registration to use tax pooling to settle the resulting AIL liability. Accordingly, AIL should be added to the list of taxes in section RP 17B(14).

Officials note that, to allow pooling to meet a new liability, the Commissioner must be satisfied that the taxpayer was not deliberately non-compliant and did not show a lack of reasonable care. Additionally, the taxpayer must voluntarily disclose the new liability within a reasonable time after becoming aware of it.

Recommendation

That the submission be accepted.

Issue: Discretions in tax system generally

Submission

(Corporate Taxpayers Group)

There is scope for a wider review of discretions in the tax system. There are many instances of the tax rules applying strictly and producing a disproportionately punitive outcome when there has simply been a genuine error. An example of this is the Research and Development Tax Credit (RDTC) deadlines; there is no ability for the Commissioner to exercise a discretion to allow late filing (even though the income tax return in which the RDTC figure is included will be accepted if it is late).

Comment

Officials acknowledge the submission. However, a wider review of discretions in the tax system would require prioritisation and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be noted.

Issue: Broader administrative issues with AIL regime

Submission

(EY)

There are administrative hurdles to approved issuer levy (AIL) registration that should be reconsidered because these processes increase compliance costs and result in some taxpayers failing to register "on time".

The AIL regime broadly requires a two-step process before AIL can be paid in place of non-resident withholding tax (NRWT). First, the Commissioner requires taxpayers to register as "approved issuers" by notifying the Commissioner that they wish to have approved issuer status, and then the securities must be registered. This process is unduly cumbersome, does not appear well thought through, and requires improvement.

For example, in addition to the notification requirements, the online registration process requires a taxpayer to do the following:

- Declare that they do not pay interest to a related party (and the declaration does not permit a taxpayer to specify that such interest is not payable on the security or securities they wish to register for AIL purposes) – this appears to make little sense.
- Provide details of a functional New Zealand bank account or, if the taxpayer does not have one, provide evidence that an approved reporting entity has undertaken customer due diligence on the taxpayer for anti-money laundering (AML) purposes. This is required even if the taxpayer has an IRD number, a process which itself requires adequate AML identification processes.

Further, while the legislative regime expressly permits an approved issuer to register a class of securities for AIL, Inland Revenue does not provide for this in either the online application or hardcopy form it has prescribed for security registration, resulting in unnecessary compliance costs.

These processes mean that taxpayers often require support from a professional advisor to register a security for AIL, which increases compliance costs and slows the registration process. Taxpayers who have endeavoured to comply should not miss out on the benefit of the AIL regime merely due to the onerous nature of the application process.

An alternative approach would be to change the security registration process so that taxpayers who have successfully registered for AIL can continue to apply it in place of NRWT across all their securities, with only a simplified notification process required (so no longer requiring the second step of approval for each security, in addition to the approval for the payer). Online notification processes that are simple and instant would further reduce compliance costs and support the broader policy intent of this proposal.

Comment

Officials acknowledge that there may be some administrative issues with the AIL regime and these may be considered as part of a wider review of the regime in future.

Recommendation

That the submission be noted.

Issue: Application date

Submission

(Corporate Taxpayers Group, KPMG)

The application date of the proposed amendments should be retrospective, so that if there were genuine errors before 1 April 2025 that fall within the two-year timeframe from the first interest payment, applications could be made for retrospective approved issuer levy (AIL) registration in these instances. This would further the policy intent. Applications should only be made when there has been a genuine error so there is not likely to be a large number of applications. (*Corporate Taxpayers Group*)

Providing that retrospective registration cannot be backdated to a date before 1 April 2025 significantly reduces the benefit of this proposal in the short term. The submitter sees no policy reason why the earliest date for backdating should be 1 April 2025 (which is effectively a prospective application date for this change), particularly if the two-year time limit is retained and given the other proposed safeguards. (*KPMG*)

Comment

Legislative changes of a policy nature like this normally apply on a prospective basis. Officials do not consider an exception to this principle is warranted in this case.

The Commissioner has been applying the law as it currently stands by requiring borrowers who have made mistakes with AIL registration in the past to pay non-resident withholding tax. Implementing the proposed amendments retrospectively could result in Inland Revenue having to issue refunds to these borrowers. This would increase the fiscal cost of the policy significantly.

Recommendation

That the submission be declined.

EXEMPT EMPLOYEE SHARE SCHEME THRESHOLD INCREASE

Clause 21

Issue: Support for proposal

Submission

(Bell Gully, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, New Zealand Law Society)

Submitters generally support increasing the thresholds used for exempt employee share schemes.

Recommendation

That the submission be noted.

Issue: Greater increases required

Submission

(New Zealand Law Society)

Threshold increases should be higher (double the threshold) if the proposed amendment wants to achieve the stated intention of supporting start-up companies.

Comment

The thresholds have been increased to recognise past inflation from when they first applied (first quarter of 2018) and provide a buffer against future inflation. This is considered an appropriate increase that balances the reduction in compliance costs for the employer with the fiscal cost of the exempt scheme.

Recommendation

That the submission be declined.

Issue: Other monetary thresholds need updating in response to inflation

Submission

(Bell Gully)

Other monetary thresholds should be updated to reflect the effects of inflation, including the thresholds to determine:

- who is a cash-basis person for the purposes of the financial arrangements rules, and
- who is required to register for goods and service tax.

Comment

This submission is considered out of scope of the proposed amendment. Reviewing each threshold would require dedicated policy resources and would likely have large fiscal implications.

Recommendation

That the submission be declined.

Issue: Further changes to exempt scheme needed

Submission

(KPMG, New Zealand Law Society)

Other changes to the criteria for exempt employee share schemes are required to make it easier for companies in the start-up sector to use the scheme. (*New Zealand Law Society*)

The submitter believes that consideration should also be given to adjusting section CW 26C(d) of the Income Tax Act 2007 (minimum spend cap). (*KPMG*)

Comment

A tax exemption for employment income does not fit generally within New Zealand's broad-base, low-rate tax framework. The limit on the benefit provided, and the fact that the scheme must be "widely offered" to almost all employees, are the main justifications for operating the exempt scheme that carves out employment income from the tax base. Increasing the minimum spend cap would undermine this original policy intent.

Recommendation

That the submission be declined.

Issue: Employer deduction for share acquisition

Submission

(Corporate Taxpayers Group)

When an employer acquires shares on market or provides a discount on shares provided under an exempt scheme, there should be a matching deduction available for these costs. This is seen as a disincentive to businesses taking up the scheme.

Comment

As noted by the submitter in their submission, this submission was declined in the Officials' Report for the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Bill. The scheme is designed to reduce compliance costs, and the view of officials has not changed that the trade-off for a tax exemption for the income is a denial of a matching deduction for the employer.

Recommendation

That the submission be declined.

NEW ZEALAND BUSINESS NUMBER INFORMATION SHARING

Clause 153(2), (3)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed amendment.

Recommendation

That the submission be noted.

Issue: Introduce information-sharing framework

Submission

(EY)

The proposed changes raise concerns around the increasing use of taxpayer information for objectives unrelated to tax. While the Government may wish to progress the proposal despite these concerns, taxpayers are increasingly raising concerns around the extensive use of tax information for non-tax-related purposes. These concerns can be addressed through a more open public discussion on the use of taxpayer information. The submitter encourages officials to establish an information-sharing framework that can better inform the public as to the extent of information sharing across government agencies.

Comment

Inland Revenue shares information with other agencies to reduce the compliance costs faced by taxpayers, improve services to customers, or to identify individuals and entities that are not complying with their obligations.

The current sharing of information with the Ministry of Business, Innovation and Employment (MBIE) is to reduce the compliance costs for unincorporated entities. MBIE does not have contact details for entities that do not have a New Zealand Business Number (NZBN), so its only avenue would be to contact all businesses, which would impose compliance costs on those businesses. Inland Revenue would provide targeted contact details for only those businesses that are not registered for an NZBN, and the information share would be limited to a one-off, one-way share.

Officials view the development of an information-sharing framework as outside the scope of the Bill.

Recommendation

That the submission be declined.

Issue: Information sharing with MBIE

Submission

(Nicole Dryden)

Information sharing between Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE) should not be carried out without far-reaching social licence and agreement, especially from marginalised communities. The confidential information being shared was not gathered with permission to share and use for this policy intent, so MBIE should seek this information through its own work.

Comment

Officials acknowledge the concern around the privacy of individuals. Mitigating any privacy risks and establishing safeguards has been a key priority in considering this information share. While the one-off and one-way nature of the information share should assist in mitigating some concerns, further safeguards would be established in the memorandum of understanding between MBIE and Inland Revenue that would be put into place before the information share is carried out.

Boosting the uptake of New Zealand Business Numbers (NZBNs) among unincorporated entities is key to unlocking the wider benefits associated with a more complete NZBN register. These benefits include a growth in business digitalisation, due to the platform the NZBN provides for interoperability, and a reduction in compliance costs by decreasing the need for businesses to repeat the same information in their interactions with government departments and other businesses.

While MBIE can carry out broader communications explaining the associated benefits of NZBNs to encourage registration, they have no ability to specifically target unincorporated entities in these efforts. The only way for MBIE to access the contact information of this targeted group of unincorporated entities is through this one-off information share with Inland Revenue.

The information share is limited to the contact information and IRD numbers of unincorporated entities, such as partnerships. Once the information has been used by MBIE it would be destroyed. They would not be able to use the information shared for any other purposes. The authorisation of this information share would also be removed by 1 April 2026, ensuring that it would only be used for this one-off share.

Unincorporated entities that are contacted as a result of this information share retain the ability to then make a choice regarding if they want to provide their consent and opt in or not to registering for an NZBN.

Recommendation

That the submission be declined.

Issue: Preference for information sharing through Privacy Act

Submission

(Office of the Privacy Commissioner)

Unlike other provisions in schedule 7 of the Tax Administration Act 1994 (TAA), which explicitly refer to section 18 of the TAA, the wording of the provisions could be read as overriding general requirements and information-sharing provisions under the Privacy Act 2020.

There is not a strong policy case showing the need for a legislative override of the Privacy Act when the Privacy Act can enable this sharing. The Privacy Act provides a range of ways to enable this type of information sharing, such as an information-sharing agreement between agencies. This would preserve the general approach and safeguards under the Privacy Act.

The submitter recommends promoting New Zealand Business Numbers (NZBN) to taxpayers without an override of the Privacy Act.

Comment

The amendment would insert clause 25(3B) into schedule 7 of the TAA. Schedule 7, clause 25(1) has an existing reference to section 18 of the TAA, outlining that section 18 does not prevent the Commissioner communicating any information that is communicated for the purposes of clause 25(2) and (3) of schedule 7 to a person who is an authorised officer of the department for the time being responsible for the New Zealand Business Number Act 2016. The proposed amendment would expand that to information communicated for the purposes of information sharing between Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE).

We acknowledge the submitter's preference for alternative approaches to enabling information sharing. We have considered different options for carrying out an information share between Inland Revenue and MBIE, weighing up various factors such as compliance costs, administrative costs, privacy implications, and benefits of the share.

After considering these factors, and the scope and frequency of the information that we were proposing to share, we came to the view that a vehicle such as an approved information-sharing agreement (AISA) would not be appropriate. An AISA is a good mechanism for ongoing information sharing and is most useful in instances where both agencies are sharing information. In contrast, this amendment is a one-way share of contact information and IRD numbers from Inland Revenue to MBIE and would only occur once. After MBIE uses the information to confirm the unincorporated entities are not registered for an NZBN and contact the group of unincorporated entities without NZBNs, the information would be destroyed.

Recommendation

That the submission be noted

Issue: Language proposed too broad

Submission

(Office of the Privacy Commissioner)

The language proposed is far too broad, enabling open-ended and ongoing sharing of a taxpayer's contact information for no defined purpose in a way that presents a range of risks to New Zealanders' privacy.

As drafted, this clause would enable the Ministry of Business, Innovation and Employment (MBIE), as the agency responsible for administration of New Zealand Business Numbers, to access any contact information or tax file numbers of an unincorporated body held by Inland Revenue to enable any of the agency's duties and functions.

The Privacy Act 2020 requires that personal information is collected for a particular purpose and is only used, retained, and shared in ways connected with that purpose. To meet the privacy expectations of New Zealanders and ensure that the privacy regulator can provide effective oversight, agencies need to say why they are collecting personal information and what they will use it for. This is particularly important in relation to taxpayer information held by Inland Revenue.

Comment

Officials agree and the proposed provision would be amended to clarify that the information sharing, and the use of this information, is limited to the specific duties and functions relating to the New Zealand Business Number Act 2016, rather than the broader functions of MBIE.

The proposed provision would also be amended to reference that the information sharing would be carried out by way of a single transfer of data and would be repealed by 1 April 2026. This reflects the policy intent of the information share being carried out on a one-off basis and provides transparency around the limitations of the authorisation of the information sharing.

Recommendation

That the submission be accepted.

Issue: Breach of trust

Submission

(New Zealand Taxpayers' Union)

There is not an appropriate policy case to justify the sharing of sensitive taxpayer information compulsorily acquired by Inland Revenue. Passing this information on to other organisations without compelling reasons is a breach of trust.

If businesses have chosen not to register for a New Zealand Business Number (NZBN), why should they be contacted as part of a marketing campaign by the Ministry of Business, Innovation and Employment (MBIE)?

Comment

Currently incorporated businesses are automatically registered with an NZBN through the Companies Office when they register. The current policy settings reflect that an NZBN may not be relevant or appropriate for all unincorporated entities. However, there are still a variety of benefits for some proportion of unincorporated entities, such as the following:

- Growth in business digitalisation, with an increase in information-sharing efficiencies, avoidance of human error, and a reduction of duplication.
- Compliance cost reduction, as businesses do not need to repeat the same information in their interaction with government and with other businesses.

But under the current settings there is no natural touch point for unincorporated entities to understand the benefits of an NZBN or be supported to register. The information sharing between Inland Revenue and MBIE would not involve contacting any incorporated businesses. Rather, it is a low compliance approach to support unincorporated entities in accessing this tool. This approach to addressing the low uptake also ensures that unincorporated entities retain the ability to make a choice around if they wish to opt in to registering for an NZBN.

The information Inland Revenue is sharing has been limited to contact information and IRD numbers. IRD numbers assist MBIE in matching up records, limiting the scale of communications by ensuring that only unincorporated entities without NZBN numbers would be contacted.

Recommendation

That the submission be noted.

ENROLLING PERSONS AGED UNDER 16 IN KIWISAVER

Clause 189

Issue: Support for proposal

Submission

(Booster, Chartered Accountants Australia and New Zealand, Financial Services Council, Te Ara Ahunga Ora Retirement Commission)

The submitters support the proposal. (*Booster, Chartered Accountants Australia and New Zealand, Te Ara Ahunga Ora Retirement Commission*)

Removing the need for a person aged under 16 to have both/all their guardians contract directly with a provider will help simplify the process for getting a KiwiSaver fund underway. (*Booster*)

The proposal will address issues when legal guardianship is undetermined. (*Financial Services Council*)

This proposal was one of 15 recommendations to the Government that the Retirement Commissioner made in a 2024 KiwiSaver Report. (*Te Ara Ahunga Ora Retirement Commission*)

Recommendation

That the submissions be noted.

Issue: Proposal could create challenges for providers

Submission

(Financial Services Council)

While this proposal will simplify administration, it could raise issues when one parent is able to transfer a minor's account between different providers without the other parent's knowledge or consent.

The burden will be on providers to correctly determine legal guardianship at varying points in time, which will increase administrative costs, and the risks associated with establishing minors' accounts.

Comment

Officials note that the reaction of KiwiSaver providers to the proposal has been generally positive. While the potential for young people to oscillate between providers has been noted, providers do not anticipate this occurring in large numbers.

Recommendation

That the submission be noted.

Issue: Expand eligibility for KiwiSaver to temporary visa holders

Submission

(Te Ara Ahunga Ora Retirement Commission)

KiwiSaver membership is currently only open to citizens living permanently in New Zealand and those holding a residence class visa. This means that temporary visa holders are ineligible to join KiwiSaver even if their visa enables them to legally work in New Zealand.

An additional change should be included in the Bill that allows temporary visa holders to join KiwiSaver.

Comment

Officials acknowledge that, under current settings, those on temporary visas are ineligible to join KiwiSaver.

However, any changes to this setting would represent a significant change to KiwiSaver eligibility rules and present increased costs for employers (including potentially the Crown). Policy changes in this area would need to be commissioned as a specific project and resourced across the responsible agencies as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Remove age restrictions in favour of competence test

Submission

(Billy Leonard)

Fairness is popularly held to be a New Zealand value and discrimination should not occur on the basis of age.

A young person's competence should be tested, rather than the attainment of 16 years of age. No parental or pseudo-parental permission should be involved whatsoever.

Comment

Officials assume this submission relates to the proposal that would allow persons aged under 16 to join a KiwiSaver scheme with the assistance of one parent.

Officials acknowledge that the conditions associated with a young person's ability to join KiwiSaver varies with age. However, it is not uncommon for the exercise of some rights and activities to be age restricted in New Zealand. Other examples of age-restricted rights and activities in New Zealand include the ability to vote, drive a vehicle, purchase alcohol, join the military or enter into legal contracts.

Officials note the proposal would expand and improve the ability of young people to join KiwiSaver. However, the reform of age restrictions more broadly is beyond the scope of this Bill and would need to be resourced as a cross-agency project

Recommendation

That the submission be declined.

OVERSEAS DONEE STATUS

Clause 115

Issue: Discontinue overseas donee status designation

Submission

(Billy Leonard)

The submitter makes two points:

- The authors of the Bill do not name the organisations to be granted overseas donee status, or the reasons why.
- The overseas donee status designation should be discontinued for current and future New Zealand organisations.

Comment

The Explanatory Note is designed to provide an overview of the key policy reforms contained in the Bill. The changes in clause 115 (overseas donee status) amend a list in schedule 32 of the Income Tax Act 2007 so the description in the Explanatory Note at page 10 is appropriate.

We note that a fuller explanation of the changes in clause 115 is provided in the Commentary to the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (pages 79 to 81). Given the technical nature of tax legislation, it has been a long-standing practice for Inland Revenue to supply a Bill commentary to assist readers with a more in-depth discussion and details about the changes in the Bill. The Bill commentary sets out the purpose of the overseas donee status changes and describes the activities of the six charities that are to be granted this status.

The intended outcome in the submitter's second point is not clear. It could be interpreted as:

- no New Zealand charity should be able to access the rules that allow tax benefits to their donors if that charity has overseas purposes, or
- all New Zealand charities should have access to the rules that allow tax benefits to their donors irrespective of the countries in which they operate or apply their funds.

The first interpretation would be revenue positive; the second would be revenue negative. The purpose of clause 115 is not intended to achieve either outcome discussed above, and the submission is beyond the scope of the Bill.

Since its introduction in 1962, the law to provide tax benefits for monetary donations to donee organisations has had a territorial limitation to New Zealand in respect of the application of funds by those organisations. An express exception to this rule was included in the 1962 law changes for four charities that applied funds to purposes outside New Zealand. These four charities were specifically named in the Land and Income Tax Act 1954 and became the predecessor for schedule 32 in the current Income Tax Act 2007. Since then, further additions have been made to the statutory list on a case-by-case basis. The policy criteria for a charity to be added to the statutory list in the Income Tax Act were set by Cabinet in 1978 (CM/78/14/7 refers). Cabinet's approval criteria frame the conditions for overseas donee status as:

> The basic criteria for adding an organisation to the list of approved "overseas" charities:
>
> (i) the funds of the charity should be principally applied towards:
>
> the relief of poverty, hunger, sickness or the ravages of war or natural disaster; or
>
> the economy of developing countries*; or
>
> raising the educational standards of a developing country*;
>
> (ii) charities formed for the principal purpose of fostering or administering any religion, cult or political creed should not qualify;
>
> * developing countries recognised by the United Nations.

The charities proposed for overseas donee status in clause 115 of this Bill have purposes that are consistent with the criteria above.

Recommendation

That the submission be declined.

Issue: Support for amendments to schedule 32

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed changes to schedule 32 of the Income Tax Act 2007.

Comment

The Bill proposes to add six charities to the list and remove two other charities that have ceased operating.

Recommendation

That the submission be noted.

Issue: Maintenance changes

Submission

(Matter raised by officials)

Maintenance changes are recommended to the list of donee organisations in schedule 32 of the Income Tax Act 2007. The purpose of these changes ensures that the list is as current and updated as practical. The maintenance changes involve updating two references to existing charities that are on the list and removing four charities that have ceased operating.

- Update the reference to "Community Action Overseas (Oxfam NZ)" to "Oxfam Aotearoa" with effect from 25 May 2021. The change responds to a decision to rename the trust in 2021.
- Update the reference to "Cotton On Foundation Limited" to "Cotton On Foundation New Zealand Limited" with effect from 1 April 2022. This change ensures the list aligns with the legal name of the New Zealand foundation.
- Remove the reference to "Operation Vanuatu Charitable Trust" with effect from the date of the enactment of this Bill. The charity ceased operations and was dissolved on 25 September 2024.
- Remove the reference to "Sampoerna Foundation Limited" with effect from the date of the enactment of the Bill. The charity ceased operations and was dissolved in June 2008.
- Remove the reference to "The Food Bank of New Zealand" with effect from the date of enactment of this Bill. This charity was dissolved in October 1984.
- Remove the reference to "Together for Uganda" with effect from the date of the enactment of this Bill. The charity ceased operations and was dissolved on 31 March 2021.

The reference in the Bill to "Altus Resource Trust" should also be updated to "Altus Pacific Aid". This change responds to a decision to rename the Trust on 8 May 2024.

Recommendation

That the submission be accepted.

GST remedials

ZERO-RATING RULES FOR INTERNATIONAL VESSELS EXEMPT FROM IMPORT ENTRIES

Clause 159(1)

Issue: Support for proposal

Submission

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

Submitters support the proposed amendment to ensure that services provided directly in connection with commercial vessels that are temporarily in New Zealand are zero-rated for GST purposes.

Recommendation

That the submission is noted.

Issue: Broaden proposed amendment

Submission

(Deloitte, PwC)

The submitter considers that the amendment should be broadened to also apply to regulation 25(1)(a), (bb), (d), (da), (g) and (h) of the Customs and Excise Regulations 1996. (*Deloitte*)

The submitter considers that the amendment should be broadened to also apply to regulation 25(1)(bb). (*PwC*)

Comment

The submitters' proposal would allow services provided directly in connection with a wider range of temporarily imported commercial vessels and goods to be zero-rated for GST purposes.

The regulation that the submitters propose extending this amendment to includes certain aircraft that are temporarily in New Zealand as part of an international voyage, military craft performing duties on behalf of a foreign country and certain goods associated with export.

Officials consider that it is consistent with the policy intent to extend the zero-rating rule to services provided directly in connection with the types of craft and goods set out in the regulation referred to by the submitters. This is because the services will be provided in relation to goods or vessels that will ultimately be exported, and therefore relate to consumption that will occur outside New Zealand. This is consistent with the GST destination principle that aims to assign the right to tax consumption of goods and services to the country in which those goods and services are destined to be consumed.

Recommendation

That the submission be accepted.

APPROVED TAXABLE PERIOD END DATES

Clauses 160(1) and (2), 161, 162, 163, 164, and 165

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the proposal to provide more flexibility for GST-registered taxpayers to have alternative dates approved by the Commissioner of Inland Revenue (the Commissioner) as their taxable period end dates, provided good commercial reasons exist for those dates.

Recommendation

That the submission be noted.

Issue: Systems limitations

Submission

(PwC)

The submitter notes that following the changes enacted under the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, there were some challenges associated with Inland Revenue's systems being able to reflect the new period end dates. As such, the submitter has seen some cases when GST returns were required to be prepared and filed manually.

Consideration should be given towards ensuring that system changes have been implemented to allow the flexibility provided under the new legislation to be given effect.

Comment

Officials will consider whether changes to automate taxable period generation in the system could be adopted to address the concerns the submitter raises. However, a technical solution to automate the period end dates is not a priority based on current usage because this is currently only an issue for a very small number of taxpayers.

Recommendation

That the submission be noted.

Issue: Alignment of income tax balance dates with 4-4-5 accounting calendar

Submission

(PwC)

The 4-4-5 accounting calendar will give rise to a "floating" balance date for financial reporting purposes. In our view, the flexibility provided for GST purposes should also be considered with respect to income tax balance dates. Under current law, further work is required to calculate a few days of profit or loss for each income tax return.

In our view, aligning income tax balance dates with 4-4-5 accounting calendars would reduce compliance costs and should not give rise to revenue loss (because it would shift only a few days' worth of profit or loss to the next or previous income year).

Comment

An amendment along the lines suggested by the submitter is outside the scope of the current Bill and would require further consideration before progressing. Further work on this matter would be subject to resourcing and prioritisation as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Apply change in end date for current taxable period if commercial reasons

Submission

(KPMG)

It may not always be practicable to submit the application for a change in taxable period end date before the start of the taxable period that the registered person intends the change to be effective for. The submitter recommends that the Commissioner should be given discretion to permit the change of taxable period end date to take effect in the taxable period in which the application is submitted if there are commercial reasons to do so.

Comment

When the Commissioner approves a change in taxable period end date, the change is effective for the following taxable period, or a later taxable period nominated by the registered person and approved by the Commissioner. As the submitter notes, the only exception to this proposed in the Bill is when a person is newly registered for GST. In that situation, the Bill proposes that the change in end date take effect at the start date of the person's GST registration if they apply for the change before the end of their first taxable period.

The submitter points out that there may be other examples of when it might not be practicable for a registered person to request a change in their taxable period end date before the start of the taxable period that they intend the change to be effective for. One such example raised by the submitter is when a person sells their company to another person and the vendor wishes to align the end date of the last taxable period under their ownership with the date of the shareholding change. In this situation, the date of the shareholding change may not be known until close to the settlement date.

Officials agree there are some situations when it might be desirable to provide the Commissioner with discretion to allow a change in taxable period end date to take effect in the period in which the change is requested, and that the shareholding change example cited by the submitter is one of those situations.

Point of difference

However, we consider that the suggested approach of permitting a change in taxable period end date to take effect in the period of the request if there are "commercial reasons" for this would be overly broad in its application. For instance, this broad wording might in some cases encourage gaming of the rules to gain a timing or cashflow advantage.

Officials consider that the more appropriate way to deal with situations like the one the submitter mentions is to target the suggested Commissioner discretion at situations when it is not practicable for the taxpayer to request the change in end date before the start of the taxable period they want the change to be effective for.

Officials also recommend that proposed new section 15EC(1)(c) of the Goods and Services Tax Act 1985 be deleted from clause 165 of the Bill because this provision would be redundant if our recommendation in relation to the Commissioner discretion is accepted.

Recommendation

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

PERMANENT CHANGE OF USE AND ASSETS ACQUIRED BEFORE 1 APRIL 2023

Clause 201

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, PwC)

The submitters support the proposal.

Recommendation

That the submission be noted.

Issue: Interaction of provisions that may apply to assets acquired prior to GST registration

Submission

(PwC)

Remedial amendments should be made to sections 21B and 21FB of the Goods and Services Tax Act 1985 to clarify the interaction between the two provisions and when section 21B or 21FB should apply.

Comment

Officials agree it would be useful to clarify how the rules in sections 21B and 21FB interact because both sections can apply to assets acquired prior to GST registration. We recommend adding some minor “signposting” drafting to the Bill to achieve this.

Recommendation

That the submission be accepted.

TEMPORARY REGISTRATION FOR CERTAIN TYPES OF DEEMED SUPPLIES

Clauses 178, 179

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposal.

Recommendation

That the submission be noted.

Issue: Drafting of deemed supply rules

Submission

(Deloitte)

The drafting of the deemed supply rules and the operation of the temporary registration rules requires further consideration. While the intention appears to be that a deemed supply occurs immediately prior to GST deregistration, the wording at the start of section 5(16C) of the Goods and Services Tax Act 1985 has the potential to cause confusion because it describes "a disposal". This implies that a disposal is actually required because, on its own, ceasing to be registered is not a disposal.

Comment

Officials agree that the reference to "a disposal" in the opening words of section 5(16C) may be confusing when in some cases it is intended to refer to the deemed supply that occurs when the person deregisters from GST, rather than an actual sale. However, since the relevant provision is not included in the current tax Bill and amending it would also require redrafting of other related provisions (which also refer to disposals), we recommend it be considered as a remedial for a future Tax Bill. This would give submitters an opportunity to submit on the new drafting.

Recommendation

That the submission be declined.

AGREED ADJUSTMENT METHODS AND LIMITATIONS ON ADJUSTMENTS

Clause 172

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal.

Recommendation

That the submission be noted.

CLARIFICATION OF TAXABLE ACTIVITY EXCLUSION ON DEREGISTRATION

Clause 158(2) and (4)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal.

Recommendation

That the submission be noted.

LIMITATION ON FINAL DEDUCTION FOR NON-TAXABLE USE OF LAND SUPPLIED BY PROPERTY DEVELOPER

Clause 173

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposal.

Recommendation

That the submission be noted.

Issue: Retirement village operators

Submission

(Corporate Taxpayers Group, Deloitte, KPMG)

The proposal will be broader reaching than just those who carry out typical property development activity (when the increase in the land's value is due to the property development activity rather than any non-taxable use). The proposed extension to section 21F of the Goods and Services Tax Act 1985 could potentially also capture retirement village operators who develop their own villages. The drafting should be reconsidered, or further amendments made, to make it explicit in the legislation that it does not apply to retirement village operators (who also develop their own villages) when land is disposed of. (*Corporate Taxpayers Group, Deloitte*)

Inland Revenue should provide further clarification on the scope of section 21F(6), in particular whether the final deduction uplift should apply to those taxpayers who regularly erect buildings or acquire and/or deal with land to provide residential care services (for example, a retirement village operator or a care home provider). (*KPMG*)

Comment

The proposed rule would apply to registered persons who sell land that they have used in a taxable activity of developing land, dealing in land or erecting buildings. It limits the final input tax deduction on sale of the land based on their purchase price of the land, because any increase in the value of the land is likely to be a result of this property development activity (as opposed to non-taxable use such as using the land to make exempt supplies of accommodation).

The submitters are concerned the drafting of the proposed rule is broader reaching than the policy intention. They consider it could potentially apply to businesses that sell land that they used for another business purpose, rather than a property development activity. For example, a retirement village operator that buys land with an intention to use the land to provide accommodation and care services, but ultimately decides to not proceed with its plan and sells undeveloped land instead.

We agree with the submissions and recommend clarifying the proposed rule, so it better achieves the policy intention of applying to property developers.

Recommendation

That the submission be accepted.

ASSOCIATED PERSONS AND SECONDHAND GOODS DEDUCTIONS

Clause 156

Issue: Support for proposal

Submission

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

The submitters support the proposal. (*Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group*)

The submitters support the proposed savings provision whereby the proposal would not apply to tax positions taken prior to the Bill's introduction. (*Corporate Taxpayers Group, Deloitte*)

Recommendation

That the submissions be noted.

Issue: Drafting suggestions

Submission

(New Zealand Law Society)

The submitter made the following drafting suggestions:

a. The wording of proposed section 3A(3)(a)(i) of the Goods and Services Tax Act 1985 should be amended to replace "the tax fraction given" with "the amount of input tax given".

b. There may be circumstances when a good has been supplied between several associated persons, and one of those associated persons was registered for GST but was not subject to GST on the supply of the entire good. Proposed section 3A(3BB)(b) should be amended so the input tax amount is only limited to the GST paid by the associated registered supplier to the extent the supply of the good by that supplier was subject to GST.

c. The words "for the recipient" in proposed section 3A(3BB) are unnecessary and should be deleted.

Comment

a. This provision applies when an unregistered supplier supplies the goods to a registered person. Because the unregistered supplier will not have claimed any input tax, "tax fraction" is the correct concept. Furthermore, the opening words of section 3A refer to input tax for the registered person and the other subparagraphs in section 3A(a) define this with respect of the tax fraction of the price paid by the unregistered supplier.

b. When the supplier purchased the goods from a person who did not charge GST, there would be no embedded GST cost that needs to be claimed back when they on-sell the goods to the registered person. Officials do not think the rule should allow an input tax deduction to be claimed in respect of GST that was not actually embedded into the cost of the goods.

c. Proposed section 3A(3BB) applies when the goods have passed through multiple suppliers (some of whom may have been registered persons), so we consider "for the recipient" helps clarify that the input tax amount is relevant to the last recipient of the goods.

Recommendation

That the submissions be declined.

TIMING OF GST ON ACCOMMODATION SUPPLIED THROUGH ELECTRONIC MARKETPLACE

Clauses 166, 167, 170(3)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the proposal to provide operators of electronic marketplaces, listing intermediaries, and underlying suppliers with the option of accounting for GST on a supply of taxable accommodation made through an electronic marketplace on the completion of the performance of the services (being the guest's check-out date) or at an earlier time.

Recommendation

That the submission be noted.

Issue: Treatment of similar supplies

Submission

(Deloitte)

Officials should consider changing the timing of when GST is accounted for on similar supplies that are not made through electronic marketplaces. This would be a helpful tool for other businesses for the same reasons officials have outlined in the Bill commentary.

Comment

Amending rules related to when GST is accounted for on other supplies would be a significant change and would warrant further consideration before progressing. Further work on this matter would also require public consultation and be subject to resourcing and prioritisation as part of the Government's tax and social policy work programme. It would also come at a fiscal cost.

Officials note that a large part of the reason why changes to the timing rules were considered appropriate for supplies of accommodation made through electronic marketplaces is because some of the issues in relation to information asymmetries[2] and

[2] When the person responsible for accounting for GST on the supply might not know if/when their GST liability for the supply of accommodation through an electronic marketplace arises because they do not receive the guest's payment directly.

cashflow problems in this specific context are created by a statutory deeming, and otherwise would not exist in practice. This is the case when a marketplace operator or listing intermediary is liable for GST on supplies of accommodation and does not receive payment from the guest (payment is instead made to another person, such as the underlying supplier directly).

In other contexts, these issues are almost always created by the existence of an agency relationship (when an agent receives payment or issues an invoice on behalf of the supplier, giving rise to a GST liability for the supplier at the time payment is received or the invoice is issued), or by the supplier taking a deposit from the customer long before the services are physically performed. Officials note that in relation to principal–agent relationships and deposits, there are existing rules that may mitigate these issues, including within the agency rules in the Goods and Services Tax Act 1985.

Recommendation

That the submission be declined.

Issue: Optional accounting rule could lead to double counting

Submission

(KPMG)

The proposed optional accounting rule could lead to accounting for GST twice on the same supply of taxable accommodation. If a marketplace operator receives a booking before 1 April 2024, with a check-out date after 1 April 2024, the person providing the accommodation (the underlying supplier) could account for GST according to the old rules, while the marketplace operator may account for GST on the same supply in accordance with the optional accounting rule under section 19DB(3) of the Goods and Services Tax Act 1985.

In this scenario, there is no mechanism for the underlying supplier to recover any overpaid GST. An amendment should enable the underlying supplier to self-correct any overpaid GST as a deduction in their next GST return.

Comment

Officials do not agree that the proposed optional accounting rule can result in two parties correctly accounting for GST on a supply of taxable accommodation. This is because the optional accounting rule does not change when the time of supply occurs. We have discussed with the submitter how the rule would work and understand the submitter is no longer concerned.

For example, if time of supply occurs before 1 April 2024 (because payment for the supply was made or an invoice was issued before that date), the supply is not subject to the GST rules for listed services (as the new rules only apply to supplies made on or after 1 April 2024). This means the marketplace operator should not account for GST on the supply.

If the marketplace operator in this scenario does incorrectly account for GST on the supply (based on the guest's check-out date being after 1 April 2024), the usual rules for correcting GST errors would apply.

Recommendation

That the submission be declined.

Issue: Practicality of proposal

Submission

(Chartered Accountants Australia and New Zealand, KPMG)

a. Officials should confirm with the industry that the proposed changes are practical and workable. (*Chartered Accountants Australia and New Zealand*)

b. If the date the marketplace operator pays the underlying supplier is not aligned with the guest's check-out date, the underlying supplier would need to actively monitor the check-out date against the payment date to make sure they capture the GST liability at the right time. They would also need to identify supplies made directly to guests to account for GST based on the normal timing rules. To simplify GST compliance, the underlying supplier should be given the option to account for GST based on the date the payment is received from the operator or the guest (whichever is applicable), unless an invoice is issued earlier. (*KPMG*)

Comment

The proposed changes would provide operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) with the option of accounting for GST on a supply of taxable accommodation made through an electronic marketplace at the guest's check-out date or at an earlier time. This rule is very flexible as to when the underlying supplier (if they are responsible for GST) can account for GST on these supplies. However, when the underlying supplier receives payment from the marketplace operator after the check-out date, the proposal in its current form would not relieve certain compliance costs for the underlying supplier.

Officials understand the submitters' concerns relate to a relatively common industry practice where some marketplace operators remit the guest's payment to the underlying supplier (such as a motel) a couple of days after guest check out has occurred. In this situation, the underlying supplier's accounting system is often configured to recognise the payment and the GST liability on the date they receive the money from the marketplace operator. This means that if the latest the underlying supplier may account for the supply in their GST return is the check-out date, they essentially need to do a manual workaround in their system to ensure the amounts are included in the correct taxable periods, thus increasing their compliance costs.

As one of the submitters notes, the underlying supplier may also need to differentiate between supplies of accommodation made "directly" to guests, versus supplies made through electronic marketplaces (since the proposed timing rule would not apply to the former). This may further complicate accounting for GST on supplies of accommodation when the underlying supplier also takes direct bookings and "walk-ins".

Officials agree with the submitters that the proposal could be amended to address these issues, thus ensuring it is practical and workable.

Point of difference

Based on previous discussions, officials understand both submitters prefer an approach where the underlying supplier may account for GST on the date they physically receive the guest's payment (either from the guest directly, or from the marketplace operator). The problem with this approach (and with the current law) is that in the accommodation context, the supplier is usually considered to have received payment the moment the guest pays for the supply, even when the payment is made to a different person (such as an operator of an electronic marketplace) who holds the payment for a period before remitting it to the supplier. This is the case, for example, when the person receives payment as agent of the supplier.

a. Aside from the specific issue when the underlying supplier (or, potentially, a listing intermediary) receives payment from the marketplace operator after the check-out date, officials are satisfied that the current proposal is otherwise practical and workable in any other scenario. Officials previously consulted on the proposed changes with marketplace operators, listing intermediaries and private sector GST experts. These changes were widely supported and, based on the feedback we received, are practical and workable except in the specific scenario raised in submission (b). Officials are satisfied that the amendment we are recommending in response to that submission will ensure the proposal is practical and workable in all cases.

b. To deal with the problem, officials recommend that the proposal is amended to allow the person that is liable for GST on these supplies to account for GST up to seven days after the performance of the services is completed. Officials tested this approach with the submitter, and they were satisfied that it would address the problem in virtually all cases (because the timing difference between the check-out date and when the underlying supplier receives payment from the marketplace operator is typically only one or two days).

Recommendation

a. That the submission be noted.

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

FLAT-RATE CREDIT AND DEDUCTIONS FOR INCOME TAX PURPOSES

Clauses 14, 23, and 29

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the proposal to provide underlying suppliers with the option to return the flat-rate credit as income in their income tax return to allow them to take GST-inclusive income tax deductions on all their expenditure.

Recommendation

That the submission be noted.

Issue: Deduction in income for social entitlements

Submission

(Deloitte)

Returning the flat-rate credit should not negatively impact low-income individuals. If a person returns the flat-rate credit as income in their income tax return, they should be able to get a deduction in income for the flat-rate credit for the purpose of determining social policy entitlements and obligations.

Comment

Officials agree with the submitter in principle.

However, following further analysis, officials consider no amendments are required to achieve this outcome. This is because a person who chooses to include the flat-rate credit in their assessable income will deduct their expenditure for income tax purposes on a GST-inclusive basis. This will flow-through to income used in social policy calculations. If a "credit adjustment" to income used in social policy programmes was provided, this would understate the person's income and result in inappropriate outcomes.

Recommendation

That the submission be noted.

TECHNICAL AMENDMENTS RELATED TO PLATFORM ECONOMY

Clauses 155(4), 159(2), 169, 181, 182, and 183

Issue: Support for proposals

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the proposed amendments to the GST rules for listed services to ensure the rules work as intended and to address minor issues with the rules that were not anticipated at the time of their introduction.

Recommendation

That the submission be noted.

Issue: Reducing incorrect claims for flat-rate credit

Submission

(Matter raised by officials)

Section 20(3)(de) of the Goods and Services Tax Act 1985 provides an input tax deduction for the flat-rate credit for a supply of "listed services" if the underlying supplier (the person providing the accommodation or transportation services through an electronic marketplace) has not notified the marketplace operator they are registered for GST. Officials are aware some marketplace operators are deducting input tax for the flat-rate credit and passing it on to GST-registered underlying suppliers even though they hold no information about the underlying supplier's GST registration status.

Officials therefore recommend an amendment to allow marketplace operators (and listing intermediaries, if applicable) to deduct input tax for the flat-rate credit only if the underlying supplier has notified the marketplace operator or the listing intermediary that they are not registered for GST, consistent with the policy intention.

Officials recommend that the amendment apply for taxable periods beginning on or after 1 April 2025.

Recommendation

That the submission be accepted.

Issue: Timeframe for taxable supply information

Submission

(Matter raised by officials)

Section 19NB of the Goods and Services Tax Act 1985 (GST Act) currently provides that, for a supply of listed services made by an operator of an electronic marketplace, taxable supply information must be provided to the recipient of the supply without the need for a request. This ensures the recipient can deduct input tax, if applicable, for listed services they receive.

The section does not specify when taxable supply information must be provided. An amendment should be made to require taxable supply information to be provided within 28 days of the time of supply.

Officials understand most marketplace operators (or listing intermediaries, if they are deemed to be the supplier) are already providing taxable supply information automatically within 28 days of the time of supply. This amendment ensures there is no doubt about the timing requirement for taxable supply information and is consistent with the timeframe that exists in the GST Act for taxable supply information in other circumstances.

Officials recommend that this amendment apply from the day after the Bill receives the Royal assent.

Recommendation

That the submission be accepted.

Issue: Disclosure of GST registration status to listing intermediaries

Submission

(Matter raised by officials)

An exception to the confidentiality rules in the Tax Administration Act 1994 permits the Commissioner of Inland Revenue (the Commissioner) to disclose an underlying supplier's GST registration status to an operator of an electronic marketplace for the purpose of the flat-rate credit scheme.

When a listing intermediary is involved in a supply of taxable accommodation, the listing intermediary is treated as the marketplace operator for the purpose of administering the flat-rate credit scheme.

Officials recommend an amendment to clarify that the Commissioner can disclose an underlying supplier's GST registration status to a listing intermediary for the purpose of the flat-rate credit scheme.

Officials recommend that this amendment apply from the day after the Bill receives the Royal assent.

Recommendation

That the submission be accepted.

ELECTION TO ZERO-RATE B2B FINANCIAL SERVICES

Clause 171

Issue: Support for proposal

Submission

(Bell Gully, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, Mayne Wetherell, PwC)

The submitters support the proposal to zero-rate business-to-business (B2B) financial services.

Recommendation

That the submission be noted.

Issue: Support for further work

Submission

(Bell Gully)

The submitter supports further work being undertaken to identify other regimes that impose unnecessary notification requirements, with a view to reducing the compliance burden on taxpayers.

Comment

Any further work would be subject to resourcing and prioritisation as part of the Government's tax and social policy work programme.

Recommendation

That the submission be noted.

Issue: Application of election by financial service suppliers

Submission

(KPMG, PwC)

Inland Revenue should provide further guidance on how GST registered persons can "take a position" in a GST return to zero-rate financial services when the value of the financial services is not clear, or in periods when financial services have been supplied but there is no zero-rated income to report. (*KPMG*)

The proposal amendment should be subject to further policy development to work through certain practical issues and be followed up with technical and operational guidance. (*PwC*)

Comment

Officials will produce further technical and operational guidance on how financial service suppliers would exercise the proposed election, including examples of how it would be applied. This guidance will clarify that the relevant tax position may be claiming a percentage of their input tax deductions. This can be relevant when the financial service supplier is a new entity that has not yet begun making zero-rated supplies, or because the relevant GST rules mean they are not required to include the value of their zero-rated supplies in their GST return.

Recommendation

That the submission be noted.

Issue: Ensure previous B2B elections continue to apply

Submission

(Corporate Taxpayers Group)

Inland Revenue should ensure that any business-to-business (B2B) elections previously made continue to apply, regardless of the treatment taken in a specific GST return in the future. Errors can be made in GST returns and if the filing of a position in the GST return is treated as an election, there should be the opportunity to correct this if necessary.

Comment

Officials agree that suppliers of financial services should be able to amend their return to ensure it correctly reflects their position to zero-rate B2B financial services provided this amendment occurs within the relevant time limits for amending returns. The guidance materials will include guidance on this issue.

Recommendation

That the submission be noted.

Issue: Amend rule to zero-rate unless supplier opts out

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed mechanism could be improved, and issues are likely to arise from the mechanism in the current drafting. (*Deloitte*)

All business-to-business supplies of financial services should be treated as zero-rated unless the taxpayer specifically opts out. This would reduce compliance costs because most taxpayers would be zero-rating. (*Corporate Taxpayers Group, Deloitte*)

Comment

Officials do not agree. We consider it is better if the election is a positive decision by taking a position in a return. Most of the suppliers are likely to supply a mix of exempt and zero-rated services so will need to implement systems to identify whether their customers are GST-registered, and also develop a fair and reasonable apportionment method.

Some suppliers may supply only a small number of financial services so may prefer to not incur the compliance costs associated with these systems and methods and instead continue to treat all their financial services as exempt supplies.

Recommendation

That the submission be declined.

Issue: Proposal should apply retrospectively

Submission

(Mayne Wetherell)

The proposed amendment to the Goods and Services Tax Act 1985 to permit an election to zero-rate business-to-business (B2B) supplies of financial services by taking a tax position in a return should have retrospective effect from the date the B2B zero-rating rule was introduced.

Alternatively, Inland Revenue should confirm through guidance it will not devote resources to investigating whether a taxpayer that has historically filed on the basis a B2B election has been made, has in fact made such an election.

Comment

Officials do not agree. Making the proposal apply retrospectively could create an additional fiscal cost from registered persons seeking to amend past GST returns filed in earlier periods to claim GST refunds.

In respect of the alternative submission, while Inland Revenue has discretion to apply its resources to collect the highest amount of revenue over time, we do not consider it would be appropriate to produce guidance that states it will not be devoting resources to investigating positions taken under the current notification requirement. We note there is a time bar that generally limits Inland Revenue's ability to assess tax if the relevant GST position was included in a return that was filed four or more years ago.

Recommendation

That the submission be declined.

PROFESSIONAL BOARD MEMBER APPOINTED BY GOVERNOR-GENERAL

Clause 158(1) and (3)

Issue: Support for proposal

Submission

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

Submitters support the proposal to allow GST-registered organisations to deduct input tax on fees paid to a board member who was appointed by the Governor-General and accounts to their employer for those fees.

Recommendation

That the submission be noted.

DEEMED SUPPLY OF EMISSIONS UNITS ON DEREGISTRATION

Clause 157(1)

Issue: Support for proposal

Submission

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

Submitters support the proposal to ensure that a deemed supply of an emissions unit when deregistering from GST is zero-rated instead of standard rated.

Recommendation

That the submission be noted.

QUARTERLY FILING FOR CERTAIN NON-RESIDENT SUPPLIERS

Clause 160(3)

Issue: Support for proposal

Submission

(KPMG)

The submitter supports the proposal to clarify that a non-resident supplier must have a three-month taxable period if its only supplies in New Zealand are of remote services, listed services and/or distantly taxable goods.

Recommendation

That the submission be noted.

Issue: Requirement to change from quarterly filing

Submission

(KPMG)

Section 15C of the Goods and Services Tax Act 1985 is silent on whether a non-resident who has met the requirements to be a quarterly filer under section 15(6) at the time of registration, but subsequently makes supplies other than remote services, listed services or distantly taxable goods, is required to change their taxable period from quarterly to either monthly, two-monthly or six-monthly (the standard taxable periods).

If the expectation is that a non-resident person who no longer meets the requirements of section 15(6) to file quarterly returns is required to change to a standard taxable period, the submitter recommends that a new subsection is included in section 15C to clarify this requirement.

Comment

Officials agree with the submitter that there is a gap in section 15C, and that a new subsection should be added to clarify that a non-resident person who no longer meets the requirements for having a three-month taxable period is required to change to one of the "standard" taxable periods.

Recommendation

That the submission be accepted.

NON-RESIDENTS AND "PERCENTAGE ACTUAL USE" DEFINITION IN ADJUSTMENT RULES

Clause 174

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal.

Recommendation

That the submission be noted.

Issue: Bill commentary

Submission

(PwC)

The approach to analysing this scenario in the commentary to the Bill is not correct.

Comment

Officials will revise the description of the issue to ensure it is more accurate when we publish a *Tax Information Bulletin* on the proposed change.

Recommendation

That the submission be noted.

ADJUSTMENTS WHEN GST PAID TWICE ON IMPORTED GOODS

Clause 170(1)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposal to reinstate a rule that previously allowed a supplier to reduce their GST liability by an amount they were required to refund to a customer when imported goods were taxed twice.

Recommendation

That the submission be noted.

SUPPLY CORRECTION INFORMATION

Clause 168

Issue: Support for proposal

Submission

(Corporate Taxpayers Group)

The submitter supports the amendment.

Recommendation

That the submission be noted.

Issue: Supply correction information “available”

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters contend that the requirement for supply correction information to be “issued” is not always appropriate because in some cases the supply correction information will already be available as existing data points. In the submitter’s view, the Bill could provide for supply correction information to be “available” rather than “issued”.

Comment

Officials agree with the submitter but note that there are multiple references to supply correction information being “issued” throughout the Goods and Services Tax Act 1985, which need to be rectified. Therefore, officials consider that the matter should be included on the Referrals and Remedials Register so it can be considered for inclusion in the next omnibus tax Bill.

Recommendation

That the submission be noted.

Issue: Supply correction information and time bar

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters consider there should be an ability to issue supply correction information (credit and debit notes) in respect of time-barred supplies. Failing that, the Commissioner should have discretion to allow credit notes to be issued following the time bar period. The submitters advise there are practical scenarios when a taxpayer finds they have overcharged GST on supplies made more than eight years ago (that is, outside the time bar period to issue a credit note).

Subsequently, while the suppliers were originally required to return output tax to Inland Revenue for these amounts, they are unable to claim input tax deductions when they issue credit notes that would enable them to obtain refunds going beyond the approximately eight-year period. However, a GST-registered recipient of the original supply that receives a credit note in respect of that supply will still have a GST output tax obligation in the period they receive the credit note. This results in a windfall of revenue for Inland Revenue and an unfair outcome for the taxpayer. If there are acceptable supporting documents to justify the position taken, the amount was paid to a non-associated person, and the error was only found outside this period, a credit note adjustment outside the time period stipulated in section 19N(7)(b) of the Goods and Services Tax Act 1985 (GST Act) should be acceptable practice, or at least subject to the Commissioner's discretion.

Comment

The purpose of the time bar provisions is to ensure that refunds do not remain open-ended forever and are necessary to safeguard the Crown against an unquantifiable fiscal risk in respect of earlier taxable periods. The time bar provisions achieve this outcome by preventing taxpayers from amending past returns. The time bar applies not only to GST but to all taxes administered by Inland Revenue including income tax.

The policy intent is that supply correction information should not be able to be issued in respect of supplies of goods and services that are contained in a time-barred return period. This is necessary because supply correction information amends the current return period, and therefore the time bar provisions alone are not sufficient in preventing the tax position from being changed (this is because the time bar applies to previous return periods).

Officials note that this is how the law currently applies. The amendment contained in this Bill does not change this position but merely ensures that section 19N(7)(b) of the GST Act is aligned with the test set out in the refund rules, which provide an additional four-year period to issue a refund if the overpayment of tax is a result of a clear mistake or simple oversight by the person. The amendment in this Bill is necessary because this test was inadvertently changed from "clear mistake or simple oversight" to a test that required a registered person to take "due care to avoid errors". This caused confusion and interpretive issues for some taxpayers.

The submitters' proposal would be a significant departure from the tax policy rationale for the time bar. Officials do not consider it appropriate to introduce further exceptions to the time bar at select committee stage of this Bill without proper consideration and consultation. Subject to resourcing and prioritisation, this is something that the Government could consider for inclusion on the tax and social policy work programme. It is noted that this additional four-year period for "clear mistake or simple oversight" currently only applies in a GST context and does not apply for income tax. This provides GST registered persons with ample time to ensure that supplies of goods and services have the correct tax treatment.

Lastly, it should be called out that the submitters' proposal would likely come with a fiscal cost that would also need to be worked through.

Recommendation

That the submission be declined.

Issue: When time limit to issue supply correction information commences

Submission

(Mayne Wetherell)

It should be clarified (through legislation or guidance) that the time limit within which supply correction information must be issued commences from the end of the taxable period in which the taxable supply information or tax return was or became incorrect (for example, as a result of a subsequent refund of, or adjustment to, the consideration for the supply), rather than the taxable period in which the supply was made.

Section 19N(7) of the Goods and Services Tax Act 1985 (GST Act) provides that supply correction information for a supply may not be issued after four years from the end of the taxable period in which the registered person provides the return for the taxable period in which the supply was made (subject to exceptions or proposed exceptions for certain overpayments of tax resulting from a clear mistake or simple oversight, and for the transactions involving zero-rating of land: see section 19N(7)(b) and (c), as proposed to be amended by clause 168 of the Bill).

However, it will often be the case that the taxable supply information and GST return were correct at the time of supply, and only subsequently become incorrect as a result of (for example) an agreed adjustment to the consideration payable for the supply.

For example, if a registered person sells a defective car, a purchaser may demand a partial refund of the purchase price (say) five years after purchasing the car. If the payment is (legally) a refund of the purchase price rather than compensation for loss, the seller should issue supply correction information when the refund is made. However, because this will be more than four years since the supply of the car was made, section 19N(7) would (on its face) prevent supply correction information from being issued. (Section 25(2)(b) of the GST Act would not appear, for these purposes, to alter the time of supply for the purposes of section 19N(7).)

Comment

The purpose of the proposed amendment in the Bill is to ensure that the ability to issue supply correct information is aligned with the time bar as set out in the refund rules, which provide an additional four-year period to issue a refund if the overpayment of tax is a result of a clear mistake or simple oversight of the person. The amendment has been proposed because the test was inadvertently changed in the supply correction information provisions from "clear mistake or simple oversight" to a test that required a registered person to take "due care to avoid errors" to utilise the additional four-year period. This caused confusion and interpretive issues for some taxpayers. Further information around the purpose behind this amendment is contained in response to Issue: Supply correction information and time bar.

The submitter is suggesting that the law should be clarified to provide that the time bar commences from the end of the taxable period in which the taxable supply information was or became incorrect, rather than commencing from the end of the taxable period in which the supply was made or return provided.

A change as proposed by the submitter would be significant and would have ramifications for how the time bar applies for amending a GST assessment. Officials consider that the suggested change goes far beyond the scope of this amendment and would not be appropriate to make at select committee stage of this Bill.

Officials will consider this issue further at a later date, subject to resourcing and prioritisation as part of the tax and social policy work programme.

Recommendation

That the submission be declined.

GST GROUPING RULES

Clause 180

Issue: Minor amendments to GST grouping rules

Submission

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

The submitters support the amendment.

Recommendation

That the submission be noted.

NON-TAXABLE GOVERNMENT GRANTS AND SUBSIDIES

Clauses 157(2), (3), and (4), 185, 186, 204, and schedule 1

Issue: Support for proposal

Submission

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

The submitters support the proposal to revoke the Goods and Services Tax (Grants and Subsidies) Order 1992 and shift the schedule of non-taxable government grants and subsidies from the Order to proposed new schedule 2 in the Goods and Services Tax Act 1985.

Recommendation

That the submission be noted.

Trusts remedials

TAX RATE FOR MINOR AND CORPORATE BENEFICIARY INCOME

Clauses 59(1) and (3), and 60

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal to clarify that income subject to the minor or corporate beneficiary rules is subject to a 39% tax rate, regardless of whether the relevant trust is eligible for an exclusion from the 39% trustee tax rate.

Recommendation

That the submission be noted.

Issue: Drafting of proposal

Submission

(Matter raised by officials)

The drafting of the proposed amendment provides that income subject to the minor or corporate beneficiary rules is taxed at the rate in schedule 1, part A, clause 3 of the Income Tax Act 2007 (ITA) (the 39% rate), ignoring clauses 4 to 6B (other tax rates for trustees).

Section BC 6(1) of the ITA provides that the income tax liability of a filing taxpayer is simply calculated by multiplying their taxable income by the taxpayer's basic tax rate. The core provisions of the ITA do not allow for a taxpayer to have different basic tax rates on different amounts of income. If a trustee's taxable income includes amounts taxed at 33% (for example, due to the $10,000 trustee income de minimis in section HC 40 of the ITA) and amounts taxed at 39% (for example, beneficiary income subject to the minor beneficiary rule), then it is not clear which basic tax rate to apply to the trustee's taxable income.

To resolve this issue, officials recommend that beneficiary income subject to the minor or corporate beneficiary rules should be treated as schedular income. The income tax liability of a trustee with such income would then be calculated under section BC 7(1) as the total of the schedular income tax liability and the total income tax liability on non-schedular income. This would not affect the policy outcome but would ensure there is legislative clarity regarding which tax rate should apply to which amounts of income.

Recommendation

That the submission be accepted.

DISABLED BENEFICIARIES AND MINOR BENEFICIARY RULE

Clause 59(2) and (3)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal to ensure that beneficiary income derived from a disabled beneficiary trust by a minor is not subject to the minor beneficiary rule.

Recommendation

That the submission be noted.

Issue: Scope of proposal

Submission

(PwC)

The proposed amendment should be extended so that the minor beneficiary rule does not apply to beneficiary income derived from any discretionary trust by a minor, provided they meet the disabled beneficiary trust definition.

This would address situations such as when a disabled minor beneficiary shares a trust with other siblings. Under the current proposal, a special purpose trust would have to be established, imposing additional compliance and administrative costs on families of disabled children.

Comment

We agree that extending the proposal to include disabled beneficiaries of non-disabled beneficiary trusts would help reduce compliance costs when it is not practical for families to establish a separate trust to meet the disabled beneficiary trust requirements.

Recommendation

That the submission be accepted.

CORPORATE BENEFICIARY RULE

Clause 10

Issue: Support for proposal

Submission

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

Support for the proposal to clarify that when a company derives beneficiary income subject to the corporate beneficiary rule, the capital gain amount included in the calculation of the company's available capital distribution amount is the after-tax amount.

Recommendation

That the submission be noted.

Issue: Overreach of corporate beneficiary rule

Submission

(EY)

The proposed amendment does not address the significant overreach of the corporate beneficiary rule and results in the 39% trustee tax rate applying to most trust distributions made to corporate beneficiaries. The scope of the drafting in section HC 38 of the Income Tax Act 2007 is much broader than intended or necessary.

Taxing such income at 39% to the trustee and taxing it again when it is distributed as a dividend is overly punitive.

Commentary released at the time the rule was first introduced described it as necessary to "ensure trustees cannot 'circumvent' the top tax rate" and a rule that will "prevent the under-taxation that would arise if trust income were taxed at the corporate tax rate". The submitter repeats submissions made to the Select Committee at Bill stage on the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 because the underlying concerns have not been addressed:

- The example used in the Bill commentary to highlight the need for the rule focuses on a contrived arrangement, which the submitter believes could constitute tax avoidance. The example describes an uncommercial lending arrangement. This type of concern does not justify the far broader scope of the corporate beneficiary rule than merely contrived or artificial arrangements.
- A company in receipt of beneficiary income that is taxed at the company tax rate (28%) should not be categorised as having received an "under-taxed" payment.

- There are a multitude of commercial reasons a trust may allocate income to a company beneficiary. The Bill commentary asserted that the "real beneficiary of such an allocation of income is the ultimate natural person shareholder in the company". The submitter considers that the ultimate shareholders are in no way "real" beneficiaries of corporate income unless and until such time as the company distributes its profits by way of dividends.
- The rule has a distortionary effect on investment behaviour. It is unlikely to have any additional revenue impact because taxpayers will simply favour corporate ownership of income-earning assets and activities.
- On the face of it, the rationale for the rule can be understood. However, as currently drafted the rule is both complex and has overreach. The rule will more often than not result in over-taxation because it will apply to ordinary commercial distributions that are not tax-avoidance motivated. The corporate beneficiary rule goes beyond addressing circumstances when trustees deliberately circumvent the tax rules, and its scope should be reconsidered.

Comment

The ability for trustees to shelter income in a corporate beneficiary (taxed at 28%) by making beneficiary income allocations is a significant integrity risk that would undermine the 39% trustee tax rate. It would be challenging to consider the allocation of beneficiary income to a corporate beneficiary as avoidance given the existing tax policy settings. Furthermore, a specific anti-avoidance provision would be difficult to target at the problem and could result in significant uncertainty. Therefore, we consider that the corporate beneficiary rule is a necessary integrity provision to buttress the 39% trustee tax rate.

Even if beneficiary income is not only allocated but distributed by the trustees to the corporate beneficiary, taxing the income at 28% would be problematic. First, if the company is owned by the trust, then this allocation and payment is a very simple way to subvert the 39% trustee tax rate. While the income is still in the trust (since the company is owned by the trust) it has been taxed at only the corporate rate. Second, if the company is owned by a natural person beneficiary, then again, the allocation to the company rather than the beneficiary effectively avoids the intended outcome of trust taxation.

Targeting the rule more narrowly would be difficult. For example, introducing rules based on whether a corporate beneficiary receives the distribution, or if it is only an allocation, would require introducing a different definition of the term "paid" in legislation. This distinction would be impractical and very challenging to enforce. We expect that this approach would also be easy to structure around.

The proposed amendment in the Bill is intended to address a technical issue with how the rule interacts with the available capital distribution amount formula. Further consideration of the underlying policy intent of the corporate beneficiary rule is outside the scope of the Bill and would require public consultation. Policy work on this matter would be subject to prioritisation by the Government on the tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Proposal does not address problem

Submission

(EY)

The recognition of an available capital distribution amount (ACDA) typically ensures that capital gain amounts are not taxed once they are ultimately distributed upon liquidation. However, in this instance the ACDA mechanism is being used to recognise that income distributions from a trust to a corporate beneficiary, which are subject to the corporate beneficiary rule and therefore taxed at 39% (rather than at the corporate tax rate of 28%), should equally not be taxed again upon liquidation.

It is insufficient for the Bill to allow the income subject to the corporate beneficiary rule to form part of the ACDA. The submitter is not convinced why corporate beneficiaries subject to the rule should have to pay higher taxes despite not having a tax avoidance arrangement or purpose. Further, it is unclear why such income that is taxed at 39% should not attract imputation credits ensuring that any subsequent (pre-liquidation) distribution is not taxed twice.

The imputation regime should apply to allow a credit for the tax paid by the trustee, ensuring that dividends distributed by the corporate beneficiary are not double taxed. Capping the imputation credit at 28% may be necessary to mitigate the complexity that would otherwise arise if taxpayers had some credits at 28% and some at 39%.

Comment

The Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 introduced the corporate beneficiary rule, including that income subject to this rule is included in a company's ACDA. The proposed amendment in the Bill confirms that the amount included in the company's ACDA is the after-tax, rather than pre-tax, amount of beneficiary income.

When the corporate beneficiary rule was introduced, we considered that due to the limited number of beneficiary income allocations made to corporate beneficiaries, not many companies would be affected by the rule. Due to this, we did not recommend changing imputation rules to allow corporate beneficiaries to receive imputation credits for such distributions or introducing special rules such as memorandum accounts to track distributions. This would add significant complexity.

We do not recommend making changes to the imputation rules at this stage of the Bill without further consideration; such changes would add additional complexity and compliance costs to the trust regime for limited benefit, and risk introducing unintended consequences

Further consideration of the underlying policy intent of the corporate beneficiary rule is outside the scope of the Bill and would require public consultation. Policy work on this matter would be subject to prioritisation by the Government on the tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Over-taxation of non-residents' foreign-sourced income

Submission

(EY)

If a trust earns foreign-sourced income and allocates it as beneficiary income to a non-resident corporate beneficiary (for example, an Australian company owned by a family member living in Australia), the distribution still falls within the corporate beneficiary rule and is taxable as trustee income at 39%. This outcome arises despite the income being a non-resident's foreign-sourced amount, which would typically not be taxed in New Zealand.

It is not apparent that section BD 1(4) of the Income Tax Act 2007 (ITA) will override section HC 38. Section BD 1(4) simply stops the non-resident being taxable on the income but will do nothing to relieve the New Zealand resident trustees of the trust. It cannot have been intended for the rule to tax foreign-sourced income paid to non-New Zealand companies at 39%. The rule should be amended to ensure it does not apply in such circumstances.

Additionally, the rule can result in double taxation. For example, on a distribution of New Zealand-sourced income, section HC 38(3) will not save an Australian company from being taxable on that income in Australia (since the income is actually distributed to the Australian company and is, therefore, income in Australia). However, no tax credit will be available to the New Zealand trust for tax paid by the Australian company, resulting in double taxation and some trustees potentially facing a 69% effective tax rate.

Comment

The corporate beneficiary rule is designed to ensure that trustees do not shelter income from the 39% trustee tax rate in a corporate beneficiary (which would otherwise be taxed at 28%). The rule applies if a close company earns an amount of beneficiary income from a trust (Trust A) and any voting interest or market value interest, directly or indirectly, in the company is held by at least one of the following:

- criteria 1: a settlor of Trust A
- criteria 2: the trustees of Trust A
- criteria 3: a person for whom a settlor of Trust A has “natural love and affection”, or
- criteria 4: the trustees of another trust (Trust B), if a settlor of trust A has “natural love and affection for a settlor or a beneficiary of Trust B.

We agree with the submitter that there is an issue with the interaction of the corporate beneficiary rule and how non-resident’s foreign-sourced income is taxed under the core provisions of the ITA. If a trustee earns foreign-sourced income and it is distributed as beneficiary income to a non-resident corporate beneficiary subject to the corporate beneficiary rule, then that income will not be assessable income of the corporate beneficiary under New Zealand law, but it will be taxed at 39% to the trustee under the corporate beneficiary rule.

We recommend that the corporate beneficiary rule is amended to exclude foreign-sourced amounts of beneficiary income derived by a non-resident company if the company does not have a New Zealand-resident shareholder. We recommend that the exclusion is based on the residence of the shareholders of the company, rather than the residence of the company, to ensure that New Zealand residents are not able to avoid the rule by incorporating a company in a foreign jurisdiction and having the trust distribute income to that company.

The rule should still apply to a distribution to a foreign company without a New Zealand resident shareholder if the income is New Zealand sourced.

This change should be made retrospectively for the 2024–25 and later income years to align with the introduction of the corporate beneficiary rule.

Point of difference

The corporate beneficiary rule should not apply to foreign-sourced amounts of income derived by non-resident companies that do not have a New Zealand resident shareholder.

Recommendation

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

Issue: Foreign-sourced amounts derived by resident trustees

Submission

(Matter raised by officials)

A foreign-sourced amount of income derived by a resident is normally assessable income. However, section HC 26 of the Income Tax Act 2007 provides that if a resident trustee of a trust derives a foreign-sourced amount that is included in trustee income, it is exempt income under section CW 54 if no settlor:

- is at any time in the income year a New Zealand resident who is not a transitional resident, or
- exists in the income year and the last surviving settlor was a non-resident when that settlor ceased to exist.

Section HC 26 only applies to trustee income. It does not apply to income that is allocated to a beneficiary of the trust as beneficiary income.

Section HC 26(1)(e) excludes beneficiary income subject to the minor beneficiary rule from this section. In the absence of this exclusion, such income would be exempt from tax even though it is beneficiary income. This is because the minor beneficiary rule treats certain beneficiary income distributions to under 16-year-olds as trustee income. The exclusion in section HC 26(1)(e) ensures that the exemption does not override the minor beneficiary rule.

The corporate beneficiary rule is similar to the minor beneficiary rule, in that it treats certain distributions of beneficiary income as trustee income. However, unlike the minor beneficiary rule, there is no corresponding exclusion in section HC 26.

Section HC 26 should be amended to exclude income subject to the corporate beneficiary rule to ensure that income subject to this rule is not unintentionally exempt from tax. This change should apply for the 2025–26 and later income years.

Recommendation

That the submission be accepted.

ENERGY CONSUMER TRUST EXCLUSION

Clause 105(18) and (40)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters support the proposal to ensure that trusts that no longer hold shares in electricity distribution companies but continue to have the same class of beneficiaries for which the trust was established also qualify as energy consumer trusts.

Recommendation

That the submission be noted.

Partnership remedials

RWT-EXEMPT STATUS, AIL ELIGIBILITY AND OTHER MATTERS RELATING TO PARTNERSHIPS

Clauses 31, 32, 48(3), (4), and (5), 54, 61, 62, 63, 64, 65, 66, 67, 68, 69, 98, 99, 101, 102, 105(12), (22), (37), and (39), 126, 127, 128(1) and (2), 131, and 198

Issue: Support for proposal

Submission

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

The submitters support the amendments to clarify several issues that have been identified as a result of work undertaken by the Tax Counsel Office and consider them to be a positive step that reduces compliance costs, aligns with the policy intention, and encourages investment in New Zealand by non-residents.

Recommendation

That the submissions be noted.

Issue: Reliance on optional elections

Submission

(EY)

Inland Revenue may want to have some awareness of the reliance on some of these “optional elections”. In particular, when the election alters income/deductions across periods, can have other consequential effects, or is irrevocable.

Comment

Officials consider this submission is a wider piece of work than the proposals in the Bill and it could be addressed as the tax and social policy work programme and Government priorities permit.

Recommendation

That the submission be noted.

Issue: Tax Counsel Office published guidance

Submission

(EY)

Once the Bill is enacted, officials should update the earlier published Tax Counsel Office guidance to capture the changes made by the Bill.

Comment

The draft guidance will be updated if the proposed amendments are enacted.

Recommendation

That the submission be noted.

Issue: NRWT application to dividends and royalties paid to limited partnership with non-resident limited partners

Submission

(Corporate Taxpayers Group, Deloitte)

There should be later clarification, through policy or guidance, as to whether non-resident withholding tax applies to a dividend or royalty paid to a New Zealand limited partnership that has non-resident limited partners.

Comment

Officials will cover this in guidance.

Recommendation

That the submission be noted.

Issue: Inconsistency with statutory right of recovery

Submission

(Deloitte, PwC)

The Bill commentary notes that a limited partnership paying interest to a non-resident limited partner is required to deduct non-resident withholding tax (NRWT) or pay the approved issuer levy (AIL) as agent for the borrower, and that there is a statutory right of recovery against the non-resident limited partner. It is unclear whether this is in fact the case, or whether a limited partnership is subject to the AIL rules and NRWT rules in its own right.

The interaction of the agency rules in subpart HD of the Income Tax Act 2007 with the changes to enable limited partnerships to access the AIL regime, if any, should be clarified in the light of apparent differences between the Bill commentary and the draft legislation, and if necessary legislative amendments are made to clarify this

Comment

The proposed amendments allow the limited partnership to satisfy AIL obligations.

The Bill commentary does not refer to the limited partnership paying the interest. It refers to the limited partnership being "responsible for the deduction and payment of NRWT or AIL on interest payments made to non-resident limited partners". The reference in the commentary to the limited partnership doing this "as agent" is incorrect. However, the legislation does correctly provide for the limited partnership being responsible for the deduction of NRWT or AIL. Officials will address the inconsistency in a future *Tax Information Bulletin*.

Recommendation

That the submission be noted.

Issue: Wider work relating to partnerships

Submission

(PwC)

The submitter notes that a number of policy and interpretative issues remain with the application of the partnership rules, in particular to limited partnerships. They propose the Government undertake further policy work in this area to improve the clarity and ease of application of the rules.

Comment

Officials consider this submission is a wider piece of work than the proposals in the Bill and it could be addressed as the tax and social policy work programme and Government priorities permit.

Recommendation

That the submission be declined.

Clauses 48(3), 61, 62, 63, 64, 65, 66, 67, and 68

Issue: Proposed amendments do not support objective to clarify legislation

Submission

(Chartered Accountants Australia and New Zealand)

The submitter considers that the following proposed amendments to provisions in the Income Tax Act 2007 do not support clarification objectives and are not necessary:

- Replacing section HG 3(1) and repealing section HG 4(6) to clarify that the partnership safe harbour provisions apply unless the disposal occurs on the final dissolution of a partnership.
- Replacing section HG 5(8) to clarify that section HG 5 does not apply on the final dissolution of a partnership.
- Replacing section HG 6(7) to clarify that section HG 6 does not apply on the final dissolution of a partnership.
- Replacing section HG 7(7) to clarify that section HG 7 does not apply on the final dissolution of a partnership.
- Replacing section HG 8(7) to clarify that section HG 8 does not apply on the final dissolution of a partnership.
- Replacing section HG 9(7) to clarify that section HG 9 does not apply on the final dissolution of a partnership.
- Inserting section FD 1(4B) to clarify that look through companies and partnerships are not transparent for the purposes of determining association under section FD 1(1)(a).

Comment

Officials consider the proposed amendments are required to ensure that the partnership provisions work as intended and to provide clarity on issues raised by the recent review by the Tax Counsel Office.

Recommendation

That the submissions be declined.

Clause 131

Issue: Extension to election for partners with non-standard balance date

Submission

(Chartered Accountants Australia and New Zealand, KPMG)

The proposed amendment provides that partners may choose to return their share of partnership income to the same corresponding tax year as the partnership when the partnership has a non-standard balance date.

When a partnership has a standard balance date, but a partner has a non-standard balance date, the partner should be allowed to include their share of the partnership income in the same corresponding income year when filing their separate return.

Comment

Officials do not consider an amendment is required in this circumstance. If a person has a non-standard balance date for a business that they carry on separately from the partnership, the income and other amounts returned for that non-standard period relate to a corresponding tax year. The person would be returning income and other amounts they have from the partnership for the same corresponding tax year.

Given this, there is no need to allow the partner to include their share of the partnership income "in the same corresponding income year". The amounts from the partnership and the amounts from the separate business will both be included in the return for the tax year.

Recommendation

That the submission be declined.

Clause 131

Issue: Commencement date of clause 131(2)(b) unnecessary

Submission

(KPMG)

It is unnecessary to have an effective date clause for a person who has taken a tax position that is inconsistent with the proposed amendments.

Comment

The proposed amendment allows partners to make a return as if they also had that non-standard balance date, if the partnership they are a part of has a non-standard balance date.

The proposed amendment commences retrospectively on or after 1 April 2008 and provides for tax positions that have previously been taken. However, it does not allow a person to change a previous tax position by applying for a reassessment.

Officials consider the effective date clause is required to ensure that the partnership provisions work as intended and to provide clarity on issues raised by the recent review by the Tax Counsel Office.

Recommendation

That the submission be declined.

Clause 131

Issue: Calculation or apportionment of partnership income between partners

Submission

(KPMG)

It should be clarified that, for the purposes of completing the partnership tax return, a partnership can follow the allocation basis in the partnership agreement or agreed in the Limited Partnership Act 2008 (in the case of a limited partnership), regardless of the positions that may be taken by individual partners.

Comment

The proposed amendment would not impact the calculation or apportionment of partnership income between partners. The proposed amendment simply provides more options for partners to align balance dates with a partnership. Additionally, officials do not consider it necessary to expand the scope of the proposed amendment to alter the calculation or apportionment of partnership income between partners.

Recommendation

That the submission be declined.

Clause 131

Issue: Mandatory apportionment of partnership income

Submission

(KPMG)

The proposed amendment will legislatively compel a partnership to provide part-year income calculations to a partner. The submitter does not consider this reasonable because a partner may have insufficient information to prepare the part-year calculations needed to apply the apportionment approach.

Comment

The proposed amendment does not compel partners to apportion the income between years. This is a choice discretionary to the partners themselves.

Recommendation

That the submission be declined.

Issue: Limited partnership borrowing from third-party non-resident lenders

Submission

(Corporate Taxpayers Group, Deloitte, Mayne Wetherell, PwC)

The submitters propose that when a limited partnership borrows from a third-party non-resident lender, it should be clarified that the limited partnership is able to register as the approved issuer (and not the individual partners).

Comment

Officials agree with the submission because it is consistent with existing proposals that allow the limited partnership to register as approved issuer for non-third-party lenders.

Recommendation

That the submission be accepted.

Clause 99

Issue: Permit limited partnerships to elect accounting for NRWT or AIL prior to payment

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The proposed amendment provides that a limited partnership elects to be treated as "the person" who makes "the payment" of non-resident passive income by withholding and paying the tax to Inland Revenue.

A limited partnership should be able to make an election prior to the payment, so the borrower is relieved of any withholding obligation on payments to the limited partnership. This would enable contracting parties to obtain certainty as to their elected positions prior to payments being made.

Comment

Officials agree that there should be some mechanism for the limited partnership to elect to account for any non-resident withholding tax or approved issuer levy prior to payment. This would provide more certainty to the borrower and the limited partnership.

Recommendation

That the submission be accepted.

Clause 98

Issue: Body required to carry on taxable activity

Submission

(Corporate Taxpayers Group, Deloitte)

The requirement for a body to carry on a "taxable activity" to be eligible for resident withholding tax (RWT)-exempt status should not apply to limited partnerships.

Comment

Bodies must be a sufficient size and level of sophistication to be granted RWT-exempt status. When a body carries out a "taxable activity" this is often an indication of this size and level of sophistication. However, this is not a requirement for companies and given limited partnerships closely resemble companies, officials agree that to have the requirement to carry on a "taxable activity" would not be consistent.

Recommendation

That the submission be accepted.

Clause 126

Issue: Expand proposed change to treat general partnership as "entity"

Submission

(Corporate Taxpayers Group, Deloitte)

Proposed new section 32IB of the Tax Administration Act 1994 (TAA), which treats a limited partnership as an entity for the purposes of calculating various amounts to determine resident withholding tax (RWT)-exempt status, should be expanded to include general partnerships when the same issues arise.

This could be done by treating unincorporated bodies and limited partnerships as a "person" for the purposes of the provisions under which RWT-exempt status is determined, or the existing section could be expanded to include partnerships.

Comment

Officials agree that the proposed provision should be expanded to include general partnerships as well as limited partnerships for consistency.

Recommendation

That the submission be accepted.

Issue: Retrospective application to 1 April 2008

Submission

(Corporate Taxpayers Group, Deloitte, KPMG)

The application date for the proposed amendments is either the same date as the commencement date, or retrospective to the date of the introduction of the limited partnership rules (1 April 2008). Submitters propose that more of the provisions are retrospective to 1 April 2008.

In particular, the application dates for the amendment to sections RF 3 and RF 12 of the Income Tax Act 2007, section 32M of the Tax Administration Act 1994, section 86G of the Stamp and Cheque Duties Act 1971, and all other amendments relating to resident withholding tax -exempt status, approved issuer levy eligibility and other related partnership matters should be given retrospective application to 1 April 2008.

Comment

Officials agree that the application dates for these amendments should be retrospective to allow for legislative consistency.

Recommendation

That the submission be accepted.

Clause 131(2)

Issue: Expand proposed amendment to include general partnerships

Submission

(KPMG)

The proposed amendment provides that partners may choose to return their share of partnership income to the same corresponding tax year as the partnership when the partnership has a non-standard balance date.

The application date for the proposed amendment only refers to “limited partnerships”; this should be expanded to include general partnerships.

Comment

In respect of the omission of general partnerships from the application date section of the proposed amendment, officials agree that the amendment should also apply to general partnerships.

Recommendation

That the submission be accepted.

Clause 131

Issue: Partners ability to vary tax year election

Submission

(Chartered Accountants Australia and New Zealand, KPMG)

The proposed amendment provides that partners may choose to return their share of partnership income to the same corresponding tax year as the partnership when the partnership has a non-standard balance date. The submitter proposes a clarification as to whether partners will be able to vary this election year on year.

Comment

If a partner elects to return their share of partnership income to the same corresponding tax year as the partnership, officials agree it should not allow partners to switch elections year on year. We propose this election remain in place until the partnership changes their balance date, or the partner leaves the partnership.

Recommendation

That the submission be accepted.

Clause 131(1)

Issue: Non-resident partners and joint assessments

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed amendment states that a non-resident partner is not required to make a return of income if they do not derive New Zealand-sourced income other than certain non-resident passive income.

It should be clarified that this does not mean there is a joint assessment on the partnership. The amendment should also make clear that a non-resident limited partner who derives New Zealand-sourced income that is fully exempt from New Zealand tax under a double tax agreement (DTA) is not required to file a tax return.

Comment

Officials agree the provision should be amended to clarify that a non-resident limited partner who derives New Zealand-sourced income that is fully exempt from New Zealand tax under a DTA is not required to file a tax return.

Officials also agree the provision should be amended to clarify that a non-resident partner who derives passive income from foreign sources does not receive a joint assessment.

Recommendation

That the submissions be accepted.

Clause 126

Issue: Capturing groups that include limited partnerships

Submission

(Corporate Taxpayers Group, Deloitte)

For the purposes of determining whether a group of companies meets the thresholds to be exempt from resident withholding tax (RWT), the Tax Administration Act 1994 treats groups of companies as one company. The proposed amendment should be expanded to capture groups that include or are completely made up of limited partnerships because these entities are akin to companies.

Comment

Officials agree that limited partnerships that are sufficiently related should be treated as one limited partnership in respect of assessing the thresholds for RWT exemptions.

Recommendation

That the submission be accepted.

APPLICATION OF ASSOCIATED PERSONS RULES TO CERTAIN STRUCTURES INVOLVING LIMITED PARTNERSHIPS

Clauses 51, 105(9), (10), (20), (21), (35), (36), and (38), 109(2), and 111

Issue: Support for proposal

Submission

(EY)

The changes are sensible and largely uncontroversial.

Recommendation

That the submission be noted.

Issue: Replace amendments with more targeted measure

Submission

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

The submitters consider the proposed amendments are broader than is necessary to address the scenarios discussed in the Bill commentary. They represent a significant change to the association rules for limited partnerships that has not been consulted on outside the Bill process.

Two of the submitters noted that the amendments would have the following consequences:

- Some limited partnerships would cease to be associated with limited partners they are currently associated with (because the association threshold for two companies is 50% compared with 25% for limited partners and limited partnerships).
- Some limited partnerships would become associated when they are currently not (for example, limited partnerships that are investment funds and have commonality of limited partners of 50%, but no individual partner holds a 25% interest).
- The amendments could result in ongoing changes to whether a limited partnership is associated with its partners because the amendments would link which association test applies to a limited partnership's owners and investments, which may change from time to time.

Given the risk of unintended consequences, the two submitters consider the amendments should not proceed in their current form and should be replaced with something more targeted. They suggest a more targeted rule should apply prospectively from the enactment of the Bill, rather than from its introduction. (*Corporate Taxpayers Group, Deloitte*)

Comment

Officials consider that the proposed amendments should proceed in their current form. The amendments are needed to address an integrity issue. Submitters have not made any suggestions about what a more targeted rule might look like and have not set out clear adverse consequences flowing from the amendments. Officials also note that a highly targeted rule would not be effective because it could be circumvented. These matters are discussed further below.

Scope of the amendments

Proposed new section YB 16B of the Income Tax Act 2007 (ITA) would provide that a limited partnership would be treated as a company for the purpose of applying relevant associated persons tests in the ITA in situations involving a limited partnership holding an interest in a company, a company holding an interest in a limited partnership, or a limited partnership holding an interest in another limited partnership.

The amendments address a gap in the law whereby the use of a chain of two or more limited partnerships or a combined chain of limited partnerships and companies can result in a break in association between closely connected entities. This outcome would not occur if only companies, rather than limited partnerships or limited partnerships and companies, were used. This is clearly contrary to the policy intent of the associated persons tests in the ITA.

The reason the amendments were not consulted on more broadly is because they relate to an integrity issue that could have been exploited if it had become widely known. This is consistent with the approach commonly taken when integrity issues are identified.

Submitters state the amendments should be replaced by something more targeted. However, they have not made suggestions about what a more targeted rule should look like.

Submitters have further stated that the amendments are broader than necessary to address the example in the Bill commentary, involving a two-tier limited partnership structure. This example was used to illustrate an effect of the amendments. It is not intended to be the only scenario the amendments would address. Therefore, it would not be appropriate to replace the current amendments with a rule specifically targeted at the two-tier limited partnership structure.

For the amendments to be effective they need to be broad enough to ensure that they cannot be easily circumvented to break association between closely connected entities. A highly targeted amendment would not achieve this objective because it could be circumvented. For example, a rule that only enabled association in scenarios involving a two-tier limited partnership structure may be able to be circumvented by interposing an additional limited partnership or company in the chain.

Consequences of the rule and treating a limited partnership as a company

Two companies are associated under section YB 2 of the ITA if a group of persons exists whose total voting interests (or market value interests, if a market value circumstance exists for one of the companies) in each company are 50% or more. A limited partner and limited partnership are associated under section YB 12(2) of the ITA if the limited partner has a 25% partnership share in the limited partnership.

Officials acknowledge that, given the different association tests applying to companies and limited partnerships, the amendments would result in some limited partners and limited partnerships no longer being associated and some limited partnerships that are currently not associated becoming associated. Officials consider that this is appropriate and consistent with the idea that association between a company and limited partnership (or between two limited partnerships) should be tested in a similar way to association between companies.

Further, the approach of treating a limited partnership as a company for the purpose of testing association is not novel. Under the current law, limited partnerships are treated as companies for the purposes of the Goods and Services Tax Act 1985 (GST Act) (see the definition of company in section 2(1) of that Act). Therefore, the associated persons tests in section 2A of the GST Act will already be applied to a limited partnership as if it were a company (there is no separate association test in the GST Act for limited partnerships).[3] The company-based associated persons tests in the GST Act are the same as the tests in the ITA.

Limited partnerships are also currently treated as companies for the purpose of the tripartite test in section YB 14(4) of the ITA.

One of the submitters includes an example of when they consider the proposed amendments could result in changes in the association status of limited partnerships and their partners on an ongoing basis. The example involves a limited partnership that is initially associated with its 40% limited partner ceasing to be associated with that partner because the limited partnership acquires one share of immaterial value in a company. Based on the information included in the submission, this does not appear to be an accurate representation of the effect of proposed section YB 16B.

The limited partnership acquiring shares in a company would trigger proposed section YB 16B and result in the limited partnership being treated as a company for the purpose of applying the associated persons tests. However, assuming the limited partner was a person other than a company (for example, a natural person) then section YB 3 of the ITA would be the relevant test for determining association. The association threshold in section YB 3 is 25% (the same as the threshold in the limited partner and limited partnership test in section YB 12(2)). Therefore, the limited partner and limited partnership would be associated under section YB 3.

[3] There are several situations when it is necessary to determine whether parties are associated for the purpose of the GST Act. For example, to determine the amount of input tax deduction that can be claimed in relation to secondhand goods and in determining the value of a supply of goods and services.

Alternatively, if the limited partner was a company, then proposed section YB 16B would already have been triggered. The limited partnership acquiring a share in a company would not change the outcome.

Recommendation

That the submission be declined.

Issue: Consultation on change

Submission

(KPMG)

The submitter is concerned that the change is more than a minor remedial amendment and should be properly consulted on.

Comment

As detailed in the response to the previous submission, the proposed amendments address a gap in the law that would allow closely connected entities to circumvent the associated persons rules. The reason the amendments were not consulted on more broadly is because they relate to an integrity issue that was not widely known and that could have been exploited if it had been publicised through consultation. This is consistent with the approach commonly taken when integrity issues are identified.

Recommendation

That the submission be declined.

Issue: Further guidance on "partnership share"

Submission

(PwC)

When a limited partnership is treated as a company under the proposed amendments, this can require determining association by reference to the "voting interest" or "market value interest" held in a limited partnership. For these purposes "voting interest" and "market value interest" include the "partnership share" a person has in a right, obligation, or other property, status, or thing of the limited partnership.

The submitter considers "partnership share" will be a difficult concept to apply when there are differing rights in a limited partnership. For example, when a partner has preferential rights to an income distribution, but no voting rights, which "partnership share" should be used? How does it work if the "partnership share" changes over time (for example, due to differing income rights in a particular year)? There is a need for further refinement of the rules or further guidance to be provided by Inland Revenue in its final report on this legislation.

Comment

The amendments use the concept of a "partnership share" because it is a feature of the existing limited partnership association test in section YB 12(2) of the Income Tax Act 2007. This "partnership share" concept has been a feature of section YB 12(2) since it was inserted in 2010. The "partnership share" concept is intended to be used for the purpose of the amendments in a similar way to how it is currently used in section YB 12(2).

For the purposes of the amendments, when a limited partner has differing rights in a limited partnership, officials consider the largest right (in percentage terms) should be treated as the partnership share. Therefore, in the first example raised by the submitter the right to the income distribution would be the relevant partnership share.

The associated persons tests are applied on a point in time basis (that is, to determine whether parties are associated at the point in time a particular transaction occurs). Therefore, the partnership share that will be relevant is the partnership share held at the date association is being tested.

Officials will include guidance on the use of the "partnership share" concept for the purpose of the amendments in the *Tax Information Bulletin*.

Recommendation

That the submission be noted.

Issue: Technical drafting matters

Submission

(*Corporate Taxpayers Group*, *PwC*)

a. The proposed amendments to the definition of "voting interest" in clause 105(35) of the Bill should specifically reference that it applies for the purpose of section YB 2 of the Income Tax Act 2007 (ITA), as has been done in the equivalent changes to the definition of "market value interest". (*PwC*)

b. On one reading, proposed new section YB 16B of the ITA could apply to any limited partnership that has a company as its general partner, on the basis the general partner (having unlimited liability) has a "share" in the "obligations" of the limited partnership. (*Corporate Taxpayers Group*)

Comment

a. Adding a reference to the sections the amendments to the "voting interest" definition are intended to apply for would improve clarity. Officials, therefore, recommend that the amendments to the voting interest definition are revised to this effect.

Point of difference

The changes would not exactly mirror the equivalent amendments to the "market value interest" definition. This is because, the amendments to the voting interest definition could apply in a broader range of situations when proposed section YB 16B is triggered than the amendments to the market value interest definition.

b. Proposed section YB 16B was not intended to apply to general partners in a limited partnership. Officials recommend that the drafting of proposed section YB 16B is revised to make this clearer.

Recommendation

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

b. That the submission be accepted.

Issue: Interaction between tripartite test and aggregation rules

Submission

(New Zealand Law Society)

Under the current law, the aggregation rules result in a company (Company A) and a limited partnership (Limited Partnership B) being associated under section YB 3 of the Income Tax Act 2007 (ITA) if a person (Person X) holds a 25% interest in both entities. The submitter considers this is overreach, noting that Company A and Limited Partnership B are not associated under the tripartite test in section YB 14(1) of the ITA (by virtue of section YB 14(4)). The submitter considers this is the correct policy outcome.

To address this, the submitter recommends the company aggregation rules (sections YB 2(4), (5) and YB 3(3), (4)) are amended to exclude the limited partner and limited partnerships association test in section YB 12(2) of the ITA and the limited partnership aggregation rules (section YB 12(3), (4)) are amended to exclude the company-based associated persons tests (sections YB 2 and YB 3).

Comment

The changes recommended by the submitter would switch off the company-based aggregation rules in all situations when a person is associated with another person under the limited partnership association test in section YB 12(2). It would also switch off the limited partnership aggregation rules in all situations when a person is associated with another person under the company-based association tests.

Officials note that the matter raised in the submission is separate to the amendments in the Bill and additional work would be required to understand the implications of the suggested solution. Further consideration of this matter would require prioritising and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Add comprehension aids to associated persons rules

Submission

(EY)

Given the complexity of the associated persons rules, comprehension aids such as diagrams and examples should be introduced into the rules to improve comprehension and assist taxpayers with navigating the provisions.

Comment

Officials note there is an existing Inland Revenue guide (which is periodically updated) to help taxpayers navigate the associated persons rules – IR620: *A guide to associated persons definitions for income tax purposes*. This guide includes diagrams and examples illustrating how the associated persons tests apply.

Adding comprehension aids to the current legislation would require a significant amount of legislative drafting work and, therefore, would require prioritising and resourcing as part of the Government's tax and social policy work programme. Officials consider this would be a low priority given that Inland Revenue already produces guidance (including examples) in other formats.

Recommendation

That the submission be declined.

CLARIFYING APPLICATION OF LIMITED PARTNERSHIP AND LOOK-THROUGH COMPANY AGGREGATION RULES

Clauses 105(26), (38), and (41), 109(1), (3), (7), and (8), and 110(1), (2), (3), and (7)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, EY, New Zealand Law Society)

The submitters support the proposal.

Recommendation

That the submissions be noted.

Issue: Retrospective application date

Submission

(Chartered Accountants Australia and New Zealand)

The submitter noted that they do not support a retrospective application date unless it corrects an anomaly.

Comment

The proposed amendments are retrospective to the dates the limited partnership and look-through company aggregation rules took effect from, but with savings provisions for persons who took a tax position inconsistent with the amendments before the date of introduction of this Bill. This approach to retrospectivity is common for amendments to tax legislation.

Officials consider the proposed application dates are appropriate because the amendments would clarify a legislative ambiguity and ensure the law reflects the outcome that was always intended.

The retrospective application dates would prevent taxpayers from amending tax positions taken in past returns to take advantage of the uncertainty under the current law. However, the savings provisions would ensure that people who have taken a tax position relying on the current law would not be affected by the amendments.

Recommendation

That the submission be declined.

Issue: Consultation on change

Submission

(KPMG)

The submitter is concerned that the change is more than a minor remedial amendment and should be properly consulted on.

Comment

The proposed amendments would clarify that the limited partnership aggregation rules enable association between a person that is associated with a limited partner but is not a limited partner themselves. Similar clarifying amendments are proposed in relation to the look-through company aggregation rules and persons associated with owners of look-through interests.

Arguably, the current law already gives effect to this outcome: see draft interpretation statement PUB00367*: Income tax – Partnerships (including limited partnerships) – general guidance* at paragraph 176. To put the matter beyond doubt, the amendments would simply resolve potential uncertainty that may arise because of how the provisions are currently drafted.

Further, the proposed amendments are consistent with how the company-based aggregation rules apply. They are also consistent with an intended effect of the limited partnership aggregation rules discussed in the 2009 special report *New definitions of "associated persons",* published when the associated persons definitions were reformed (the report does not comment on the look-through company test because this was not enacted until 2011). The special report describes the partnership aggregation test as similar to the company and person other than a company aggregation test in section YB 3 of the Income Tax Act 2007 (see page 24), and an example on page 12 for the company and person other than a company aggregation test illustrates the effect.

Therefore, officials consider the amendments would be of a minor remedial nature.

Recommendation

That the submission be declined.

Land rules remedials

BRIGHT-LINE START DATE WHEN LAND PARTITIONED OR SUBDIVIDED

Clause 16

Issue: Support for proposal

Submission

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

Submitters support the proposal to ensure that the bright-line start date for co-owners after a partition/subdivision is completed is the start date for the co-owners when they originally acquired the undivided land.

Recommendation

That the submission be noted.

Issue: Terms not previously used

Submission

(New Zealand Law Society)

Proposed section CW 3C(9) of the Income Tax Act 2007 introduces the terms of "transferee" and "transferor" without them having been used previously in the section. The submitter recommends consistency in terms used.

Comment

The drafting has been amended in response to the submission Issue: Apportionment and no longer uses the terms "transferee" or "transferor".

Recommendation

That the submission be noted.

Issue: Apportionment

Submission

(New Zealand Law Society)

Section CW 3C(9) of the Income Tax Act 2007 (ITA) is not limited to apply only to the extent that the co-owner's proportional interest in the property does not change (or is within the 5% tolerance allowed in section CW 3C). Section CW 3C(9) should incorporate the formula in section CB 15E(2) of the ITA.

Comment

Officials agree with the submitter that an apportionment rule should apply. This means that when a person acquires more land on a subdivision or partition between co-owners such that the acquisition exceeds the 5% safe harbour in section CW 3C, that "new bit" of land is treated as being acquired on the date it is acquired, rather than the date the undivided land was acquired. The portion of land that represents what the person had originally is treated as being acquired on the date the person acquired the undivided land. For example, if A and B buy land 50:50, subdivide and build a house each, and A now owns what would be the equivalent of 60% of the undivided land, 5/6th of A's title would be treated as being acquired on the date the undivided land was acquired, and the remaining 1/6th (which relates to the "10%" acquisition), on the date A became entitled to it.

Recommendation

That the submission be accepted.

Issue: Bright-line start date on partition

Submission

(New Zealand Law Society)

A co-owner's bright-line start date for their entire subdivided title (that is, both the interest in the land they held from the outset, and the interest they acquired from their co-owners when the subdivision was completed), should be the date they acquired their first interest in the undivided land, rather than the date the transferor first acquired an interest in the undivided land.

Comment

Officials agree with the submitter. The current drafting works when co-owners acquire land together. However, the transferee taking on the transferor's bright-line start date for the undivided land is less appropriate if one person (person A) acquired the land and then subsequently another person (person B) bought in as co-owner (say, 50:50 for this example) and the land was subsequently partitioned. Under the current drafting of this clause, person A's start date for 50% of the land they get on the partition would be their start date for the undivided land, but for the other 50% their start date would be person B's start date for the undivided land.

Recommendation

That the submission be accepted.

SALE OF SUBDIVIDED LAND ACQUIRED FROM CO-OWNER

Clause 6

Issue: Support for proposal

Submission

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

Submitters support the proposed amendments to section CB 15E of the Income Tax Act 2007 that:

- extend the scope of the section to a person developing land in their personal name, and
- ensure the person has an appropriate amount of net income under the formula.

Recommendation

That the submission be noted.

Issue: Extend scope of section CB 15E

Submission

(New Zealand Law Society)

Section CB 15E of the Income Tax Act 2007 (ITA) should be extended to also apply to income arising, as a result of the partitioning arrangement, under sections CB 6, CB 9, CB 11, CB 12 and CB 14 of the ITA. The application of some of these provisions would be addressed if the legislation is amended to clarify that the co-owners are treated, for the purpose of the land provisions, as acquiring their entire interest in the subdivided parcel that is allocated to them under the partitioning arrangement on the date they acquired their interest in the unsubdivided land.

Comment

Officials have recommended amending section CW 3C of the ITA in line with the submitter's suggestion so that co-owners are treated, for the purpose of the land provisions and sections CB 12 to CB 14, as acquiring the land they receive on the partition or subdivision on the date they acquired their interest in the undivided land. There is an exception to this when the person has increased their land ownership by more than 5%, in which case this "extra bit" of land is acquired at the point the person became entitled to it, rather than when the undivided land was acquired.

The person’s intent or other test (depending on the relevant land sale rule) is tested at the point of acquisition. This means that part of the land could be taxed on a subsequent sale. For example, consider when two co-owners acquire land 50:50 with the intent of building a house each to live in, and person A ends up acquiring an extra 10% of the land at the point of the subdivision, and person A’s intent at that point is to dispose of the land. When the land is disposed of, proceeds that relate to that 10% (which would be 1/6th of A’s individual title) would be taxable under section CB 6. This is an appropriate outcome and is consistent with the policy intent behind section CB 15E.

The intent of section CB 15E is to exempt from tax the subsequent sale of land when the land was partitioned or subdivided between co-owners and the taxing event arises because of the subdivision itself (ie, because there are legally disposals and acquisitions of land between the co-owners, even if economically there is no change in their land interest). The tax outcomes when there is a subdivision between co-owners should be the same as if a sole owner of land subdivided the land and received all the newly created lots.

The application of many of the land sale rules turns on when the land was acquired so officials consider that with the recommended amendment, there is no need to refer to the individual sections, and the reference to section CB 10(2) can also be deleted from section CB 15E. It is proposed that section CB 15E now only refer to income arising under section CB 15(1).

Point of difference

Officials do not consider that there should be an amendment to prevent section CB 11 applying on the disposal of land acquired from a co-owner on subdivision, if the criteria of that provision are met. Section CB 11 applies to a disposal of land within 10 years of the completion of improvements to the land, if at the time the improvements were begun either the person or an associate carried on a business of erecting buildings. Neither the time for testing whether the person or an associate is in the business of erecting buildings nor the time from which the 10-year period runs are impacted by the subdivision of the land. As such, the subdivision does not create inappropriate tax outcomes for the eventual disposal of land a co-owner acquires on the subdivision. This is best illustrated by comparing how section CB 11 applies when there is no co-owner or subdivision, compared with when there is a co-owner and a subdivision:

Example 1: Why exemption from section CB 11 unnecessary

Section CB 11 – no co-owner or subdivision

A buys land, but is not associated with a builder at that time.

Seven years later, A is associated with a builder and starts building on the land.

If A sells within 10 years of when the improvements began, the sale is taxed (assuming no exclusion applies).

Section CB 11 – co-owner and subdivision

A buys land, but is not associated with a builder at that time.

Seven years later, A is associated with a builder (Build Co), which has bought a 90% share in the land. Build Co starts building on the land.

When the building is finished, the land is subdivided with Build Co taking lots equal to a 90% share and A taking a lot equal to a 10% share.

If A sells their lot within 10 years of when the improvements began, the sale is taxed (assuming no exclusion applies).

As Example 1 shows, the subdivision changes nothing. If A sells their land within 10 years of commencement of improvements, the sale is taxed because A was associated with a builder at the time the improvements were commenced. It is irrelevant whether A was associated with a builder when the land was originally acquired. It is also irrelevant to the eventual sale by A of their lot that on the subdivision A acquired a 90% share in the lot A gets from Build Co, and disposed of 10% interest in the lots Build Co gets to Build Co (section CW 3C ensures those disposals are not taxed because there is no economic disposal).

Recommendation

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

ROLL-OVER RELIEF RULE

Issue: Remove requirement for land to be transferred within bright-line period

Submission

(New Zealand Law Society)

The requirement that land be "transferred within the bright-line period" to qualify for roll-over relief under sections FD 1 to FD 3 of the Income Tax Act 2007 (ITA) should be removed for the rollover relief rules to work for sales of land.

Comment

The rollover relief rules do not work properly when there is a sale of land, rather than just a transfer of land, as follows:

- Residential land must be "transferred within the bright-line period" for each of the provisions to apply.
- "Bright-line period" means the period beginning with the "bright-line start date" for the land and ending with the "bright-line end date" for the land.
- "Bright-line end date" is the earliest of a number of possible dates, including the date the person enters into an agreement for the disposal of the land.
- Land would be "transferred" on settlement so if the associated persons enter into a sale and purchase agreement earlier, the land would not be transferred "within" the bright-line period.

Example 2: Land not transferred within bright-line period

A acquires land on 1 April 2024. A enters into an agreement to sell the land to B (an associated person) on 1 September 2024. The sale to B settles and the land is transferred to B on 30 September 2024. The bright-line period is 1 April 2024 to 1 September 2024. The land is not transferred "within the bright-line period" so section FD 1 of the ITA does not apply to the transfer of the residential land.

Recommendation

That the submission be accepted.

Issue: Sale of land transferred before 1 July 2024

Submission

(Matter raised by officials)

A deeming rule is required to treat a "bright-line acquisition date" as a "bright-line start date" for the purposes of the rollover relief rules for the rules to work as intended for transfers before 1 July 2024.

Comment

Subpart FD of the Income Tax Act 2007 provides rollover relief from the bright-line test in certain circumstances. The subpart refers to the "bright-line start date", which can create an issue when the land was transferred from the transferor to the person prior to 1 July 2024. At that time there was no "bright-line start date", but rather a "bright-line acquisition date".

Section FD 1 provides roll-over relief from the bright-line test for transfers of land between associated persons. Section FD 1(3) provides that the transferee's bright-line start date for the land is the transferor's bright-line start date. The following example illustrates how the rules would not work as intended without a deeming rule.

Example 3: Roll-over relief and no deeming rule

Scenario:

- 1 Dec 2021: Jane's bright-line acquisition date
- 1 November 2023: land transferred from Jane to family trust
- 1 July 2025: land sold by trust.

The intent of the rules is that the trustee of the trust takes on Jane's bright-line acquisition date, which in this example is 1 December 2021, so the bright-line test would not apply because the land was sold more than two years after this date.

However, section FD 1 would not apply to give the trustee Jane's bright-line acquisition date. This is because section 77(2) of the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024, which introduced subpart FD, applies to a person's disposal of residential land if the bright-line end date for the land is on or after 1 July 2024. Jane (the transferor) doesn't have a "bright-line start date" because subpart FD doesn't apply to her since she disposed of the land before 1 July 2024. Therefore, section FD 1 doesn't give the trustee the benefit of the 1 December 2021 acquisition date, and the trustee instead has a bright-line start date of 1 November 2023 and so the bright-line test applies to the sale.

A deeming rule is required to treat a "bright-line acquisition date" as a "bright-line start date" for the purposes of a transfer from a transferor before 1 July 2014 in sections FD 1(3), FD 2(4), FD 3(4) and proposed new section CW 3C(9).

Recommendation

That the submission be accepted.

INHERITED LAND AND BRIGHT-LINE TEST

Clauses 5, 47, and 48

Issue: Support for proposal

Submission

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

Submitters support the changes to ensure that a disposal by an executor, administrator, or beneficiary of an estate to a third party is exempt from the bright-line test.

Recommendation

That the submission be noted.

Issue: Amendments better placed in subpart FC

Submission

(Chartered Accountants Australia and New Zealand)

The bright-line exclusion for disposals of land to a third party by an executor, administrator or beneficiary of an estate would be better placed in subpart FC of the Income Tax Act 2007 (ITA).

Comment

Subpart FC is intended to provide a value for property that is disposed of under the specific transactions listed in section FC 1(1) of the ITA. In contrast, the proposed amendment excludes (from the application of the bright-line test) transfers of land from an executor, administrator or beneficiary of an estate to a third party. This is not a type of transfer listed in section FC 1(1). Further, the proposed amendment does not provide a value for property. Therefore, officials do not consider that it would be appropriate to include the proposed amendment in subpart FC.

Recommendation

That the submission be declined.

Issue: Rollover provisions and application of section FC 9(4)

Submission

(New Zealand Law Society)

Section FD 1(1) of the Income Tax Act 2007 (ITA) states that the section applies for the purposes of sections CB 6A, CB 16A, and Part D of the ITA. However, section FD 1 also applies for the purposes of section FC 9(4). Section FD 1(1) should include a reference to section FC 9(4).

Comment

Section FD 1 applies for the purposes of sections CB 6A, CB 16A, and Part D of the ITA because it alters their application. In contrast, section FC 9(4) refers to persons described in section FD 1, but section FD 1 does not alter the application of section FC 9(4). Officials therefore do not consider that section FD 1 applies for the purposes of section FC 9(4).

Recommendation

That the submission be declined.

Issue: Unnecessary words

Submission

(New Zealand Law Society)

In the provisions for residential land transferred to an executor or administrator, the words "including any intervening transfer to an executor or administrator" in section FC 9(2) of the Income Tax Act 2007 should be deleted because they are unnecessary. Section FC 9(1) already states that the section applies when land is transferred on a person's death in the circumstances described in section FC 1(1)(a), which is the transfer of a person's estate to an executor or administrator on the death of a person.

Comment

Officials agree that the quoted words are unnecessary and should be deleted.

Recommendation

That the submission be accepted.

Issue: Phrasing of subparagraphs should be consistent

Submission

(Matter raised by officials)

Proposed new section CB 6A(5)(a)(i) of the Income Tax Act 2007 (ITA) uses the phrase "an executor or administrator who acquired the land in the circumstances described in section FC 1(1)(a)". Section CB 6A(5)(a)(ii) uses the phrase "a beneficiary described in section FC 1(1)(b)". Subparagraph (ii) should use similar phrasing to subparagraph (i) by referring to a beneficiary "who acquired the land in the circumstances" described in section FC 1(1)(b) of the ITA.

Recommendation

That the submission be accepted.

ROLLOVER RELIEF FOR THOSE IN CIVIL UNIONS AND DE FACTO RELATIONSHIPS

Clause 48(2) and (5)

Issue: Support for proposal

Submission

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

Submitters support the changes to ensure that rollover relief from the bright-line test applies to those in civil unions and de facto relationships, as well as those in marriages.

Recommendation

That the submission be noted.

DISPOSAL OF LAND TO THE CROWN – REPEAL OF INCOME SPREADING RULE

Clauses 36, 38, and 43

Issue: Support for proposal

Submission

(Corporate Taxpayers Group, Deloitte, EY)

Two submitters support all five of the land rule remedials, including the repeal of the income spreading rule for disposals of land to the Crown. (*Corporate Taxpayers Group, Deloitte*)

One submitter expressed support for repealing the income spreading rule, but only for non-compulsory disposals of land to the Crown. (*EY)*

Recommendation

That the submission be noted.

Issue: Protection for binding rulings

Submission

(KPMG, The Winton Group)

The submitters propose that section EI 8 of the Income Tax Act 2007 should include a savings provision for those with an active binding ruling to protect the application of the law.

Comment

Officials agree with the proposal.

Recommendation

That the submission be accepted.

Issue: Spreading provision should not be repealed

Submission

(Chartered Accountants Australia and New Zealand, KPMG, New Zealand Law Society, PwC)

The submitters do not support the proposal because they do not believe the justification for repealing the provision is sufficient.

The proposal to repeal the income spreading rule is not in the nature of a remedial change. (*New Zealand Law Society)*

The Government should consider a generic income spreading rule as part of the suite of emergency response provisions. (*Chartered Accountants Australia and New Zealand)*

Comment

Remedial amendments ensure legislation is regularly updated in response to changing technology, business practices, jurisprudence, or other factors, which includes removing out-of-date provisions. A version of section EI 8 of the Income Tax Act 2007 was introduced in the Land and Income Tax Act 1954. This is out-of-date with the broad-base, low-rate (BBLR) tax framework introduced in the mid-1980s.

Inland Revenue has recorded only one use of this provision in many years (taxpayers are required to apply to the Commissioner to use this provision). This indicates that repealing the provision is unlikely to have a significant impact on taxpayers.

Therefore, it is appropriate to treat the repeal of section EI 8 as a remedial amendment because it is out-of-date; in particular, it no longer aligns with BBLR principles and is rarely used.

In addition, the emergency response provisions in the Bill are intended to implement a more efficient process for providing relief for emergencies (through an Order in Council process rather than primary legislation). An income spreading provision (similar to section EI 8 but with wider application) has not been provided for previous emergencies and would be outside the scope of the emergency response reform. This issue is discussed more fully in Generic response measures to emergency events.

Officials do not consider there is sufficient reason to depart from standard income timing rules. Income is generally allocated to the income year in which it is derived.

Recommendation

That the submission be declined.

Issue: Provision should not be repealed for compulsory acquisitions of land

Submission

(Chartered Accountants Australia and New Zealand, EY, KPMG, New Zealand Law Society, PwC)

The submitters do not support the repeal of the income spreading rule for compulsory acquisitions of land by the Crown.

A compulsory acquisition prevents taxpayers from being able to choose when to dispose of land (and whether section CB 6A or sections CB 9 to CB 12 of the Income Tax Act 2007 applies). The submitters contend that the effect of section EI 8, whether intended or not, was to provide relief to those taxpayers.

The removal of the rule may create a perverse incentive for taxpayers to delay the completion of a compulsory acquisition process, particularly given the short time period in section CB 6A. (*EY*)

The repeal may have a negative effect on cashflow and/or restrict the person's ability to replace the land that was compulsorily acquired. (*Chartered Accountants Australia and New Zealand)*

Comment

Officials do not consider that the compulsory acquisition of land should be relevant to its tax treatment. The fact that the sale is compulsory does not seem a sufficient reason to depart from the standard income timing rules (income is generally allocated to the income year in which it is derived).

Recommendation

That the submission be declined.

MISCELLANEOUS LAND TRANSFER SUBMISSIONS

Issue: Cost base for land transfers subject to rollover relief

Submission

(KPMG)

The expansion of the rollover relief provisions has changed the approach to determining the recipient's cost base for land transfers subject to rollover relief. Under the previous narrow rollover relief rules, transfers were deemed to occur at the higher of the transferor's original cost or the actual consideration the recipient provided to the transferor. Under the new rules, that transfer will always be treated as occurring for the transferor's original cost.

The previous approach should be restored, so that transfers are deemed to occur at the higher of cost and actual consideration for the transfer.

Comment

Section FD 1(2) of the Income Tax Act 2007 (inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024), which treats the transferee as acquiring the land for the transferor's original cost, is intended to exclude a transfer subject to the rollover rules from the application of the bright-line test. This is consistent with the policy intent that the bright-line test is intended to tax speculative transactions and, when the rollover rule in section FD 1 applies, the transfer is unlikely to be speculative. The earlier rollover rules were intended to be significantly more limited, which is why they only provided rollover relief for the transferor if the transfer occurred for less than their original cost. Amending the rule as suggested by this submission would not be in accordance with the policy intent for this rollover rule and is likely to lead to unintended consequences.

Recommendation

That the submission be declined.

Issue: Allow more than one rollover relief transfer in two-year period

Submission

(KPMG)

Rollover relief can only apply to the transfer of a particular piece of residential land once in a two-year period, which departs from the rules prior to the recent changes to the bright-line test. This restriction prevents legitimate back-to-back transactions from accessing rollover relief and should be removed.

Comment

Section FD 1 of the Income Tax Act 2007 (inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024), allows for a wider range of situations in which rollover relief can be applied. This recognises that the bright-line test is intended to tax speculative transactions and not those between associated persons. Given the expanded rollover provisions, it was necessary to include rules to prevent the expanded rollover rules being used for avoidance purposes. The restriction allowing rollover relief to only be used once within a two-year period is one of those rules.

Given the bright-line test is only two years now, officials consider it reasonable that the concession provided by the rollover rules should be limited to only applying once in a two-year period. This rule is simple to apply, which is consistent with the general policy objective for the new two-year bright-line test.

Recommendation

That the submission be declined.

International tax remedials

THIN CAPITALISATION CHANGES RELATED TO NON-DEBT LIABILITIES

Clauses 49, 50, and 105(16)

Issue: Support for proposals

Submission

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

The submitters generally support the changes to:

- ensure entities that have a group debt percentage of zero because their non-debt liabilities are greater than their total assets are required to reduce their total interest deductions
- extend the exclusion from non-debt liabilities to certain interest-free loans from a settlor to a trust, and
- extend the exclusion from non-debt liabilities for some interest-free loans provided by, and redeemable shares held by, members of the same wholly-owned group of companies to also include non-corporate members (such as a settlor of a trust, trustee of a trust, or individual).

Recommendation

That the submission be noted.

Issue: Drafting with less complexity

Submission

(EY)

The Bill proposes amendments to the thin capitalisation rules to ensure that the way section FE 5 of the Income Tax Act 2007 (ITA) operates, relating specifically to the treatment of non-debt liabilities, is consistent with the policy intent. That is, the rules adequately deny interest deductions when the excess debt entity is heavily indebted or insolvent.

The proposed amendments would create additional complexity in what is an already long and complicated section. This will make it harder for taxpayers to understand what is required.

Instead of amending section FE 5, it would be simpler to amend section FE 6(1) of the ITA by adding the following words (in bold), which could achieve the same effect without the same degree of complexity:

"This section applies to an excess debt entity or a natural person if section FE 5 requires the entity or person to apportion their interest expenditure for an income year under this section, **or if the excess debt entity has a debt percentage equal to zero under section FE 12(3)**."

Comment

Officials agree that amending section FE 6(1) would be simpler and achieve the same effect as amending section FE 5.

Recommendation

That the submission be accepted.

Issue: Insolvent entity with non-debt liabilities exactly equal to their assets

Submission

(EY)

The proposed amendments to section FE 5 of the Income Tax Act 2007 do not address the case of an insolvent entity that has non-debt liabilities exactly equal to their assets. In such a case, it appears that an insolvent entity is not required to apportion their interest on debts, which is clearly not in accord with the policy intent. While such cases may be rare, a further change is needed to ensure the rule applies in these cases.

Comment

Officials agree that the proposed amendments to section FE 5 do not address the case of an insolvent entity that has non-debt liabilities equal to their assets and this scenario should be covered.

Recommendation

That the submission be accepted.

Issue: Incorrect application date

Submission

(EY)

The retrospective application of the proposed amendments to section FE 5(3)(a) and (b) of the Income Tax Act 2007 is set to apply from 1 July 2011, but the concept of "non-debt liabilities" for the purposes of the thin capitalisation rules did not exist until 2018. This appears to be an oversight that needs remediation.

Comment

Officials agree with the submission. The proposed amendments would now be covered in section FE 6(1) with a proposed application date of 1 July 2018.

Recommendation

That the submission be accepted.

Issue: Equity group should be broadened

Submission

(Deloitte)

The Bill proposes to extend the exclusion from non-debt liabilities for some interest-free loans provided by, and redeemable shares held by, a shareholder and members of the same wholly-owned group of companies as the shareholder, to also include non-corporate members (such as a settlor of a trust, trustee of a trust, or individual). To facilitate this, the Bill introduces the term "equity group" that includes non-corporate members.

The exclusion should be extended further so that it also includes one of the following:

- associated persons of a member of the equity group
- relatives (if "associated persons" is deemed too broad) of a member of the equity group, or
- spouses, civil union or de factor partners (if "relatives" is deemed too broad) of a member of the equity group.

This is consistent with the underlying policy objective of the extension, being to identify arrangements that in financial reporting terms constitute non-debt liabilities, but which are more akin to equity than debt. This is because associated persons/relatives/spouses or civil union or de facto partners are within the same community of interest as the shareholder.

Comment

The extension to non-corporate persons is primarily to cater for smaller private enterprise-type arrangements involving settlors/trusts/individuals.

Officials consider there is scope to extend the proposed amendments to cover relatives of non-corporate members of the equity group without undermining the integrity of the rule. This would essentially cover relatives within two degrees of relationship such as a spouse, child, sibling, or grandparent. It would mean that such relatives of a non-corporate member of the equity group could also provide interest free loans or hold redeemable shares that would be covered by the exclusion from non-debt liabilities.

There should be a similar change to the proposed amendment covering the scenario when a shareholder is a trustee of a trust. This would mean that the exclusion would also apply to interest-free loans provided by, or redeemable shares held by, relatives of a settlor.

Point of difference

Officials consider that extending the exclusion to associated persons of a member of the equity group would be broader than intended. The current rule applies to wholly-owned groups of companies, and the proposed amendments extend this to non-corporate persons within a tight circle of ownership/community of interests. However, the term "associated persons" is defined widely in subpart YB of the Income Tax Act 2007 and would make the equity group concept broader than intended.

Recommendation

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

Issue: Settlor should not need to have made 100% of settlements on trust

Submission

(Deloitte)

The proposed amendments require that for the loans provided by a settlor (or redeemable shares held by a settlor) to be aggregated with the trustee/shareholder, the settlor must have made 100% of the settlements on the trust.

This requirement is too stringent, and in practice may mean that scenarios that should fall within the exclusion do not. The concern is when, for example, there is a jointly settled trust by a married couple, but another party makes a relatively minor settlement on the trust for tax purposes. This would mean the 100% requirement for settlements on a trust is breached.

It is acknowledged that Inland Revenue may have concerns of unintentionally extending the exclusion if the threshold for settlements for this purpose is set too low. It is proposed that the threshold for settlements could be reduced to 90%.

Comment

Officials consider that the requirement for a settlor to make 100% of the settlements on a trust should be changed to instead require the settlor to make at least 90% of the settlements of a trust. This would provide some flexibility when nominal or accidental settlements are made on the trust (for example, by providing services at less than market value) outside of the settlor (and their relatives) without undermining the integrity of the rule.

Recommendation

That the submission be accepted.

Issue: Non-proportionate funding from non-corporates

Submission

(Deloitte)

The Bill as drafted would only apply to treat non-corporate members/equity group as the "shareholder" in circumstances when the amount of funds provided by each "shareholder" is in proportion with their voting interest.

The extension of the exclusion from non-debt liabilities should also apply to non-proportionate funding from non-corporate members/equity group when the shareholder and associates hold 10% or more of the voting interest in the relevant company in the New Zealand thin capitalisation group.

Non-proportionate funding can still be carved out of the definition of non-debt liabilities if it came from a direct shareholder who has a 10% or greater voting interest so the same principle should apply to that shareholder's equity group.

Comment

Officials agree with the submission that the exclusion from non-debt liabilities should apply to non-proportionate funding from non-corporate members/equity group when the shareholder and associates hold 10% or more of the voting interest in the relevant company in the New Zealand thin capitalisation group. This is consistent with the policy intent.

Recommendation

That the submission be accepted.

Issue: Equity group can provide funding to indirect subsidiary of New Zealand thin capitalisation group

Submission

(Deloitte)

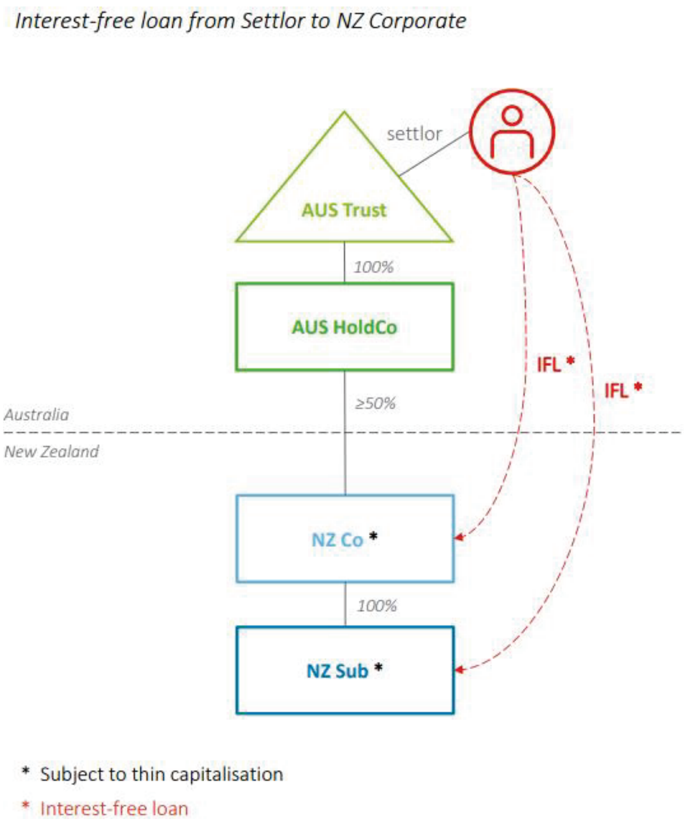
The proposed extension of the exclusion from non-debt liabilities should apply in the context of funding from the shareholder/equity group directly to an indirect subsidiary of the New Zealand thin capitalisation group (ie, the funding can be provided to a subsidiary within the New Zealand thin capitalisation group, and not the top company in that group).

This submission is best illustrated by way of example.

Consider Diagram 1 below, when Aus Hold Co holds more than 50% of the shares in NZ Co, which means NZ Co and NZ Sub are subject to the thin capitalisation rules. Aus Hold Co is in turn owned by Aus Trust, which is 100% settled by an Australian settlor who provides interest-free loans to NZ Co and NZ Sub.

Current legislation could be read as requiring the funding to be with the top company in a New Zealand thin capitalisation group (the interest-free loan (IFL) to NZ Co in Diagram 1 below). However, it is possible for the funding to be with another company in the New Zealand thin capitalisation group (the interest-free loan (IFL) to NZ Sub in Diagram 1 below) and this is economically the same. This is because the arrangement still involves an economically whole group (the equity group) lending on an interest-free basis to the New Zealand thin capitalisation group). The legislation should be amended to cover this scenario so that existing arrangements do not have to be restructured to fall within the extended exclusion as currently drafted.

Diagram 1: Interest-free loan from settlor to New Zealand corporate



Comment

Officials consider that both the interest-free loans (IFL) in the diagram above should be excluded from non-debt liabilities from a policy perspective.

While the taxpayer could restructure the funding arrangements to ensure they fell within the exclusion for non-debt liabilities (for example, there could be an interest-free loan between the Settlor and NZ Co, with NZ Co then lending the funds to NZ Sub), it is reasonable for the interest-free loan between Settlor and NZ Sub to instead be excluded from non-debt liabilities.

Recommendation

That the submission be accepted.

Issue: Retrospective application date for extending exclusion from non-debt liabilities

Submission

(Deloitte)

The proposed amendments extending the exclusion for non-debt liabilities to settlor–trust scenarios and non-corporate persons are stated to apply for the 2025–26 and later income years. The proposed amendments should instead have a retrospective application date to 1 July 2018. This is the date the non-debt liabilities concept was brought into the thin capitalisation rules and the proposed amendments are consistent with the original policy intent.

Comment

Officials consider that it is clear interest-free loans and redeemable shares in settlor–trust scenarios were not covered when non-debt liabilities became part of the thin capitalisation rules from 1 July 2018.[4]

Further, while the rules were extended to cover interest-free loans and redeemable shares for companies within the same wholly-owned group in 2020 and this was backdated to 1 July 2018, the proposed amendments to the rules to cover non-corporate persons are broader and were not contemplated when the rules were introduced.

Officials consider it is appropriate that these changes should be applied prospectively from the 2025–26 and later income years.

Recommendation

That the submission be declined.

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[4] Refer Inland Revenue, special report "*Base erosion and profit shifting – interest limitation rules*", at page 36.

FIF COST METHOD ELIGIBILITY

Clause 39

Issue: Support for proposal

Submission

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

Submitters support the proposed amendments to clarify that the eligibility to use the cost method to calculate foreign investment fund income depends on whether a market value for the investment is readily available, not the valuation skills and experience of the investor.

One submitter explicitly supports the retrospective application from income years beginning on or after 1 July 2011. (*Corporate Taxpayers Group*)

Recommendation

That the submission be noted.

Issue: Effective date

Submission

(KPMG)

The current wording of the legislation could be read as supporting the "alternative", more subjective, approach when a person's skills and experience may be relevant in determining eligibility to use the cost method. It is not difficult to envisage that some taxpayers (and/or tax advisors) may have applied the more subjective approach in practice.

Accordingly, there should be grandparenting of historical tax positions taken by taxpayers based on the alternative view. While in practice Inland Revenue may choose not to seek out and reassess these, clarifying the legislative wording would be desirable.

Comment

According to the alternative interpretation, the cost method cannot be used by investors possessing the skills, experience, and information needed to personally apply a commercially acceptable valuation method to determine the market value. The proposed change effectively removes this potential restriction for such investors.

A taxpayer who has the means to personally determine the market value and has taken the alternative interpretation would have used another allowable method to calculate the FIF income. Therefore, the proposed amendment would not require these taxpayers to be reassessed and change the calculation method.

Recommendation

That the submission be declined.

Issue: Broader review of FIF rules

Submission

(PwC)

In many scenarios, the cost method as currently drafted under section EX 56 of the Income Tax Act 2007 is difficult for taxpayers to apply and unworkable.

This is particularly relevant for:

- New Zealand citizens who have spent time abroad and return to New Zealand owning shares in a privately held company they may have co-founded but no longer control
- foreign migrants who move to New Zealand owning minority shareholdings in privately held companies, and
- New Zealand tax residents who hold minority interests in multi-generational private family businesses with no control, liquidity or ability to exit.

In the above situations, the "opening value" for the cost method formula cannot be easily derived and/or the foreign investment fund (FIF) income calculated under the cost method is completely disproportionate to the taxpayer's economic return. In many cases, this is affecting New Zealand's attractiveness as a destination for talent and investment.

Therefore, a broader review of the FIF rules, including the cost method, should be undertaken.

Comment

A broader review of the FIF rules is outside the scope of the proposed changes in the Bill. However, reviewing these aspects of the FIF rules are part of the Government's tax and social policy work programme. A consultation paper was issued on 6 December 2024 on potential changes to the FIF rules, which could address the issues raised by the submitter, depending on its final design.[5]

Recommendation

That the submission be noted.

[5] Consultation opens on FIF rules.

Issue: Meaning of “readily available”

Submission

(PwC)

Although the proposed amendment is consistent with the policy intention, it raises interpretative issues around what “readily available” means in practice.

Comment

Inland Revenue intends to confirm the interpretation of “readily available” through an interpretation statement. It has published an exposure draft for comment with the intention of releasing the final version after the Bill is enacted. [6]

The exposure draft notes that the phrase "readily available” is not defined for the purposes of the Income Tax At 2007 and has its ordinary meaning in context. “Readily” means without delay, without difficulty or as may easily happen.[7] “Available” means able to be used or obtained.[8] Accordingly, market value of an attributing interest is “readily available” when it can be easily obtained, ie, without delay or difficulty.

The phrase “readily available” was also used in *A special report by the Policy Advice Division of Inland Revenue* that accompanies the introduction of the cost method, which was released on 23 February 2007.[9] In the report, an example of an investment with no readily available market value is an investment in a company that is not listed.

Recommendation

That the submission be noted.

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[6] PUB00458: Income tax – Using the cost method to determine foreign investment fund (FIF) income (external consultation).

[7] Shorter Oxford English Dictionary (6th ed, Oxford University Press, 2007).

[8] Shorter Oxford English Dictionary (6th ed, Oxford University Press, 2007).

[9] Special Report – New Tax Rules for Offshore Portfolio Investment in Shares.

FOREIGN TAX CREDIT RULES AND TRUST RULES

Clause 89

Issue: Support for proposal

Submission

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

The proposed amendment is intended to fix an unintended interaction between the trust rules and the foreign tax credit (FTC) rules that can give taxpayers a larger FTC than they should get. The amendment would require a trust beneficiary to take into account any deductions that relate to the relevant foreign-sourced income when calculating their foreign tax credit entitlement. This supports the integrity of the tax system. (*Corporate Taxpayers Group*)

Recommendation

That the submission be noted.

Issue: Practical implications

Submission

(Chartered Accountants Australia and New Zealand)

The practical implications of the proposed amendment should be given more consideration.

Comment

The main practical implication of this amendment is that the beneficiary receiving the distribution of foreign-sourced income from the trust would need to ascertain the amount of the deductions relating to that foreign-sourced income to correctly calculate their foreign tax credit (FTC) entitlement. This can be managed in one of two ways. Either:

- the trustee can inform the beneficiary of the amount of the deductions relating to the distributed foreign-sourced income, or
- the trustee can calculate the beneficiary's foreign tax credit entitlement for them.

Recommendation

That the submission be noted.

FAILURE TO WITHHOLD NRWT AMOUNT

Clause 100

Issue: Support for proposal

Submission

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

Submitters support the proposed amendments to clarify the available options for rectifying cases when a person is required to withhold non-resident withholding tax for a payment of passive income but fails to do so.

Recommendation

That the submission be noted.

Issue: Explicit provision on liability of recipient

Submission

(Corporate Taxpayers Group, Deloitte)

The amended legislation should be more explicit that an amount that should have been withheld on a payment of non-resident withholding income is ultimately the liability of the recipient of the payment, and that the Commissioner of Inland Revenue can expressly require the recipient to pay the amount (acknowledging that the Commissioner can ultimately seek the amount from either the payer or the recipient). While the signpost to section 165 of the Tax Administration Act 1994 is helpful, there is no explicit statement that the liability for the non-resident withholding tax (NRWT) is with the recipient (rather than the payer), as previously existed under section NG 12 of the Income Tax Act 2004.

The recipient has the money, not the payer, so it would make more sense to seek payment of the NRWT from the recipient to remove a step in the process. If the payment is sought from the payer, the payer would then subsequently have to seek payment from the recipient, adding in an extra administrative step and introducing unnecessary compliance costs. This would be consistent with the outcome in section NG 12 of the Income Tax Act 2004, which explicitly imposed a liability on the recipient of the non-resident withholding income payment.

Comment

The legislation is sufficiently clear that the recipient is liable to satisfy the payment of non-resident withholding income that is not withheld by the payer. Section RF 6(1) of the Income

Tax Act 2007 (ITA) deems the recipient of non-resident withholding income as a filing taxpayer. In turn, subpart BC of the ITA refers to the income tax liability of a filing taxpayer. Subpart BB of the ITA then confirms that a person is obligated to satisfy the income tax liability, which is payable to the Crown. Furthermore, section RF 6(4) already confirms that the Commissioner can require, not only the payer, but also the recipient, to satisfy the NRWT liability.

The approach that the Commissioner only seek recourse for the NRWT liability from the recipient is not preferred because it would undermine the objective of having a withholding tax. This is particularly the case given the recipients will be outside New Zealand.

Recommendation

That the submission be declined.

INTERACTION BETWEEN TRANSFER PRICING RULE AND DEEMED DIVIDEND RULE

Clauses 55, 56, and 57

Issue: Support for proposal

Submission

(Bell Gully, Chartered Accountants Australia and New Zealand)

One submitter supports the proposal to clarify that the transfer pricing and dividend rules apply concurrently, regardless of whether the other party applies for a matching transfer pricing treatment under section GC 11 of the Income Tax Act 2007 (ITA). (*Bell Gully*)

Another submitter supports the proposed amendment to align the four-year time bar that currently applies to other related adjustments with the seven-year time bar that applies to the adjustments under sections GC 6 to GC 19 of the ITA, so that these adjustments are subject to the same seven-year time bar. (*Chartered Accountants Australia and New Zealand*)

Recommendation

That the submission be noted.

Issue: Effective date

Submission

(Corporate Taxpayers Group, Deloitte, EY, Mayne Wetherell)

The proposed amendment to clarify that the transfer pricing and dividend rules apply concurrently, regardless of the matching treatment application, should not apply retrospectively or should at least protect positions taken under the current law. Given that this issue has been subject to several disputes in recent years, retrospective application would be inappropriate.

Comment

The changes were initially proposed to apply retrospectively because they were intended merely to clarify the provisions and confirm the policy intent. Furthermore, operationally, Inland Revenue has been interpreting and applying the rule in a way that is consistent with the proposed amendment.

However, officials acknowledge that retrospective application could be seen as unfair to taxpayers who interpreted the law in its current formulation differently to Inland Revenue. As such, officials will now recommend that the changes should apply prospectively from the day after the Act receives the Royal assent. This approach would allow the taxpayers to challenge the interpretation in court based on the existing formulation for positions taken prior to the effective date, should they choose to do so.

Recommendation

That the submission be accepted.

Issue: Application of dividend rules related to adjustment under RTP rules

Submission

(Deloitte)

The 2022 amendment to the deemed dividend rule in section CD 38(2)(b)(i) of the Income Tax Act 2007 acted to deem a dividend to arise when a deduction is denied under the restricted transfer pricing (RTP) rules. The section should be reverted to its pre-2022 state for the following reasons:

- Significant compliance costs and complexity have arisen from the deemed dividend rules being extended to apply between mismatches of an amount paid and the deductible amount allowed under the RTP rules.
- Dealing with non-deductible amounts determined under the RTP regime as deemed dividends is also inconsistent with the characterisation of the RTP rules as interest limitation rules.
- The treatment of non-deductible interest (where the denial is a result of the RTP regime) as a deemed dividend inherently creates a mismatch in treatment between the New Zealand payer of interest (now to be treated as a dividend) and the treatment by the non-resident associated party lender (still treated as interest as the amount is an arm's length or market value amount of interest).

In the absence of a more significant change to the application of the deemed dividend rules requested above, it would be desirable to have clarity around whether a taxpayer can self-assess their withholding obligations following an RTP adjustment. This is a less desirable amendment because it still imposes significant compliance costs.

Comment

The RTP rules limit a taxpayer's deductions by disregarding certain uncommercial features of the tested transaction for transfer pricing purposes and by deeming a realistic level of parental support. It may not always be practically possible to isolate the quantum of the RTP component of a transfer pricing adjustment from other features which lead to that adjustment.

Even if segregation is possible, taxpayers would effectively have to undertake two exercises to remove the impact of the RTP rules for the purposes of determining the dividend withholding consequences – one based on the original terms of the transaction as agreed by the parties and another one based on the adjusted terms and conditions under the RTP rules. Contrary to the submissions, having to undertake two separate exercises would increase the compliance cost for taxpayers.

If a New Zealand company is paying more than the amount determined by the RTP rules, the excess is a transfer of value by the company to its shareholder and must logically be a dividend. Indicating that the RTP rules do not need to be considered when New Zealand entities are entering into cross border financing transactions would also undermine the policy intent of the RTP rules. We also consider that our RTP rules should produce a similar tax result to the standard transfer pricing rules in most cases.

Officials have also confirmed with the submitter that the current legislation does not restrict taxpayers from self-assessing their withholding obligations following an RTP adjustment. This is also the approach that is applied by Inland Revenue operationally.

Recommendation

That the submission be declined.

Issue: Clarifying application of withholding tax rules

Submission

(Bell Gully)

There would be some benefit in clarifying the application of the withholding tax rules to a payment that is characterised by the parties as a payment of interest, but that is regarded as a dividend under subpart CD of the Income Tax Act 2007. This point is of particular significance when the rate of withholding applicable to payments of interest or dividends differ.

Comment

This has been addressed by Inland Revenue's Commissioner's Statement issued on 30 August 2024.[10] The Commissioner's Statement states that "where non-resident withholding tax (NRWT) has previously been withheld and paid on the basis that the excess amount had been treated as interest or a royalty, that interest NRWT or royalty NRWT could be refunded or potentially offset against the dividend NRWT obligation provided the applicable provisions in the Act are satisfied".

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[10] CD 24/02: Commissioner's Statement - Withholding obligations arising in relation to transfer pricing arrangements

Recommendation

That the submission be noted.

Issue: Time bar alignment

Submission

(Mayne Wetherell)

The proposed amendment to align the time bar that applies to other related adjustments so that these adjustments are subject to the same seven-year time bar as the adjustments made under sections GC 6 to GC 19 of the Income Tax Act 2007, should not proceed because it encourages delay and inefficiency.

If the amendment proceeds, it should be drafted in a way that reflects the rationale stated in the Bill commentary (allowing the extended time bar period for amendments to an assessment that “flow from”, that is, are “consequential on”, a transfer pricing adjustment, rather than the much broader and somewhat vague “related to” formulation).

Comment

When an adjustment is required under the transfer pricing rules in sections GC 6 to GC 14, or the interest limitation rules in sections GC 15 to GC 19, there are often other related adjustments required to reflect the adjusted income or expenditure, for example, the withholding requirements and tax loss carry forward or offset against other group members’ net income.

The proposed amendment only proposes to align the four-year time bar that currently applies to these related adjustments with the seven-year time bar that applies to the adjustments from which they flow under sections GC 6 to GC 19, so that these adjustments are subject to the same seven-year time bar.

Officials disagree that the proposed amendment to align the time bar would result in delay and inefficiency. On the contrary, the lack of alignment itself is problematic because it potentially results in different aspects of the same transaction being treated differently. For example, if a transfer pricing adjustment is made under sections GC 6 to GC 14 on the fifth year, a corresponding adjustment to the non-resident withholding tax amount cannot be made.

Officials also disagree that the proposed wording of section GC 13(7) would result in an overreach. The extent of the adjustments that can be made under section GC 13(7) is already appropriately limited to adjustments that are linked to the transfer pricing adjustment under section GC 13(6).

Recommendation

That the submission be declined.

Other remedials

R&D TAX INCENTIVE: GENERAL APPROVAL APPLICATION DUE DATE

Clause 134

Issue: Support for proposal

Submission

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

Submitters support the proposed amendment to address the high compliance and administrative burden caused by the proximity of the Research and Development Tax Incentive general approval application due date to the previous year's supplementary return due date.

Recommendation

That the submission be noted.

Issue: Submitting supplementary returns

Submission

(EY)

Allow businesses to file a supplementary return based on the general approval they submit to Inland Revenue before approval has been granted. Any changes could be made after the review of the general approval is complete. This would alleviate any filing pressure if the review of the general approval takes a longer timeframe.

Comment

General approval is intended to provide certainty to customers that their activities are eligible for the Research and Development Tax Incentive. Submitting a supplementary return based on an unapproved general approval would undermine this intent. Further, taxpayers could, if needed, prepare their supplementary return in advance and submit it once approval has been granted with any necessary changes.

Recommendation

That the submission be declined.

Issue: Due date extension for claimants with good filing history

Submission

(EY)

Allow businesses that have claimed the Research and Development Tax Incentive in previous years and satisfied all compliance obligations to seek an extension to the filing deadline.

Comment

This proposal would provide more flexibility. However, the potential for a large proportion of customers to be granted extensions would undermine the timeliness that having due dates provides.

Recommendation

That the submission be declined.

Issue: Commissioner discretion to extend due dates

Submission

(EY)

Allow the Commissioner of Inland Revenue the power to extend the Research and Development Tax Incentive (RDTI) due dates by determination. This could be used to provide additional filing time for due dates that correspond to an otherwise busy period for Inland Revenue or taxpayers.

Comment

The proposed amendment is limited to addressing the high compliance and administrative burden caused by the proximity of the RDTI general approval application due date to the previous year's supplementary return due date, and not workflow peaks caused by outside events during the year.

Having fixed due dates allows businesses and scheme administrators alike to plan around busy periods.

Recommendation

That the submission be declined.

Issue: Extend supplementary return due date

Submission

(EY)

The deadline for filing the Research and Development Tax Incentive (RDTI) supplementary return should also be extended to align with the proposed new general approval deadline. For example, the supplementary return deadline could be amended to fall on the later of the current deadline or the last day of the fourth month (or 90 days, or similar) after receiving the general approval from Inland Revenue.

Comment

The current supplementary return due date is tied to the income tax return due date. This ensures that the supplementary return is due after the expenditure, on which the RDTI is claimed, is known.

In contrast, the general approval functions as pre-approval because it is intended to provide certainty to customers that their activities are eligible for the RDTI. As such, approval is granted during the year for which the RDTI is being claimed.

The supplementary return is due 30 days after the income tax return is due. For taxpayers whose tax agent has an extension of time, this will be 31 March of the following year. Late balance dates fall between 1 April and 30 September, so this means there will be at least six months before the supplementary return is due. Officials consider this timeframe appropriate.

Recommendation

That the submission be declined.

Issue: Amending incorrect RDTI filings

Submission

(Corporate Taxpayers Group, Deloitte, EY)

Research and Development Tax Incentive (RDTI) filings should be able to be accepted after the relevant due date to allow for necessary and appropriate corrections, such as correcting minor administrative errors.

Comment

The RDTI was originally implemented with "hard" deadlines, meaning that there is generally no discretion to amend RDTI filings past the due date. This was intended to provide certainty for taxpayers and administering agencies and reflects a trade-off between certainty and flexibility.

It is important to strike the correct balance of this trade-off. However, the suggested changes are beyond the scope of the proposed amendment, which is limited to addressing the high compliance and administrative burden caused by the proximity of the RDTI general approval application due date to the previous year's supplementary return due date.

Recommendation

That the submission be declined.

Issue: Clarify application date

Submission

(EY)

Further clarification is needed to stipulate when the extended due date for Research and Development Tax Incentive filings will apply from in practice.

Comment

The proposed amendment would only function to apply to due dates falling after 1 April 2025, as opposed to (for example) income years after 1 April 2025. Officials will clarify the application of this amendment in the *Tax Information Bulletin* and communications to taxpayers about the change.

Recommendation

That the submission be declined.

R&D TAX INCENTIVE: ICAS AND SHAREHOLDER CONTINUITY BREACHES

Clause 92

Issue: Support for proposal

Submission

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

Submitters support the proposed amendment to prevent a double debit to imputation credit accounts for Research and Development Tax Incentive tax credits when there has been a breach of shareholder continuity, with retrospective application.

Recommendation

That the submission be noted.

PORTFOLIO INVESTMENT ENTITY ELIGIBILITY REQUIREMENTS

Clauses 70, 71, 72, 73, and 105(17)

Issue: Wider review

Submission

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

a. No changes should be made to the portfolio investment entity (PIE) rules without consideration of the overall PIE regime. (*Chartered Accountants Australia and New Zealand*)

b. Given that PIEs are long-term investment vehicles, through which many New Zealanders invest retirement savings, it is important that the rules remain certain and predictable and are based on stable and coherent tax policy principles. (*Corporate Taxpayers Group*)

c. The submitter does not have strong views on the proposals in the Bill. However, further reforms to the PIE regime should be approached with a degree of caution given it is closely linked to New Zealanders' long-term pension savings. The submitter encourages the Select Committee to ensure that the view being taken on the PIE regime design is fit for the future and not reverting to the past. (*EY*)

Comment

Officials have reviewed the original policy documents in relation to these rules and are confident that a more comprehensive review is unnecessary and that the proposed amendments do align with the original policy intention for PIEs. Officials consider, especially given the long-term nature of many PIE investments, that the eligibility criteria remain as consistent as possible over time and that the proposed amendments support that. We have commented on the specific proposals separately below. We agree that care should be taken in amending eligibility requirements given the long-term investment nature of many PIEs. We consider that these changes are in line with that including the history of amendments to sections HM 11 and HM 12 of the Income Tax Act 2007 to include or exclude various types of income as issues have come up.

Recommendation

a. That the submission be declined.

b. That the submission be noted

c. That the submission be noted.

Issue: Support for commentary on deposit taker changes

Submission

(Corporate Taxpayers Group)

The submitter is supportive of the wording in the Bill commentary that the deposit taker amendments are not intended to capture cash or term deposit portfolio investment entities (PIEs), or other bank and non-bank deposit taker sponsored PIEs.

Recommendation

That the submission be noted.

Issue: Deposit taker changes should not be made

Submission

(Chartered Accountants Australia and New Zealand)

The submitter agrees that a licenced deposit taker would not normally be a portfolio investment entity (PIE). However, a specific exclusion is unnecessary and any moves by an entity such as a bank to become a PIE could be addressed through the anti-avoidance rule if required.

Comment

Notwithstanding the policy intent that a licenced deposit taker should not be a PIE, a licenced deposit taker with an ownership structure that meets the PIE requirements can meet the rest of the current requirements when more than 90% of the investments are financial arrangements and 90% of income comes from those financial arrangements. For a business that meets the licenced deposit taker requirements this can be achieved without any particular structuring. Therefore, it is unlikely that any anti-avoidance rule could apply to a licenced deposit taker seeking to become a PIE. Furthermore, having a specific exclusion increases certainty of this outcome.

Recommendation

That the submission be declined.

Issue: Associate interest changes should not be made

Submission

(Chartered Accountants Australia and New Zealand)

The proposed rule is complex and cumbersome. If any arrangement is not within Parliament's contemplation it could be dealt with under the avoidance rules rather than creating a new rule that will be difficult to apply in practice.

Comment

Officials agree that this proposed rule is relatively complex. This complexity is a necessary part of ensuring that the proposed rule has a narrow application. By excluding common on-lending structures such as lending to a bank, a portfolio investment entity (PIE) or non-associated entities (and due to their widely held-nature few PIEs will be associated with any other entity), the rules are designed so that few PIEs would ever need to consider this proposed rule in detail. By including this proposed rule there would be greater certainty that the avoidance transactions that may otherwise be possible are not within Parliamentary intent.

Recommendation

That the submission be declined.

Issue: Approach for associated interest changes

Submission

(Corporate Taxpayers Group)

The submitter supports the inclusion of the examples in the Bill commentary of circumstances in which interest income derived by a portfolio investment entity (PIE) from an associated party would continue to be eligible income.

The submitter is supportive of the proposed transitional period to allow existing PIEs to continue to apply the current interpretation of the law. It also supports the comment in the Bill commentary that no existing PIEs will be removed from the regime as a result of outstanding borrowing under the proposed changes (during the transitional period).

Comment

Officials welcome the support of efforts to ensure that the majority of PIEs will not be affected by these proposals by including a transitional period, which ensures no PIEs would be removed from the regime before 1 April 2030. This should provide time for any PIEs that are inadvertently affected to restructure to ensure their continued eligibility.

Recommendation

That the submission be noted.

Issue: Associate interest carve-out for foreign PIE equivalents

Submission

(KPMG)

Section HM 12(1B)(b) of the Income Tax Act 2007 should be amended to carve out from the definition of "excluded interest", interest derived from a foreign PIE equivalent as well as a PIE or an entity that qualifies for PIE status (ie, a PIE equivalent).

Comment

The submitters suggestion is consistent with the consideration that officials undertook in developing the proposal in the Bill. We agree that on-lending to a foreign PIE equivalent should be treated the same as on-lending to a PIE and therefore this extension to the exclusions should be made.

Recommendation

That the submission be accepted.

Issue: Associate interest carve-out for indirect loans

Submission

(KPMG)

The proposed drafting of section HM 12(1B)(c) of the Income Tax Act 2007 should be amended to cover funds that were loaned directly or indirectly to the entity by a third party.

Comment

Officials agree that conceptually an equivalent indirect lending arrangement should be carved out of the excluded interest definition. However, there can be fact specific considerations in complex back-to-back lending arrangements. We recommend that a "directly or indirectly" approach is not added to this proposal; however, this could be considered for a later remedial.

Recommendation

That the submission be declined.

Issue: Active vs passive principle

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, PwC)

The submitter agrees, and has discussed with officials, that in describing a portfolio investment entity (PIE) as a "passive" business, it is the nature of the income of the PIE that is relevant rather than the activity of the PIE itself. The distinction is important. Many PIEs are active businesses. (*Chartered Accountants Australia and New Zealand*)

The submitter questions the Bill commentary's claim that the PIE regime's foundational principle was the distinction between active and passive income. (*Deloitte*)

Section HM 2 of the Income Tax Act 2007 (ITA) is a background/purpose provision only, and sections HM 11 and HM 12 of the ITA should operate as a code that prescribes all the investment and income types that are eligible for PIE status. If the Commissioner considers that certain kinds of investments give rise to "active" income and should not be eligible for PIE status, the submitter recommends that this be clarified in the legislation, such that the eligibility criteria for investment and income types is entirely contained within sections HM 11 and HM 12. (*PwC*)

Comment

Officials have had discussions with submitters throughout the development of the PIE proposals in the Bill. The view of some submitters that PIEs undertake "active" actions, such as choosing which shares to purchase or whether to buy or sell a financial arrangement, is a separate consideration to the view that officials have consistently held since developing the PIE rules in 2006. The PIE rules were developed to more closely align the tax treatment of managed funds with the passive investments that individuals could undertake in their own name. It is reasonable to assume that an individual could undertake share investment, including choosing whether to purchase individual shares, alongside their primary occupation much the same as a managed fund could do on their behalf. While an individual may also undertake a small business alongside their primary occupation this is not an equivalent activity to those provided by managed funds. Accordingly, officials have always viewed a difference between actively choosing which investments to make and actively running a business such as property development or operating a finance company.

The active/passive distinction has always been a guiding principle in determining eligible investments in section HM 11 and eligible income in section HM 12. A specific test based on whether assets or income are active or passive has never been a feature of the PIE rules and the proposed changes in the Bill do not change this, therefore it is not necessary to draw a clear line between different types of "active" activities. However, from time-to-time changes in interpretation or commercial activities may identify individual assets or activities when the policy intent and the interpretation do not align and, in those cases, it is necessary to consider whether a remedial amendment is necessary to maintain the intent and the integrity of the PIE rules.

Officials agree that it would be helpful to have a clear legislative boundary regarding "active" income for property development rather than relying on a purpose test. Prior to the introduction of the Bill, officials undertook targeted consultation on a legislative change to clarify that land development was not an eligible activity. Officials were not able to achieve a consensus with submitters and instead the exclusion of land development income from eligible PIE income will be publicly consulted through Inland Revenue's Tax Counsel Office. Following the conclusion of this process officials will consider whether further legislative change is necessary or desirable.

Recommendation

That the submission be noted.

Issue: Unintended consequences

Submission

(Corporate Taxpayers Group, Deloitte)

When unintended effects are identified they should be dealt with promptly by a remedial amendment.

Comment

Officials agree that any unintended changes to the portfolio investment entity (PIE) rules should be corrected as they are identified. Officials do not expect any such changes would arise from these proposals, which have very minor application and are consistent with the long-standing policy intent.

Recommendation

That the submission be noted.

Issue: Land tainting rules

Submission

(PwC)

It has already been accepted that from a policy perspective, the land tainting rules should not apply to a portfolio investment entity (PIE) or an entity that qualifies for PIE status (for example, because it is widely held). This should be extended to cover widely held overseas investment funds by including "foreign PIE equivalents".

Comment

Officials agree that the policy reasons for excluding a PIE from the land tainting rules should apply equally to a foreign PIE equivalent.

Recommendation

That the submission be accepted.

SHARE-LENDING ARRANGEMENTS

Clause 34

Issue: Support for proposal

Submission

(Corporate Taxpayers Group, Deloitte)

Submitters support the proposed amendment to address an issue that causes uneconomic distortions to share-lending arrangements.

Recommendation

That the submission be noted.

Issue: Optional deferral of income

Submission

(Corporate Taxpayers Group, Deloitte)

Allocating the income from the sale to the year the replacement shares are purchased should be optional to allow for greater commercial flexibility and provide sufficient lead time to make changes to processes and systems.

Comment

Given the current tax treatment can allocate income to the tax year in advance of the equivalent deduction, officials do not expect share users are currently share lending across balance dates. When they are, there would be no tax benefit in choosing to allocate income to the earlier year. However, if a share user finds it easier to do so, there is no reason why the tax legislation should prevent this.

Recommendation

That the submission be accepted.

Issue: Term of share-lending arrangements

Submission

(Corporate Taxpayers Group)

The permitted terms of share-lending arrangements should be extended from one year to three years.

Comment

The share-lending rules were intentionally applied to arrangements with less than a 12-month duration, which officials understand would cover most share-lending arrangements. The returning share transfer rules apply to arrangements of greater than 12 months. Extending this 12-month restriction would be a policy change that would require full consideration as part of a project on the tax and social policy work programme.

Recommendation

That the submission be declined.

DEBT FUNDING SPECIAL PURPOSE VEHICLE ELIGIBILITY

Clauses 74, 75, 76, 77, 78, 80, 81, and 105(25)

Issue: Support for proposal

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell, New Zealand Law Society)

Submitters support the proposed amendments to expand the eligibility of the debt funding special purpose vehicle securitisation regime in the Income Tax Act 2007.

Recommendation

That the submission be noted.

Issue: Scope of proposal

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

Submitters consider that the eligibility of the debt funding special purpose vehicle (DFSPV) regime should be further expanded to allow flow-through treatment when the securitisation entity:

- has received assets from a third party that is not a trust, or
- has “self-originated” assets.

This is subject to the assets being “on balance sheet” for the beneficiary/shareholder (or a member of the beneficiary/shareholder’s wholly-owned group).

Extending flow through treatment to assets transferred from a third party would avoid the need to undertake additional transactions to achieve the same outcome, which creates unnecessary complexity and cost for securitisation transactions.

Extending flow through treatment to self-originated assets would address the scenario when, for operational reasons, the DFSPV lends/provides credit directly to borrowers rather than having such arrangements originated in a group company. There is no sound reason why the flow through tax treatment should be limited to situations when assets have been transferred into a DFSPV by another entity.

Comment

Officials agree with submitters. Provided that a beneficiary or shareholder (or member of a wholly-owned group of companies that includes a beneficiary or shareholder) of the DFSPV holds the relevant assets on balance sheet, then the source of the assets is not important. The flow-through tax treatment of the regime is intended to reflect the economic reality of the securitisation vehicle structure, rather than introduce different rules for different sources of assets.

Recommendation

That the submissions be accepted.

Issue: Overreach of associated persons rules

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

The associated persons rules can result in overreach for securitisation arrangements.

Currently, there is a specific exclusion in the approved issuer levy (AIL) rules for association arising due to a person being the beneficiary of a security trust. However, the exclusion does not address all instances of overreach of the association rules (for example, association arising as a result of a person being a settlor of a security trust) and does not address all of the consequences of such overreach (for example, the application of the transfer pricing rules). The exclusion is therefore inadequate and requires remedial amendment.

A person should not be associated with a borrower simply because the person (or an associate of the person) is a beneficiary, settlor or person with a power of appointment or removal of a trustee of a security trust established in connection with the borrowing. This amendment should apply generally (for any borrower that is a trust) rather than merely for a borrower that is a securitisation trust.

Further, a person should not be associated with a securitisation trust simply because the person (or an associate of the person), as an ordinary incident of lending to the securitisation trust, is or becomes a settlor of the securitisation trust or has or acquires the power to appoint or remove the trustee of that securitisation trust.

Comment

Officials agree with submitters that association should not arise in these situations solely because of the establishment of a security trust or as a result of lending to a securitisation trust.

Recommendation

That the submissions be accepted.

Issue: Securitisation trust definition

Submission

(Australian Securitisation Forum, New Zealand Law Society)

The definition of "securitisation trust" in section YA 1 of the Income Tax Act 2007 (ITA) was enacted by the Taxation (Annual Rates for 2023−24, Multinational Tax, and Remedial Matters) Act 2024. The following amendments should be made to this definition:

a. Paragraph (e) of the definition should be amended to refer to a trustee rather than a trust. There is no statutory test for when a trust is tax resident. Rather, the relevant statutory test is to look to the tax residence of the trustee. (*Australian Securitisation Forum, New Zealand Law Society*)

b. The requirement that the trust has only one beneficiary that is a company should be removed. This requirement would exclude a securitisation trust that has or has had two beneficiaries (eg, a capital and an income beneficiary), or which has a beneficiary that is not a company (eg, a charitable trust). (*Australian Securitisation Forum*)

c. The requirement that the trust has a "lending person" as its beneficiary should be removed. This requirement would exclude a securitisation trust established by an originator group that does not undertake lending or leasing activities, for example, an originator group that securitises trade receivables or receivables that are characterised as service contracts rather than loans or leases for tax purposes. (*Australian Securitisation Forum*)

d. The alternative requirement that the trust adopts international financial reporting standards (IFRSs) should be removed. Some securitisation trusts do not prepare IFRS accounts. Including such a requirement would, therefore, result in unnecessary additional compliance costs as IFRS accounts would be prepared solely for tax purposes. IFRS accounts are a requirement under the debt funding special purpose vehicle regime, because in that case the tax treatment turns on the financial reporting treatment. The financial reporting methodology adopted is not relevant, however, for the purposes of the definition of "securitisation trust". (*Australian Securitisation Forum*)

e. The submitter understands that the requirements in (b) to (d) of the definition were included in the context of the corporate beneficiary rule in section HC 38 of the ITA. If officials consider that restrictions on the identity of the beneficiary are important for the purposes of section HC 38, at a minimum the deleted requirements should not apply for the purposes of the proposals in this submission. (*Australian Securitisation Forum*)

Comment

a. Officials agree with the submitters.

b. The intent of the corporate beneficiary rule is to prevent income being sheltered from the 39% trustee tax rate in a corporate beneficiary, it is not intended to impact the use of trusts in corporate structures. The securitisation trust definition was introduced to exclude such trusts from the corporate beneficiary rule. In this context, the requirement for a securitisation trust to have only one beneficiary that is a company is important because it ensures that another beneficiary of the trust cannot benefit from income that has been allocated to the corporate beneficiary but retained in the trust.

c. In the context of the corporate beneficiary rule in section HC 38, the requirement that a securitisation trust has a "lending person" ensures that the exclusion from the corporate beneficiary rule is sufficiently targeted. Due to the breadth of the other requirements in the securitisation trust definition, removing this requirement would significantly undermine the corporate beneficiary rule. A family trust that raises funds by borrowing money backed by its assets would not be subject to the rule.

d. The requirement for a securitisation trust to have its assets included in financial statements prepared using IFRSs is an alternative to the "lending person" requirement. This requirement is intended to target the exclusion for securitisation trusts to financial institutions (that are required to use IFRSs to prepare financial statements). This requirement, in conjunction with the alternative "lending person" requirement, ensures that family trusts are not unintentionally excluded from the corporate beneficiary rule.

e. As noted above, officials consider that paragraphs (b) to (d) of the securitisation trust definition are important for the purposes of the corporate beneficiary rule. Outside this context, we agree with the submitter that these requirements are not necessary for wider uses of the securitisation trust definition. We recommend that the definition is amended to limit the requirements in paragraphs (b) to (d) to the corporate beneficiary rule.

Recommendation

a. That the submission be accepted.

b. That the submission be declined.

c. That the submission be declined.

d. That the submission be declined.

e. That the submission be accepted.

RESTRICTIVE COVENANT PAYMENTS: SALE OF BUSINESS EXCLUSION

Clause 12

Issue: Support for proposal

Submission

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

Submitters support the proposed amendment to ensure that the sale of business exclusion for restrictive covenant payments applies when a person sells all their shares in a company carrying on a business, despite the other shareholders not selling their shares.

Recommendation

That the submission be noted.

Issue: Scope of proposal

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed amendment should be extended to a shareholder only selling part of their shares in a company. It is arbitrary to limit the exclusion to only shareholders that sell all their shares.

In both cases, the restrictive covenant is part of a larger capital receipt (the sale of shares) rather than existing to remunerate the shareholder. The consequence is that taxpayers will have to value restrictive covenants separately when the consideration of a restrictive covenant is incorporated in a single payment for goodwill, which is a compliance heavy activity.

Comment

The policy intent of section CE 9 of the Income Tax Act 2007 is to tax "restrictive covenant" payments made for the restriction on a person's ability to perform services. This ensures that restrictive covenant payments cannot be paid in substitution for taxable personal services income (including salary or wages).

Section CE 9 contains an exclusion for restrictive covenant payments made in connection with the sale of a business. This is because such payments are often received as part of a larger capital receipt and are less likely to be substituted for taxable income from services.

Currently the sale of business exclusion only applies if all the shares in the business are sold. The proposed amendment in the Bill expands this exclusion to also apply if a person sells all their shares in a company carrying on a business, despite the other shareholders not selling their shares.

If the exclusion was expanded further to treat restrictive covenant payments as non-taxable, if the person only sold some of their shares in the company, there is a risk that such a payment could be made in substitution for that person's taxable personal services income. Multiple non-taxable restrictive covenant payments could be made through partial sell-downs of a person's shares in a company.

Recommendation

That the submission be declined.

REVISED INTRODUCTORY WORDING FOR LIVESTOCK VALUATION

Clause 35

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the amendment to the introductory wording for livestock to clarify who is required to value their livestock annually.

Recommendation

That the submission be noted.

Issue: Need to clarify that bailors also included

Submission

(Chartered Accountants Australia and New Zealand)

The proposed amendment to clarify who is required to value their livestock annually should also clarify that the livestock valuation provisions also apply to bailors of livestock.

Comment

The Bill includes proposed changes to the introductory wording of subpart EC of the Income Tax Act 2007, which relates to livestock valuation.

The purpose of the proposed amendment is to clarify that the livestock valuation provisions apply to a person when they own or carry on a farming business, other than a livestock dealing business, and hold the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business.

A bailor is an owner of livestock who has allowed another person (the bailee) the use of the livestock for an agreed period under a bailment agreement. They need not be farming. Officials agree that the livestock valuation provisions have always been intended to also apply to bailors and the proposed amendment needs to be widened to ensure that outcome.

Recommendation

That the submission be accepted.

CHALLENGING CIVIL PENALTIES UNRELATED TO TAX

Clause 142

Issue: Support for proposal

Submission

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

The submitters support the proposal to make the process clearer for challenging civil penalties that are unrelated to tax.

Recommendation

That the submission be noted.

Issue: Separate provision should be drafted

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters suggest that instead of adding a new paragraph to section 138L(1) of the Tax Administration Act 1994 as the Bill proposes, a new provision should be drafted. This would avoid potential unintended consequences or confusion.

Comment

Officials agree with the submitter.

Point of difference

However, officials do not consider an entirely new section should be added. Instead, an additional subsection should be added to section 138L that sets out the process a person must follow when they want to commence challenge proceedings in relation to a civil penalty that is unrelated to an assessment of tax. This would make the process clearer, is consistent with the purpose of the original amendment, and reduces the risk of unintended consequences.

Recommendation

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

Issue: Reference to "the tax" in section 138L(1)(b)

Submission

(Corporate Taxpayers Group, Deloitte)

Section 138L(1)(b) of the Tax Administration Act 1994 sets out that the person initiating the challenge proceedings has "the same rights and obligations, in relation to proceedings concerning the penalty, as the person has in relation to proceedings concerning **the tax**".

The submitters consider "the tax" should be "tax", given the addition of proposed section 138L(1)(ab), which refers to civil penalties that are unrelated to tax.

Comment

Officials agree with the submitter in principle. If a person challenges a civil penalty that is unrelated to an assessment of tax, it does not make sense for the person to have the same rights and obligations in relation to the proceedings concerning the penalty as they have concerning "the tax", because there is no "tax" related to the penalty. However, officials note that no amendment to section 138L(1)(b) is required if the submission to draft a new provision is accepted (see Issue: Separate provision should be drafted) and officials recommend this submission be accepted subject to their comments.

Recommendation

That the submission be declined.

Issue: Discretionary civil penalties for late provision of information should be challengeable

Submission

(Matter raised by officials)

Section 138L(2)(a)(i) of the Tax Administration Act 1994 (TAA) currently prevents a person from challenging a civil penalty imposed for the late provision of information. This is consistent with the underlying principle that a penalty imposed under the TAA rather than assessed at the Commissioner's discretion, should generally not be subject to the challenge rules.

Officials recommend this be clarified to refer to a "late filing penalty" (such as those imposed for late income tax returns and GST returns). This would ensure that discretionary penalties assessed by the Commissioner that relate, at least in part, to the late provision of information, are subject to the challenge procedures set out in the TAA.

Recommendation

That the submission be accepted.

TAXATION TREATMENT OF VETERANS' AFFAIRS BACKDATED LUMP SUM PAYMENTS

Clauses 97, 105(31), and 113(1)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed amendment.

Recommendation

That the submission be noted.

Issue: Broaden amendment

Submission

(EY)

The proposed amendment to Veterans' Affairs backdated lump sum payments appears to be the latest in a series of similar amendments. A broader provision that applies across the different categories of government-paid compensation should be developed.

Comment

Officials consider the submitters proposal out of scope.

Recommendation

That the submission be declined.

CLARIFYING DATE COMPANY BECOMES NOMINATED AS AGENT FOR IMPUTATION GROUP

Clause 52

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed amendment.

Recommendation

That the submission be noted.

Issue: Clarity regarding related provision

Submission

(Corporate Taxpayers Group, Deloitte)

Submitters seek further clarity about this proposal, which deals with the change in nominated member of an imputation group and the interaction with similar provisions in the consolidated group rules when a nominated member is deemed to leave a consolidated group at a certain time.

Comment

After reviewing the two similar remedial issues, officials consider that further work is required to ensure they are consistent and to identify any other similar issues that might need clarification. See Issue: Remove proposed remedial amendment following.

Recommendation

That the submission be noted.

Issue: Remove proposed remedial amendment

Submission

(Matter raised by officials)

Prior to the introduction of the Bill, we became aware of a remedial matter raised by stakeholders related to another similar provision that related to consolidated groups. In that instance we were able to find an interpretive solution to ensure that the rule did not create a gap for taxpayers who failed to notify the Commissioner of Inland Revenue that they were leaving a consolidated group. This meant no remedial provision was required.

The proposed remedial amendment of the provision in the Bill is similar, but in this instance, we viewed it as necessary to clarify the ambiguity in the wording.

However, after reviewing the two issues subsequent to the introduction of the Bill, we now consider further work is required on these provisions to ensure they are consistent, and to identify any similar issues that might also need clarification.

We recommend removing the proposed remedial amendment from the Bill to allow officials to undertake a more comprehensive review of this and the other associated provisions to ensure they work as intended.

Recommendation

That the submission be accepted.

COMMISSIONER FAILS TO RESPOND TO TAXPAYER STATEMENT OF POSITION

Clause 136

Issue: Support for proposal

Submission

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

Submitters welcome the proposed change and suggest that Inland Revenue updates its published statements and guidance to account for this change.

Comment

Officials note the proposed change would be supported through usual channels such as the *Tax Information Bulletin*.

Recommendation

That the submission be noted.

ADDITIONAL CRITERION FOR COMMISSIONER TO MAKE ASSESSMENT

Clause 135(1)

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the remedial amendment, although the finer elements may warrant closer examination.

Recommendation

That the submission be noted.

Issue: Inadequate response period

Submission

(Deloitte, KPMG)

The proposed timeframe of two months is not sufficient considering some periods of the year have several public holidays.

Submitters suggest a four-month time period would be more appropriate because it aligns with response periods under section 89AB(3) of the Tax Administration Act 1994.

Submitters note that if the two-month period is retained, additional safeguards should be put in place to ensure the Commissioner cannot request large volumes of queries and that the Commissioner should have the discretion to extend the two-month period.

Comment

Officials consider the proposed two-month time period is sufficient. A longer period would not align with other similar response periods, such as the response period for a Commissioner-issued notice of proposed adjustment.

In addition, given the proposed amendment only relates to individual taxpayers with only reportable income, the extent of the queries is very unlikely to be large.

Recommendation

That the submission be declined.

Issue: Reasonable efforts by Commissioner

Submission

(KPMG)

"Reasonable efforts" should be included in the proposed amendment to require the Commissioner to contact the taxpayer before the assessment can be issued.

Comment

Officials consider this is better dealt with in guidance material rather than in the legislation and will provide some examples in a future *Tax Information Bulletin*.

Recommendation

That the submission be declined.

Issue: Clarify "failure by the taxpayer to respond"

Submission

(Deloitte, KPMG)

Submitters note there is a need to clarify what "failure by the taxpayer to respond" to a request by the Commissioner for additional information includes.

Submitters note it is not clear if this includes the failure to provide some, but not all, of the information that has been requested, or whether it would be limited to taxpayers who have failed to provide any response at all to Inland Revenue.

Submitters note it is not clear what constitutes a "response" and suggest clarification on this.

A submitter suggests this matter be dealt with in the *Tax Information Bulletin*.

Comment

Officials consider this can be dealt with in guidance in a future *Tax Information Bulletin* rather than in legislation.

Recommendation

That the submission be declined.

Issue: Scope of proposed amendment

Submission

(Deloitte, KPMG, PwC)

Submitters note the wording of the provision could be improved. The words “providing information” create a wide scope of what may be covered by the criterion. They submit that the wording should be changed to include a reference to the taxpayer providing information as part of an individual tax return.

A submitter suggests the drafting should be clarified to provide that it only applies where the taxpayer does not provide any response at all.

Submitters also note the Bill commentary should be made clearer, so the amendment does not apply to general taxpayers but only to “qualifying individuals” with reportable income.

Comment

Officials do not consider the scope of the wording in the proposed amendment to be too wide, or that it is unclear that it only applies to “qualifying individuals”.

Officials also consider the drafting to be clear that the provision only applies where the taxpayer does not provide any response at all. This will also be clarified in guidance in a future *Tax Information Bulletin*.

However, in addressing Issue: Application of provision to taxpayers, officials propose to reference back to specific provisions that relate only to qualifying individuals, which should address submitters’ concerns.

Recommendation

That the submission be declined.

Issue: Incorrect use of provision

Submission

(EY)

The submitter is concerned the proposed amendment could be applied in a wider range of circumstances, leading to the Commissioner issuing incorrect assessments to taxpayers who have provided correct information, and eroding the safeguards afforded by the statutory disputes process.

The submitter recommends that the Commissioner should be required to request information within two months of the provision of information by the qualifying individual (to invoke the proposed amendment). They suggest this to ensure the provision would not apply to an assessment made after the Commissioner has received the requested information.

Comment

Officials do not consider the proposed changes would result in incorrect use of the provision. In the rare instances that the change could lead to incorrect assessments of taxpayers who have provided correct information, the disputes process still affords the taxpayer with full challenge rights.

Officials consider the drafting to be clear and no change is needed to clarify that the provision only applies to the assessment about which the information has been requested and when the information is not provided.

Officials do not consider that there should be a two-month timeframe proposed to the Commissioner to request any additional information within. In general, because the relevant returns generally form part of the annual "autocalc" assessment process, it is unlikely that there will be any significant time between the person adding information and a request for details of that information.

Recommendation

That the submission be declined.

Issue: Application of provision to taxpayers

Submission

(EY)

The submitter is concerned the proposed amendment is not clear which taxpayer it would apply to, in particular qualifying individuals.

Comment

Officials consider the provision to only apply to taxpayers who are “qualifying individuals”. However, we believe it would be clearer if the provision referenced the existing provisions when a person provides information.

Recommendation

That the submission be accepted.

MOTOR VEHICLES USED WHOLLY AND EXCLUSIVELY FOR BUSINESS PURPOSES

Clauses 105(7), and 200

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed amendment.

Recommendation

That the submission be noted.

EMPLOYER-FUNDED FLU VACCINATIONS

Clause 19

Issue: Support for proposal

Submission

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

Submitters support the proposal to ensure that employers are not worse off if they reimburse an employee for an influenza (flu) vaccination rather than providing it on their premises or by voucher.

Recommendation

That the submissions be noted.

Issue: Scope of exemption

Submission

(Corporate Taxpayers Group, Deloitte, EY)

The scope of the proposed exemption should be extended to include:

a. Reimbursements for all other benefits that would qualify for the fringe benefit tax (FBT) health and safety exemption if they were non-cash benefits. (*Corporate Taxpayers Group, Deloitte, EY*)
   - This would align the tax treatment when the benefit received by the employee is fundamentally the same and would reduce the need for ongoing additional law changes, for example, if employers provide a different vaccine to employees in the future. (*Corporate Taxpayers Group*)
   - If the exemption is not extended, the same issue will exist where a tax incentive is created to provide benefits in a specific manner rather than allowing employers choice and flexibility as to how they provide them. (*Deloitte*)
   - The proposed exemption should be extended to employee reimbursements for any medical treatments or vaccinations targeting specific health and safety risks in the workplace. (*EY*)

b. Direct reimbursements for any benefit that would be exempt from FBT had the employer provided the benefit directly. This approach would prevent increasing complexity in the legislation as similar or further examples are identified. (*EY*)

c. Alternatively, a general provision could be introduced allowing the Commissioner of Inland Revenue to exempt employee payments by determination. This may strike a balance between reducing legislative complexity and protecting revenue integrity. (*EY*)

Comment

a. Officials agree that the scope of the proposed exemption should be extended to include reimbursements for all benefits that would qualify for the FBT health and safety exemption if they were non-cash. We accept there is currently a disparity between the FBT and reimbursement rules (PAYE) regarding other benefits relating to specific employee health and safety risks in the workplace, and that these should be addressed at the same time.

b. The submitter notes that that there are disparities between the FBT and PAYE rules in the wider FBT regime. Officials recommend further consideration of whether there should be greater alignment of the two sets of rules, but we do not recommend making any further changes in this Bill. Further analysis and consultation would be required to determine the potential effect of wider changes.

c. Seeking a determination from the Commissioner in relation to employee payments could impose further compliance costs on employers for relatively minimal savings. Officials do not prefer this approach.

Recommendation

a. That the submissions be accepted.

b. That the submission be declined.

c. That the submission be declined.

TAXATION OF EXTRA PAY WHEN EMPLOYMENT ENDS

Clause 96

Issue: Support for proposal

Submission

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

The submitters support the proposed amendment. (*Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte*)

This amendment will reduce compliance costs for employers and provide greater certainty in the calculation of an employee's tax liability on ending employment. (*Corporate Taxpayers Group*)

Recommendation

That the submission be noted.

FILING OBLIGATIONS OF CHARITIES AND NON-PROFITS

Clause 129

Issue: Support for proposal

Submission

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

The submitters support the proposed amendment to ensure that entities that only derive exempt income do not need to file returns of income.

Recommendation

That the submission be noted.

RECORD-KEEPING REQUIREMENTS FOR GIFT-EXEMPT BODIES

Clause 125

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

Submitters support the proposed amendment clarifying that gift-exempt bodies must keep relevant records for at least seven years and allow records to be kept in te reo Māori.

Recommendation

That the submission be noted.

MAINTENANCE AMENDMENTS

Issue: Support for proposals

Submission

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

The submitters support the proposed amendments that reflect minor technical maintenance items. Some minor drafting changes were suggested, and officials note that these have been adopted into the drafting as appropriate.

Recommendation

That the submission be noted.

Miscellaneous submissions

ASSOCIATION TEST FOR TRUSTEE AND PERSON WITH POWER TO APPOINT OR REMOVE TRUSTEE

Issue: Person with power to appoint minority of trustees of charitable trust

Submission

(Deloitte)

The "associated persons" definition in section 2A of the Goods and Services Tax Act 1985 (GST Act) should be clarified to ensure that trusts that are charities or non-profit bodies are not associated with another person solely because the other person has the power to appoint a single trustee.

The relevant association test should only apply to associate a trust and a person with a power of appointment if the person has the power to appoint a majority of the trustees. The test should not apply at all in a non-profit situation.

Comment

One of the association tests in the GST Act treats a trustee of a trust and a person who has a power of appointment or removal of that trustee as associated persons (the trustee–appointor test). This rule is intended to supplement the trustee–settlor test of association (that is, to treat a person who has the power to appoint or remove a trustee similarly to a settlor of a trust who usually retains the power).

Since the trustee–settlor test contains an exclusion for trustees that are charitable or non-profit bodies, officials consider it would make sense for the same exclusion to also apply for the purposes of the trustee–appointor test (which would address the scenario the submitter is concerned about). However, officials note that this change would have a fiscal cost that at this stage is unknown. Therefore, further consideration is required before progressing an amendment, including determining the fiscal impacts of the change. Further work on this matter would be subject to resourcing and prioritisation as part of the Government's tax and social policy work programme.

We do not agree with amending the trustee–appointor test so that there is association only if the person with the power of appointment or removal has that power for a majority of the trustees. Outside of the charitable/non-profit body context, we consider that it is appropriate and consistent with the policy intent for there to be association when the person with the power of appointment or removal has that power for a single trustee only (rather than requiring the person to have this power for most of the trustees). This is because the association tests for trusts are based on the status of the person in relation to the trust (such as the person being a settlor, trustee or beneficiary of the trust), rather than being based on a threshold defined as a percentage of voting interests like in the association tests for companies.

Recommendation

That the submission be declined.

SECURITISATION ENTITIES AND PILLAR TWO

Issue: Exclude securitisation entities from liability to top-up taxes

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

Securitisation

Securitisation is a funding arrangement involving the transfer of receivables from an originator to a special purpose vehicle (securitisation entity) that then issues debt securities backed by the expected cash flows from those receivables.

Securitisation provides an important source of funding for a range of businesses by allowing them access to wholesale debt markets for their funding needs on competitive terms, thereby serving as an alternative to the provision of funding from the major banks. Tax or other impediments to securitisation transactions will therefore reduce competition in the financial sector, to the detriment of New Zealand businesses and consumers.

For funders/investors to be prepared to provide debt financing to a securitisation entity, it is critical that the securitisation entity has no unanticipated liabilities, including tax liabilities (ie, that the entity is "bankruptcy remote" and "tax neutral"). A confirmation of tax neutrality is always required for the draw down of funding by the securitisation entity, illustrating the commercial importance of the tax treatment.

Global Anti-Base Erosion (GloBE) rules

The OECD Pillar Two GloBE rules impose a 15% "global minimum tax" on large multinational groups. In some cases, they could require New Zealand to collect "top-up tax" from a New Zealand entity as a result of a group member having a less than 15% effective tax rate in a jurisdiction.

Securitisation entities and the GloBE rules – OECD Administrative Guidance

In its June 2024 Agreed Administrative Guidance on the GloBE rules, the OECD addressed a problem that had been identified with the application of the GloBE rules to securitisation entities. The problem was that, if a securitisation entity could become liable for top-up tax in respect of the undertaxed profits of other entities in the multinational group, it would not be bankruptcy remote or tax neutral. The entity's potential exposure to unexpected tax liabilities would negatively affect its own credit rating, which would undermine the viability of securitisation arrangements.

The OECD addressed the issue by clarifying that jurisdictions could choose to exclude securitisation entities from liability to top-up taxes. Other entities in the multinational group would then incur the top-up tax instead.

Change required

New Zealand should amend its legislation to clarify that securitisation entities are excluded from liability to top-up tax. This will protect the tax neutrality and bankruptcy remoteness of these entities, ensuring securitisation arrangements remain viable.

Comment

Officials agree that securitisation entities should be excluded from liability to top-up tax, for the reasons noted by the OECD and submitters.

Recommendation

That the submission be accepted.

Issue: Exclude income of securitisation entities from top-up tax calculations

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

In the June 2024 Agreed Administrative Guidance on the GloBE rules, the OECD stated that it would consider issuing further Agreed Administrative Guidance to ensure that securitisation transactions do not distort effective tax rate calculations. This may occur when certain hedging arrangements result in mismatches between the income and the taxes recognised under the GloBE rules.

In New Zealand, there should be a choice as to whether the income earned by securitisation entities is taken into account by the originator in effective tax rate calculations required under the GloBE rules. This would mitigate the risk of distortions identified by the OECD.

Comment

Officials have not seen sufficient evidence that including the income of securitisation entities in a multinational's effective tax rate calculations leads to material distortions. The OECD has not yet released further Agreed Administrative Guidance allowing the income of securitisation entities to be excluded from effective tax rate calculations, and officials do not think it is necessary to provide an exclusion at this stage.

We will monitor the OECD's work in this area and revisit this submission if it becomes clearer that there is a problem.

Recommendation

That the submission be declined.

TAXATION OF SECURITISATION ENTITY AMENDMENTS

Issue: Exclude notes issued by securitisation entity from restricted transfer pricing rules

Submission

(Australian Securitisation Forum)

Notes issued by a securitisation entity should be excluded from section GC 18 of the Income Tax Act 2007 (Loan features disregarded by rules for transfer pricing arrangements).

The restricted transfer pricing rules require junior notes held by related parties to be priced for tax purposes as if they are ranked equally with the senior notes. This is because section GC 18 requires subordination to be disregarded. This means part of the interest paid by the securitisation entity will not be deductible.

However, subordination is fundamental to the structure and purpose of a securitisation. It is intended to allow different investors with different risk profiles to hold different classes of notes that are priced differently to reflect their seniority. Therefore, the application of the restricted transfer pricing rules is not appropriate in this context.

Comment

Officials acknowledge the matter raised by the submitter. However, the issue is outside the scope of the proposals in the Bill. Further work on this matter would require prioritising and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

Issue: Exclude securitisation entity from thin capitalisation rules

Submission

(Australian Securitisation Forum)

Securitisation entities should be excluded from the thin capitalisation rules.

The thin capitalisation rules limit interest deductions for certain excessively geared entities. It is not appropriate for those rules to apply to a securitisation entity since it is a funding vehicle that is intended to be tax neutral.

When the securitisation entity's assets are financial arrangements (such as loans or finance leases), the on-lending concession under the thin capitalisation rules addresses this issue. However, the on-lending concession is not available when the securitisation entity's assets are not financial arrangements (such as operating leases). In such scenarios, ensuring that there is no denial of deductions under the thin capitalisation rules is more complex and can require changes to the commercial funding structure that would otherwise be adopted.

Comment

Officials acknowledge the matter raised by the submitter. Officials note that this issue can be solved in some cases by electing into the securitisation tax regime under section HR 9BA of the Income Tax Act 2007. However, the issue is outside the scope of the proposals in the Bill. Further work on this matter would require prioritising and resourcing as part of the Government's tax and social policy work programme.

Recommendation

That the submission be declined.

FORESTRY ISSUES

Issue: Deductions for forestry releasing expenditure

Submission

(Jim Gordon Ltd)

In practice all releasing costs have been immediately deducted since the early 1990s in accordance with the intent of the amendments made at that time that all forestry planting and growing costs should be immediately deductible. It would be helpful if the words "excluding releasing" in section DP 1(1)(e) of the Income Tax Act 2007 were deleted so that the tax law matches long-standing practice.

Comment

Releasing involves the clearing of weeds and other undergrowth from around young trees to encourage their growth. It is a cost of maintaining the forest.

As noted by the submitter, since the early 1990s it has been intended that the costs of planting and maintaining a forest be immediately deductible in the year that they are incurred. Various legislative amendments were made at that time to achieve that outcome. However, the legislation has since been rewritten and under the current version it is not clear that the immediate deductibility treatment extends to expenditure on releasing.

The problem seems to date back to the 2004 rewrite of the Income Tax Act when the relevant provisions were combined into section DP 1. Accordingly, officials agree that an amendment should be made to section DP 1 (backdated to 1 April 2005 when the Income Tax Act 2004 came into force) to ensure that releasing costs are immediately deductible.

Recommendation

That the submission be accepted.

Issue: Value of emissions units surrendered following deregistration of forest

Submission

(Jim Gordon Ltd)

Section CB 36 of the Income Tax Act 2007 should be extended to ensure that emissions units surrendered to meet a forestry deregistration obligation are deemed to be disposed of for nil value.

Comment

Emissions units are received when post-1989 forests registered in the emissions trading scheme sequester carbon. Conversely, emissions units need to be surrendered if a registered forest or part of a registered forest is removed from the scheme.

Conceptually, such surrenders should be for nil value, comparable to units surrendered because of an emissions liability under the scheme. The tax legislation could be clearer on this point to avoid any confusion for taxpayers that the units are surrendered for market value. Accordingly, officials agree that a clarifying amendment should be made to section CB 36 confirming that the units are surrendered for nil value.

We are proposing that this amendment be backdated with effect from 1 January 2009 because the technical omission has existed from that date.

Recommendation

That the submission be accepted.

MISCELLANEOUS SUBMISSIONS TABLES

The Committee also received submissions that officials have not considered further at this time on the basis that the submissions are either in the nature of general comments or raise matters outside the scope of the proposals in the Bill.

Table 1: General submissions to be noted

The Committee has received the following submissions that officials recommend be noted:

Submission description	Submitter
Support for remedial amendments.	Bell Gully, Deloitte
Support for maintenance amendments.	CTG, Deloitte
The GST remedials are broadly welcome.	EY
Better adherence to the Generic Tax Policy Process (GTPP) and improvements to the tax legislation process would reduce the volume of future maintenance amendments in future Bills.	CTG
The drafting of policy proposals should be subject to broader consultation prior to a Bill being referred to Select Committee for review. The process relating to the drafting of tax legislation should be improved.	EY
Risk mitigation should be balanced against the complexity of overly prescriptive rules.	EY
The consideration of future data needs should be woven into policy design.	EY
A data sharing framework that provides an increased degree of publish understanding of the use of tax data for broader government objectives should be established.	EY
Various pieces of legislation should be repealed.	Greg Scobie
Opposes the annual rates of income tax contained in the Bill.	New Zealand Taxpayers' Union
Stylistic suggestions for the drafting of the debt-funding special purpose vehicle amendments.	Australian Securitisation Forum, New Zealand Law Society

Table 2: Out-of-scope submissions

The Committee has received the following submissions that officials recommend be declined on the basis the work would require resourcing and prioritisation as part of the Government's tax and social policy work programme:

Submission description	Submitter
The designation for any and all overseas donee considerations to New Zealand organisations should be discontinued and not allowed in future.	Billy Leonard
Proposes increasing the income tax thresholds to account for inflation.	New Zealand Taxpayers' Union
Income tax rates should be increased on income over $300,000.	Kari Hunter
A progressive inheritance tax should be introduced, levied on the inheritor rather than the estate.	Kari Hunter
The Income Tax Act 2007 should be amended to confirm that a transfer by way of security does not cause a transfer of imputation credits from borrower to lender. This should provide sufficient legislative direction to those applying the legislation of the distinction between a security interest and a sale or other absolute transfer. The underlying issue is addressed by officials in Issue: Imputation effect on security arrangements.	Taxi Ltd

Matters raised by officials

RESEARCH AND DEVELOPMENT TAX INCENTIVE

Issue: R&D Tax Incentive – incorrect entity issue

Submission

(Matter raised by officials)

The Taxation (Budget Measures) Act 2024 amended the filing requirements for the Research and Development Tax Incentive (RDTI) to enable a business to have its RDTI approval corrected if it accidentally filed under the name of the wrong entity within a group of wholly-owned businesses. These errors can currently be corrected if they were made in applications for RDTI approval pertaining to the 2021–22 or later income years.

Two further changes should be made to those original amendments. These are to:

- extend the original amendments to the 2019–20 and 2020–21 income years to ensure that they apply from the beginning of the RDTI regime, and
- ensure that the time bar for filing for the RDTI does not prevent a business applying to have its approval corrected outside the time-bar period if it made the incorrect entity error.

Recommendation

That the submission be accepted.

FAMILYBOOST REMEDIALS

Issue: Extension of time to file

Submission

(Matter raised by officials)

The FamilyBoost legislation requires a person (and their partner) to have filed their most recent return of income to access FamilyBoost. However, the legislation overreached to require that tax return to be filed on time according to a person's filing obligations.

Accordingly, if a person's most recent annual return of income was filed late, they are not able to apply for FamilyBoost even once they file the return containing the necessary income information to calculate their FamilyBoost payment. This primarily impacts self-employed individuals who must declare their income information to Inland Revenue by filing an annual tax return.

A remedial amendment is required to allow late filers who have subsequently provided their return to access FamilyBoost.

Recommendation

That the submission be accepted.

Issue: Schedular payments

Submission

(Matter raised by officials)

If a person derives income from schedular payments, they may receive a reduced entitlement or no entitlement due to the current income test over-inflating their income.

A remedial amendment is required to ensure that the intended income calculation applies to individuals who derive income from schedular payments.

Recommendation

That the submission be accepted.

Issue: Most recent return of income

Submission

(Matter raised by officials)

In the FamilyBoost legislation it is unclear which annual return of income should be used to determine "tax credit income". Currently described as the "most recent return of income," this could refer to **any** return filed before the start of the period the applicant is applying for. Consequently, a person's eligibility for the tax credit payment could be determined based on an outdated return.

A remedial amendment is required to clarify the annual return of income used to determine a person's tax credit income.

Recommendation

That the submission be accepted.

Issue: Clarifying "greater of" income test

Submission

(Matter raised by officials)

The FamilyBoost legislation applies an income test based on whether a person derives reportable income (eg, salary and wage income) and/or non-reportable income (eg, self-employed income) in a quarter. However, Inland Revenue does not know if a person has derived non-reportable income until they file a tax return after the end of their income year.

Currently, the way in which a person's tax credit income is determined when they derive both reportable income and non-reportable income is ambiguous. A remedial amendment is required to clarify the "greater of" test for people who derive both reportable income and non-reportable income.

Recommendation

That the submission be accepted.

Issue: Application of debit interest

Submission

(Matter raised by officials)

In the event of people receiving a significant FamilyBoost tax credit overpayment, it was intended that debit interest apply to that tax credit. This would require people who received the overpayment to pay debit interest on this amount if they had not repaid the overpayment by the given due date (30 days after they have received notice of overpayment). However, the legislation does not currently apply debit interest to FamilyBoost tax credit overpayments.

A remedial amendment is required to ensure debit interest applies to FamilyBoost tax credit overpayments when they are not repaid by the due date.

Recommendation

That the submission be accepted.

Issue: Application of credit interest

Submission

(Matter raised by officials)

Credit interest was not intended to apply to the FamilyBoost tax credit. However, according to the FamilyBoost legislation, Inland Revenue is required to pay credit interest to taxpayers on the amount of a FamilyBoost tax credit underpayment or when a payment is backdated and paid (for example, an application for payment some months or years after the first date an application could have been made).

A remedial amendment is required to ensure credit interest does not apply to the FamilyBoost tax credit payment.

Recommendation

That the submission be accepted.

Issue: Late payment penalties

Submission

(Matter raised by officials)

Late payment penalties were not intended to apply to the FamilyBoost tax credit. However, according to the FamilyBoost legislation, people who receive overpayments on their FamilyBoost tax credit must pay late payment penalties, if they do not repay the overpayment by the due date.

A remedial amendment is required to ensure late payment penalties do not apply to the FamilyBoost tax credit payment.

Recommendation

That the submission be accepted.

Issue: Publishing significant overpayment and underpayment thresholds

Submission

(Matter raised by officials)

In most cases a person's FamilyBoost tax credit is full and final based on the information at hand when the claim is processed and paid. Instances when reassessment may occur are when the Commissioner considers the FamilyBoost tax credit amount to be a significant overpayment or a significant underpayment, taking account of resources required. The legislation also requires these thresholds to be published. This was an approach used with student loan repayments. However, as we began processing claims, it became apparent that people could use the published thresholds to game the system (that is, an integrity risk).

Therefore, we recommend that the requirement to publish the thresholds be removed to improve the integrity of the payments.

Recommendation

That the submission be accepted.

DEEMED SOURCE OF INCOME RULE

Issue: Section YD 4(17D) does not clearly exclude technical services fees provided from India

Submission

(Matter raised by officials)

Income earned by a non-resident is only taxable under New Zealand's domestic law if it has a "source" in New Zealand under section YD 4 of the Income Tax Act 2007. Section YD 4(17D) provides that income has a source in New Zealand if there is a right to tax that income under a double tax agreement (DTA).

However, this rule has resulted in an overreach in some circumstances. In particular, three of our DTAs (those with India, Malaysia and Fiji) give New Zealand the right to tax a non-resident on payments made from New Zealand for technical services, even if the non-resident performs the services outside New Zealand and has no presence here.

This was not intended and is outside our normal tax settings (which require a non-resident to have some presence or activity in New Zealand before personal services income has a source here). This also results in a different tax treatment of non-residents depending on which country they are from. There is no mechanism in the law to easily collect the tax payable.

Accordingly, last year an amendment was made in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 to exclude these technical services fees from the application of section YD 4(17D). This technical amendment was intended to ensure these payments would not be taxed in New Zealand unless they had a source under another provision of section YD 4. Unfortunately, the way the amendment was drafted arguably does not cover technical services fees that New Zealand is entitled to tax under Article 12 of the New Zealand–India DTA.

Comment

We recommend an amendment to ensure section YD 4(17D) does not apply to technical services fees paid to Indian residents, as originally intended.

We also recommend the amendment apply retrospectively to income years starting on or after 1 July 2018. This was the year the original amendment (in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024*)* applies from (being the year section YD 4(17D) came into effect). A retrospective application date is necessary to ensure the original amendment operates as intended. This retrospective application date is taxpayer favourable.

Recommendation

That the submission be accepted.

CLARIFYING IMPUTATION EFFECT ON SECURITY ARRANGEMENTS

Issue: Imputation effect on security arrangements

Submission

(Matter raised by officials)

An amendment is required to ensure that the imputation rules work effectively to allow for funding arrangements that provide for tax payments made by a taxpayer to be used as security against borrowings.

A new financial product was recently introduced that provides financing to clients who make a deposit into a tax pool to meet a provisional tax payment obligation. The financing is secured by transfer of security over an amount of those tax payments. If the client repays the secured borrowings by the due date, the security interest would be released, and the client can use their tax payments. If the client does not repay its borrowings, the client authorises the lender to sell or otherwise dispose of the tax payments it holds and apply the amounts received on sale towards amounts due.

The current interpretation of this arrangement is that there is a transfer of title when the title to the tax deposit with the intermediary is transferred "by way of security" so the company can access borrowing. This means there would be a debit arising to the imputation credit account of the client on the granting of a security, and a corresponding credit when the security is released.

This position makes the financing arrangement more complex for clients, who would need to seek advice on the possible impact to their imputation credit account, and the intermediary to administer.

This treatment also creates an integrity issue that could allow taxpayers to circumvent the imputation continuity rules by parking imputation credits with the lender when they have a continuity breach, which is not desirable.

We recommend amending the imputation provisions to ensure a security arrangement would not trigger an imputation debit. Instead, a debit would only be triggered when the person defaults on their arrangement and the underlying tax payments pass to the lender.

This amendment should apply from 1 April 2025.

Recommendation

That the submission be accepted.

INDEPENDENT EARNER TAX CREDITS

Issue: Clarifying IETC eligibility

Submission

(Matter raised by officials)

Section LC 13(1)(d) of the Income Tax Act 2007 provides that a person **entitled** to a Working for Families (WFF) tax credit is ineligible to receive the independent earner tax credit (IETC). Section LC 13(1)(e) further extends this ineligibility to spouses, civil union partners or de facto partners of a person who is **entitled** to a WFF tax credit.

The Bill commentary provided at the time the legislation was introduced is clear that those receiving a WFF tax credit should be excluded. However, the legislation can also be interpreted to exclude a person who meets the criteria for a WFF tax credit even if no WFF tax credit payment is actually received (that is, they have not applied to receive WFF tax credits).

Officials recommend amendments that would clarify and enact the original policy intent, which was to exclude only those **receiving** WFF tax credit payments from eligibility for the IETC.

Recommendation

That the submission be accepted.

EMPLOYEE SHARE SCHEMES

Issue: Interaction between cash-settled employee share schemes and ACC

Submission

(Matter raised by officials)

Employee share scheme (ESS) benefits are not counted as income under the Accident Compensation Act 2001, even when an employer has elected to withhold and pay PAYE in relation to that benefit. This means that the ACC earners' levy does not apply to ESS benefits in these instances. ESS benefits are usually one-off benefits that provide an ongoing equity interest in an employer. They are viewed as different to regular payments of cash that contribute to day-to-day living costs.

This exclusion does not currently apply to cash-settled ESS benefits. Because it is considered an extra pay, there is no option to not withhold tax on a cash-settled ESS benefit. This means that the ACC earner levy treatment of share-settled ESS benefits and cash-settled ESS benefits is not aligned. The liability of cash-settled benefits to the ACC earners' levy has the potential to cause problems in the processing of Employment Information filings because the system rejects the Employment Information form submitted by the employer if the "ESS benefits" field does not match the "earnings not liable for ACC" field.

Cash-settled ESS benefits are also not excluded for the purposes of calculating what is considered earnings as a shareholder-employee, for the same reason that there is no option to not withhold tax on cash-settled ESS benefits. There is no material difference between cash- and share-settled ESS benefits, and its omission from the exclusion is likely unintended.

Therefore, we recommend an amendment to clarify cash-settled ESS benefits are not considered earnings as an employee, or earnings as a shareholder-employee, to align the ACC earner levy treatment of share-settled ESS benefits and cash-settled benefits. This would be achieved by broadening the exemption in the Accident Compensation Act so that it applies to all ESS benefits, not only those when the employer has elected to pay PAYE.

Recommendation

That the submission be accepted.

FOREST LAND EMISSIONS UNITS

Issue: Value of emissions units transferred for zero value

Submission

Matter raised by officials

Emissions units are received by foresters when post-1989 forests registered in the emissions trading scheme sequester carbon. Although the legislation correctly specifies the value of the units at the end of the income year, the acquisition value of these emissions units is not stated in the legislation.

Comment

This technical oversight makes the value of such units unclear for tax purposes. It has always been intended that the units be received for nil value and taxpayers have been valuing them on that basis.

The oversight stems from various consequential tax changes made following changes to the Climate Change Response Act 2002 in 2009.

Accordingly, officials recommend:

- An amendment should be made to section ED 1 of the Income Tax Act 2007 to clarify that, for tax purposes, forest land emissions units transferred under section 64 of the Climate Change Response Act (that is, from the Crown to a forester in relation to carbon sequestration activities) have an acquisition value of zero for the period beginning with their transfer and ending before the end of the income year in which they are received.
- The amendment should be backdated to 1 July 2010, the date from which the uncertainty first arose.

Recommendation

That the submission be accepted.

MAINTENANCE ITEMS RAISED BY OFFICIALS

Summary of proposed amendments

The proposed amendments in Table 3 reflect minor technical maintenance items raised by officials.

Effective date

Effective dates for the proposed amendments are outlined in Table 3.

Table 3: Maintenance items

Act	Section	Amendment	Effective Date
Income Tax Act 2007	CW 52B	Updating name of Ministry	1 December 2024
	HC 8B	Correcting terminology	1 April 2024 for 2024–25 and later income years
	HC 14(2B)	Correcting subsection heading	Day after Royal assent
	YB 14(4)	Correcting cross-reference	1 April 2010 for 2010–11 and later income years
Tax Administration Act 1994	22C(3)(d)	Correcting cross-references	Day after Royal assent
	185S	Correcting fault of expression	1 January 2024
Goods and Services Tax Act 1985	8(4G)	Reinstating rule inadvertently repealed	Taxable periods starting on or after 1 April 2023
	19K(9)(b)	Correcting faults of expression	Taxable periods starting on or after 1 April 2023
	55(1AK)	Updating cross-reference	30 March 2022

Summary of recommendations

SUMMARY OF RECOMMENDATIONS

Generic response to emergency events

	Recommendation description	Submitter	Page #
1	Clarify that the Order in Council defines the first day of the emergency event.	2 submitters	24
2	Build in the ability to extend the five-year window for resolving insurance and recovery activity through an Order in Council.	Deloitte	37
3	Clarify meaning of "mixed-aged female breeding animals" in accordance with schedule 17 of the ITA. And clarify that the tests in proposed section FP 16(1)(c) and (17) of the ITA apply in relation to the type of livestock needing to be culled as a result of the emergency event.	EY	42
4	Simplify drafting of the proposed emergency measures.	CA ANZ	43

Qualifying recognised overseas pension schemes

	Recommendation description	Submitter	Page #
5	Make it optional for KiwiSaver providers to offer "scheme pays".	2 submitters	66
6	Extend the timeframe for making the notification of the assessable withdrawal amount.	3 submitters	69
7	Replace "foreign superannuation withdrawals" with "assessable withdrawal amounts" where relevant.	2 submitters	70
8	Clarify proposed wording inserted into the definition of "schedular income" in section YA 1 of the ITA.	Officials	72
9	Clarify proposed wording inserted into the meaning of "reportable income" in section 22D(3) of the TAA.	Officials	72
10	Clarify liability for TSWT shortfalls resulting from individual's understatement of assessable withdrawal amount.	Officials	73

	Recommendation description	Submitter	Page #
11	Include TSWT in the list of taxes included in "withholding or deduction of tax" in section 143A of the TAA for knowledge offences relating to withholding tax.	Officials	73
12	Ensure "scheme pays" is available when all a person's foreign superannuation withdrawal is assessable.	Officials	74
13	Add cross-reference to section LA 6 of the ITA to clarify how the credit for TSWT is to be used.	Officials	74
14	Amend the definition of the "QROPS accumulation" to include amounts transferred through multiple schemes rather than directly from the UK to the current locked-in KiwiSaver scheme.	3 submitters	76

Other policy items

Approved issuer levy retrospective registration

	Recommendation description	Submitter	Page #
15	Remove the two-year timeframe for retrospective registration; add duration of delay in registration as a factor the Commissioner may consider in determining whether the cause of the delay was an oversight.	5 submitters	80
16	Expand the Commissioner's discretion to allow retrospective registration so it covers cases when the borrower made an effort to register the security on time but failed to do so (ie, not an "oversight").	2 submitters	82
17	Clarify that the list of factors the Commissioner may consider when deciding if the delay in registration was an "oversight" is not exhaustive.	2 submitters	85
18	Remove "whether the person is a natural person" from the list of factors the Commissioner may consider in determining whether the delay was caused by an oversight.	3 submitters	88
19	Add AIL to the list of taxes for which the Commissioner has the discretion to allow tax pooling to be used to satisfy new liabilities.	CA ANZ	91

New Zealand Business Number information sharing

	Recommendation description	Submitter	Page #
20	Clarify that the information sharing, and use of this information, is limited to specific duties and functions and that it would be carried out by way of a single transfer of data.	Office of the Privacy Commissioner	101

Overseas donee status

	Recommendation description	Submitter	Page #
21	Amend clause 115 of the Bill by making the following maintenance changes: ▪ update the reference to "Altus Resource Trust" to "Altus Pacific Aid" from 8 May 2024 ▪ update the reference to "Community Action Overseas (Oxfam NZ)" to "Oxfam Aotearoa" from 25 May 2021 ▪ update the reference to "Cotton On Foundation Limited" to "Cotton On Foundation New Zealand Limited" from 1 April 2022 ▪ remove "Operation Vanuatu Charitable Trust" from the date of enactment ▪ remove "Sampoerna Foundation Limited" from the date of enactment ▪ remove "The Food Bank of New Zealand" from the date of enactment, and ▪ remove "Together for Uganda" from the date of enactment.	Officials	108

GST remedials

Zero-rating rules for international vessels exempt from import entries

Rec #	Recommendation description	Submitter	Page #
22	Broaden amendment to apply to regulation 25(1)(a), (bb), (d), (da), (g) and (h) of the Customs and Excise Regulations 1996.	2 submitters	110

Approved taxable period end dates

Rec #	Recommendation description	Submitter	Page #
23	Provide discretion for the Commissioner to allow a change in taxable period end date to take effect in the taxable period in which the change is requested if the person requesting the change can show that it was not practicable for them to apply for the change before the start of that taxable period.	KPMG	113

Permanent change of use and assets acquired before 1 April 2023

Rec #	Recommendation description	Submitter	Page #
24	Clarify interaction of sections 21B and 21FB of the GST Act for assets acquired prior to GST registration.	PwC	115

Limitation on final deduction for non-taxable use of land supplied by property developer

Rec #	Recommendation description	Submitter	Page #
25	Clarify the proposed rule so it better achieves the policy intention of applying to property developers and not retirement village operators (who also develop their own villages).	3 submitters	119

Timing of GST on accommodation supplied through electronic marketplace

Rec #	Recommendation description	Submitter	Page #
26	Provide marketplace operators, underlying suppliers and listing intermediaries the option of accounting for GST on a supply of taxable accommodation made through an electronic marketplace seven days after the completion of the performance of the services or at an earlier time.	KPMG	125

Technical amendments related to platform economy

Rec #	Recommendation description	Submitter	Page #
27	Amend section 20(2) and (3)(de) of the GST Act to only allow marketplace operators and listing intermediaries to deduct input tax for the flat-rate credit if the underlying supplier has notified them that they are not registered for GST.	Officials	128
28	Amend section 19NB of the GST Act to require taxable supply information be provided within 28 days of the time of supply.	Officials	129
29	Clarify that the Commissioner can disclose an underlying supplier's GST registration status to listing intermediaries for the purpose of the flat-rate credit scheme.	Officials	129

Quarterly filing for certain non-resident suppliers

Rec #	Recommendation description	Submitter	Page #
30	Amend the GST Act to clarify that a non-resident person who has a three-month taxable period but no longer meets the requirements for quarterly filing is required to change to one of the "standard" taxable periods (one-month, two-month, or six-month).	KPMG	137

Trust remedials

Tax rate on minor and corporate beneficiary income

Rec #	Recommendation description	Submitter	Page #
31	Treat income subject to the minor or corporate beneficiary rules as schedular income, subject to a tax rate of 39%.	Officials	148

Disabled beneficiaries and minor beneficiary rule

Rec #	Recommendation description	Submitter	Page #
32	Exclude disabled beneficiaries of non-disabled beneficiary trusts from the minor beneficiary rule.	PwC	150

Corporate beneficiary rule

Rec #	Recommendation description	Submitter	Page #
33	Amend the corporate beneficiary rule so it does not apply to foreign-sourced amounts of income derived by non-resident companies without a New Zealand resident shareholder.	EY	154
34	Amend section HC 26 of the ITA to exclude income subject to the corporate beneficiary rule.	Officials	156

Partnership remedials

RWT-exempt status, AIL eligibility and other matters relating to partnerships

Rec #	Recommendation description	Submitter	Page #
35	Clarify that limited partnerships can register as the approved issuer when they borrow from a third-party non-resident lender.	4 submitters	165

Rec #	Recommendation description	Submitter	Page #
36	Allow limited partnerships to elect to account for any NRWT or AIL prior to payment.	2 submitters	166
37	Provide that the requirement for a body to carry on a "taxable activity" for RWT-exempt status does not apply to limited partnerships.	2 submitters	166
38	Expand section 32IB of the TAA to apply to general partnerships.	2 submitters	167
39	Make the application dates for the amendment to sections RF 3 and RF 12 of the ITA, section 32M of the TAA, section 86G of the Stamp and Cheque Duties Act 1971, and all other amendments relating to RWT-exempt status, AIL eligibility and other related partnership matters retrospective to 1 April 2008.	3 submitters	167
40	Expand the application date of section 42(3)(b) of the TAA to apply to general partnerships.	KPMG	168
41	Amend section 42(3)(b) of the TAA so partners cannot switch their elections year on year.	2 submitters	168
42	Clarify the treatment of non-resident partners in relation to joint assessments.	2 submitters	169
43	Provide that limited partnerships that are sufficiently related are treated as one limited partnership for assessing the thresholds for RWT exempt status.	2 submitters	170

Application of associated persons rules to certain structures involving Limited partnerships

Rec #	Recommendation description	Submitter	Page #
44	Insert a reference to the sections the amendments to the "voting interest" definition are intended to apply for.	PwC	175
45	Revise drafting to clarify that the amendments do not apply to general partners.	CTG	175

Land rules remedials

Bright-line start date when land partitioned or subdivided

Rec #	Recommendation description	Submitter	Page #
46	Incorporate the formula in section CB 15E(2) of the ITA in section CW 3C(9).	NZLS	182
47	Amend bright-line start date on partition to date co-owners acquired their first interest in the undivided land.	NZLS	182

Sale of subdivided land acquired from co-owner

Rec #	Recommendation description	Submitter	Page #
48	Clarify that co-owners are treated as acquiring land received on partition or subdivision on the date they acquired their interest in the undivided land.	NZLS	184

Roll-over relief rule

Rec #	Recommendation description	Submitter	Page #
49	Remove requirement that land be "transferred within the bright-line period" to qualify for roll-over relief under sections FD 1 to FD 3 of the ITA so the rollover relief rules work for sales of land.	NZLS	187
50	Insert a deeming rule to treat a "bright-line acquisition date" as a "bright-line start date" for the purposes of the rollover relief rules so the rules work as intended for transfers before 1 July 2024.	Officials	188

Inherited land and bright-line test

Rec #	Recommendation description	Submitter	Page #
51	Delete unnecessary words from section FC 9(2).	NZLS	191
52	Make the use of the phrase "who acquired the land in the circumstances" consistent within the exclusions from the bright-line test.	Officials	192

Disposals of land to the Crown – repeal of income spreading rule

Rec #	Recommendation description	Submitter	Page #
53	Include a savings provision in section EI 8 of the ITA for those with an active binding ruling to protect the application of the law.	2 submitters	194

International tax remedials

Thin capitalisation changes related to non-debt liabilities

Rec #	Recommendation description	Submitter	Page #
54	Update drafting of the amendments that deny interest deductions for insolvent entities.	EY	200
55	Extend amendment to cover an insolvent entity that has non-debt liabilities equal to their assets.	EY	201
56	Update application date of amendments that apply to insolvent entities.	EY	201
57	Extend exclusion from non-debt liabilities for some interest-free loans/redeemable shares to include relatives.	Deloitte	202
58	Amend requirement so settlor only has to make at least 90% of the settlements of a trust.	Deloitte	203
59	Extend exclusion from non-debt liabilities to non-proportionate funding from non-corporate members/equity group when	Deloitte	204

Rec #	Recommendation description	Submitter	Page #
	shareholder and associates hold 10% or more of the voting interest.		
60	Extend exclusion from non-debt liabilities to apply in the context of funding from the shareholder/equity group directly to an indirect subsidiary of the New Zealand thin capitalisation group.	Deloitte	204

Interaction between transfer pricing rule and deemed dividend rule

Rec #	Recommendation description	Submitter	Page #
61	Amend the effective date for the amendment that clarifies the transfer pricing and dividend rules apply concurrently (regardless of the matching treatment application) to the day after the Act receives the Royal assent.	4 submitters	213

Other remedials

Portfolio investment entity eligibility requirements

Rec #	Recommendation description	Submitter	Page #
62	Remove interest derived from a foreign PIE equivalent from the definition of "excluded interest".	KPMG	227
63	Exclude a foreign PIE equivalent from the land tainting rules.	PwC	229

Share-lending arrangements

Rec #	Recommendation description	Submitter	Page #
64	Make allocating income from a share-lending arrangement to the year the replacement shares are acquired optional.	2 submitters	231

Debt funding special purpose vehicle eligibility

Rec #	Recommendation description	Submitter	Page #
65	Amend the eligibility criteria for the debt funding special purpose vehicle regime to allow flow-through treatment when the securitisation entity: ▪ has received assets from a third party that is not a trust, or ▪ has "self-originated" assets, subject to the assets being "on balance sheet" for the beneficiary/shareholder (or a member of the beneficiary/shareholder's wholly-owned group).	4 submitters	233
66	Amend associated persons rules so they do not result in overreach for securitisation arrangements.	4 submitters	234
67	Amend paragraph (e) of the definition of "securitisation trust" in section YA 1 of the ITA to refer to a trustee rather than a trust.	2 submitters	235
68	Amend the definition of "securitisation trust" in section YA 1 of the ITA so paragraphs (b) to (d) only apply for the purposes of section HC 38 of the ITA.	Australian Securitisation Forum	235

Revised introductory wording for livestock valuation

Rec #	Recommendation description	Submitter	Page #
69	Widen the amendment to ensure the livestock valuation provisions also apply to bailors.	CA ANZ	239

Challenging civil penalties unrelated to tax

Rec #	Recommendation description	Submitter	Page #
70	Insert a new subsection that sets out the process for challenging civil penalties unrelated to tax.	2 submitters	240

Rec #	Recommendation description	Submitter	Page #
71	Amend existing section 138L(2)(a)(i) of the TAA to ensure discretionary penalties assessed by the Commissioner that relate, even in part, to the late provision of information can be challenged.	Officials	241

Clarifying date company becomes nominated as agent for imputation group

Rec #	Recommendation description	Submitter	Page #
72	Remove proposed amendment clarifying the phrasing of the date a company becomes the nominated agent for an imputation group.	Officials	245

Additional criterion for Commissioner to make assessment

Rec #	Recommendation description	Submitter	Page #
73	Amend provision to include reference to sections 22F and 22G of the TAA.	EY	250

Employer-funded flu vaccinations

Rec #	Recommendation description	Submitter	Page #
74	Extend the exemption to include reimbursements for all benefits that would qualify for the FBT health and safety exemption if they were non-cash.	3 submitters	253

Miscellaneous submissions

Securitisation entities and Pillar Two

Rec #	Recommendation description	Submitter	Page #
75	Exclude securitisation entities from liability to top-up taxes.	4 submitters	262

Forestry issues

Rec #	Recommendation description	Submitter	Page #
76	Amend section DP 1 of the ITA to ensure that releasing costs are immediately deductible.	Jim Gordon Ltd	266
77	Extend section CB 36 of the ITA to ensure that emissions units surrendered to meet a forestry deregistration obligation are deemed to be disposed of for nil value.	Jim Gordon Ltd	266

Matters raised by officials

Research and Development Tax Incentive

Rec #	Recommendation description	Submitter	Page #
78	Further amend the RDTI filing requirements for the incorrect entity error.	Officials	271

FamilyBoost Remedials

Rec #	Recommendation description	Submitter	Page #
79	Allow late filers who have subsequently provided the return to access FamilyBoost.	Officials	272
80	Amend legislation to ensure that the intended income calculation applies to individuals who derive income from schedular payments.	Officials	272

Rec #	Recommendation description	Submitter	Page #
81	Clarify the annual tax return used to determine a person's tax credit income.	Officials	273
82	Clarify the "greater of" test for people who derive both reportable income and non-reportable income.	Officials	273
83	Ensure debit interest applies to FamilyBoost tax credit overpayments when they are not repaid by the due date.	Officials	273
84	Ensure credit interest does not apply to the FamilyBoost tax credit payment.	Officials	274
85	Amend legislation to ensure late payment penalties do not apply to the FamilyBoost tax credit payment.	Officials	274
86	Remove the requirement to publish underpayment and overpayment thresholds for reassessment to improve the integrity of FamilyBoost payments.	Officials	275

Deemed source of income rule

Rec #	Recommendation description	Submitter	Page #
87	Amend section YD 4(17D) of the ITA to ensure it does not deem fees for technical services that are subject to Article 12 of the New Zealand–India DTA to have a source in New Zealand.	Officials	276

Clarifying imputation effect on security arrangements

Rec #	Recommendation description	Submitter	Page #
88	Amend the imputation provisions to ensure a security arrangement does not trigger an imputation debit.	Officials	277

Independent earner tax credits

Rec #	Recommendation description	Submitter	Page #
89	Clarify that only those receiving WFF tax credit payments are excluded from eligibility for the IETC.	Officials	278

Employee share schemes

Rec #	Recommendation description	Submitter	Page #
90	Amend the Accident Compensation Act 2001 to remove the reference to the employer electing to withhold tax from an ESS benefit, so all ESS benefits would be excluded from income for ACC purposes.	Officials	279

Forest land emissions units

Rec #	Recommendation description	Submitter	Page #
91	Clarify that forest land emissions units transferred under the Climate Change Response Act 2002 have an acquisition value of zero for the period beginning with their transfer and ending before the end of the income year in which they are received, backdated to 1 July 2010.	Officials	280

Maintenance items

Rec #	Recommendation description	Submitter	Page #
92	Update name of Ministry in section CW 52B of the ITA.	Officials	281
93	Correct terminology in section HC 8B of the ITA.	Officials	281
94	Correct subsection heading in section HC 14(2B) of the ITA.	Officials	281
95	Correct cross-reference in section YB 14(4) of the ITA.	Officials	281
96	Correct cross-references in section 22C(3)(d) of the TAA.	Officials	281
97	Correct fault of expression in section 185S of the TAA.	Officials	281

Rec #	Recommendation description	Submitter	Page #
98	Reinstate into section 8(4G) of the GST Act the rule from former section 24(5D) that was inadvertently repealed.	Officials	281
99	Correct faults of expression in section 19K(9)(b) of the GST Act.	Officials	281
100	Update cross-reference in section 55(1AK) of the GST Act.	Officials	281