Inland Revenue
Te Tari Taake

DEPARTMENTAL REPORT

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Issued: 20 January 2026

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

- Tax treatment of New Zealand visitors
- FIF – revenue account method
- GST and unincorporated joint ventures
- Employee share schemes
- Income from residential supply of electricity
- Information disclosure by way of Ministerial agreement
- Other policy items
- Remedials
- Miscellaneous 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.

Prepared by Policy, Inland Revenue

FIRST PUBLISHED

January 2026 by Policy, Inland Revenue, PO Box 2198, Wellington 6140.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill – departmental report

The document is available at https://www.taxpolicy.ird.govt.nz/publications/2025/departmental-report-compliance-simplification-tax-bill

Inland Revenue can provide an alternate version of this material if requested. Please cite this document's title, website address, or PDF file name when you email a request to policy.webmaster@ird.govt.nz

Table of Contents

General support for proposals

Officials note the general support received for the following proposals in the Bill.

Table 1: General submissions supporting proposals in the Bill

Proposal supported	Clause	Submitter
Confirm that the amount of capital gains that a company can distribute tax-free on liquidation is a net amount (capital gains less capital losses) and that an amalgamated company inherits capital losses as well as capital gains.	7	CA ANZ, CTG, Deloitte
Remove redundant provisions that set out specific trustee capacity rules in the income tax exemptions for public authorities, public purpose Crown-controlled companies, and local authorities to improve the legislative clarity of these exemptions.	16, 17, 18	CA ANZ, Deloitte
Facilitate consolidation of defined benefit schemes under a master trust by allowing the master trust to qualify to be exempt from the life-insurer tax regime.	67	CA ANZ, CTG, Deloitte, Financial Services Council of New Zealand, OliverShaw
Repeal requirement for annual approval to be exempt from the life-insurer tax regime, which will reduce compliance and administration costs.	67	CA ANZ, CTG, Deloitte, Financial Services Council of New Zealand, OliverShaw
Repeal redundant provision that relates to foreign-sourced amounts of income derived by non-resident trustees to improve legislative clarity.	71	CA ANZ, CTG, Deloitte
Move the donation tax credit cap legislation from the Tax Administration Act 1994 (TAA) to the Income Tax Act 2007 (ITA) where the eligibility rules reside.	77, 150(1), (2)	CA ANZ, Deloitte
Amend some references to deductions in various GST provisions to clarify that they exclude subsequent non-integral deductions.	108(5), (12), 111(2), 112(1), (3), 132(1)	CA ANZ, CTG, Deloitte
Clarify that an issuing member of a supplier group is only responsible for issuing taxable supply information and supply correction information on behalf of the other	126	CA ANZ, CTG, Deloitte

Proposal supported	Clause	Submitter
members for taxable supplies that are covered by an agreement between the members.		
Amend an election to treat the sale of an asset as a non-taxable supply so that a person must have not used the asset for a principal purpose of making taxable supplies between the time of making the election and selling the asset.	132(2)	CA ANZ, CTG
Implement a clawback mechanism allowing Inland Revenue to recover a donation tax credit if the related donation is returned.	150(3), (4)	CA ANZ, Deloitte
Extend the due date for Research and Development Tax Incentive general approvals for businesses with a September balance date from 31 December to 15 January.	154	CA ANZ, CTG, Deloitte
Include foreign-sourced income of a non-resident applicant for a short-process ruling when considering whether it meets the $20 million of annual gross income test.	161	CA ANZ, CTG, Deloitte
Remove the requirement for payee uplifts to be in writing and signed, which allows for uplifts to be made in a way approved by the Commissioner of Inland Revenue.	181	CA ANZ
Provide that any reference to "partner jurisdiction" in the Crypto-Asset Reporting Framework (CARF) is to be read as not including New Zealand (even though New Zealand will be included on the list it is required to hold of reportable jurisdictions).	185	CA ANZ, CTG, Deloitte

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Tax treatment of New Zealand visitors

Overview of general submissions

Issue: Support for proposed non-resident visitor rules

Submission

(Baucher Consulting, Bell Gully, BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, Findex, John Shand (c) and (d), KPMG, Mayne Wetherell, New Zealand Law Society, PwC, Russell McVeagh, Tax Advisory Limited, New Zealand Taxpayers' Union)

The submitters generally supported the proposal.

Overall, the submitter welcomes the proposed amendments in the Bill recognising modern working practices. The proposal also provides clarity and certainty for digital nomads to spend time in New Zealand without unnecessary tax concerns. *(BusinessNZ)*

The proposed amendment provides much-needed clarity and certainty for digital nomads and other remote workers choosing to spend time in New Zealand. Importantly, the amendment strikes a fair balance between encouraging longer stays and ensuring that only those with genuine non-resident status benefit from the exemption. The change to the fixed establishment definition would provide certainty that a non-resident visitor's presence in New Zealand would not, on its own, create a fixed establishment for a foreign business. This removes unnecessary compliance risk, aligns with international practice, and helps make New Zealand a more attractive destination for remote workers and their employers. *(Chartered Accountants Australia and New Zealand)*

The submitter supports the proposed introduction of rules to defer New Zealand tax compliance obligations for non-resident visitors working remotely from New Zealand for offshore employers or businesses. The changes provide much-needed certainty in the tax treatment of these visitors. *(EY)*

The submitter supports the proposal to make GST registration optional for non-resident visitors. We agree with the optionality approach because it enables non-residents wishing to claim input tax on taxable supplies made to a non-resident client to do so. *(Deloitte)*

The submitter welcomes the proposed amendments treating a "non-resident visitor" as non-resident for tax purposes up to 275 days in any 18-month period. The 275-day threshold appropriately mirrors the typical duration of general visitor visas issued by Immigration New Zealand and reflects an intent to align tax and immigration frameworks. This alignment improves overall policy cohesion and reduces the compliance burden for non-resident employers and non-resident individuals. The submitter also notes the parallels with Australia's approach, where short-term visitors working remotely are typically not treated as tax residents. *(PwC)*

Recommendation

That the submission be noted.

Issue: No objection to proposed non-resident visitor rules

Submission

(Tax Justice Aotearoa)

The submitter did not object to the proposed rules. However, the submitter was concerned about the risk of exploitation of foreign workers (see Issue: Concerns for potential exploitation of vulnerable workers below) and whether the integrity rules included in the proposal could be enforced.

Recommendation

That the submission be noted.

Issue: Do not support proposed non-resident visitor rules

Submission

(Megan Evans)

The submitter did not support the proposal and expressed scepticism that enabling digital nomads to stay longer without tax obligations would provide any economic benefit to those most in need. In the submitters view, it would advantage property owners, especially Airbnb owners.

Recommendation

That the submission be noted.

Issue: Concerns for potential exploitation of vulnerable workers

Submission

(Abigail Kiirby-Neill, Andrea Morgan, Angela McAllister, Barbara Gilchrist, Christiaan Day, Colleen Pilcher, Elaine Marshell, Florence Micoud, J McCarthy, John Rhodes, Kathleen Ryan, Lu Tyree, Mary-Anne Poa, Sarah Hoefhamer, Tax Justice Aotearoa, Victoria Quade)

Submitters are concerned the proposed rules may lead to exploitation of temporary migrant workers and recommended further safeguards including requiring the visitor to provide documentation before, or on, arrival.

Without enforceable protections, the proposed tax treatment could be used by an overseas employer to employ people on low wages, and as tax exempt or only lightly taxed if the employer was employing the person from a low-tax jurisdiction, or illegally not deducting tax at all. In short, Aotearoa New Zealand could be used for exploitation of foreign workers. *(Tax Justice Aotearoa)*

Ensure the number of days or the nature of the employer interaction is validated and documented clearly; set up robust audit or oversight mechanisms. *(Emma Teutenberg)*

Comment

Officials acknowledge the concerns raised by submitters regarding migrant exploitation. The tax rules should never act to incentivise an employer to engage in migrant exploitation. However, it is not clear the proposed tax rules would incentivise a foreign employer to send a person to New Zealand to engage in remote work to evade employment law in their own or this country.

With the support of the independent advisor to the Select Committee, officials engaged with Tax Justice Aotearoa to understand more about the issues raised. Tax Justice Aotearoa acknowledged that migrant exploitation is a significant issue and of growing concern. The nature of this activity means evidence is likely to be scarce because there is little incentive for exploited migrants to report their situation to enforcement officials.

Officials from the Ministry of Business, Innovation and Employment (MBIE) were unable to provide any recent examples of remote worker tax rules encouraging this behaviour in other jurisdictions. MBIE officials advised it was unclear what the advantage would be to foreign employers, given the considerable costs of relocating remote workers to New Zealand and would ultimately be an unlikely outcome due to the narrow circumstances and short timeframe in which remote work is permitted under the proposed tax rules.

Placing information requirements on visitors who undertake remote work to document information about their working relationship with a foreign employer or client, or information about their tax affairs for their remote work, on the understanding that Inland Revenue may require this information at any time, would impose significant compliance obligations on each visitor. Additionally, it is not clear how these documents, and any verification process, would act as a safeguard against migrant exploitation.

If a remote worker is a victim of migrant exploitation, then they can report this anonymously to Employment New Zealand over the phone or via the https://gethelp.employment.govt.nz/ website.

Officials will monitor the impact of the proposed rules and engage with MBIE officials if any relevant issues arise.

Recommendation

That the submission be noted.

Issue: Visitors incentivised to structure into proposed rules

Submission

(Emma Teutenberg, John Shand (c))

The submitters noted the proposed rules extend current similar thresholds and introduce multiple qualification criteria (such as visa status, number of days and location of employer). In their view, individuals would be incentivised to structure their affairs to fall within these rules, increasing advisory costs and the risk of unintentional misclassification.

Further, the risk of opening loopholes may result in people who substantially benefit from New Zealand infrastructure (roads, health, public services) but avoid contributions to the tax base. Over time, this could erode the revenue base.

Comment

To ensure the rules work as intended and to mitigate the risk of unintended consequences, there are several integrity rules. These include:

- Eligibility criteria that appropriately targets the rules to the intended recipients and income earned through certain types of work.
- A requirement that the person and income subject to the proposed exemptions are liable to tax in another jurisdiction.
- A requirement that a person is required to remain lawfully in New Zealand at all times to be entitled to the tax benefits.

Failure to adhere to the criteria would mean the person, and any associated entity ceases to be entitled to the tax benefits of being a non-resident visitor. There is also the general anti-avoidance rule that could be applied if required.

Officials will monitor the implementation of the proposed rules and seek to undertake further changes if any unintended consequences are identified, subject to resourcing and prioritisation as part of the Government's Tax and Social Policy Work Programme.

Recommendation

That the submission be noted.

Issue: Further limitations on work that can be undertaken

(Emma Teutenberg)

The submitter thought that the criteria should be narrowed, or that the rules should require that the individual or employer contributes towards New Zealand public services (for example, a levy).

Comment

The criteria for a non-resident visitor have been developed with rules limiting the work a non-resident visitor can undertake, including the type of work that can be undertaken. The non-resident visitor cannot work for a New Zealand resident or offer goods and services in New Zealand for income from New Zealand persons or businesses.

The non-resident visitor remains subject to New Zealand tax under existing rules, such as interest in a New Zealand bank account (non-resident withholding tax) and GST on goods and services for private consumption.

Recommendation

That the submission be declined.

Issue: Require non-resident visitors to provide evidence of foreign tax chargeability

Submission

(John Shand (a), (d))

The submitter thought that the rules should require declarations or evidence of foreign tax residency and chargeability (as a condition of exemption). The submitter also thought that a Commissioner of Inland Revenue operational statement on evidence of foreign tax chargeability should be published.

Comment

The proposed rules would not require the non-resident visitor to hold evidence of their tax residence in another jurisdiction and whether the income earned is taxable in that jurisdiction.

Requiring the non-resident visitor to document and possess information about their tax residence and income earned while present in New Zealand would impose undue compliance costs. Like other taxpayers in New Zealand, a non-resident visitor is subject to self-assessment and is responsible for complying with their tax obligations both in New Zealand and other jurisdictions.

Officials will provide further guidance on the rules in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be declined.

Issue: Ensure equitable treatment between residents and non-residents

Submission

(John Shand (b))

In the submitter's view the proposed rules provide tax advantages to foreign visitors while denying equivalent treatment to New Zealand residents.

Comment

The rules treat individuals equitably, according to their circumstances.

- New Zealand citizens who are non-resident for tax purposes can benefit from the proposed rules when visiting New Zealand, in the same way as foreign nationals visiting New Zealand.
- New Zealand tax residents, whether citizens, permanent residents or living here under another immigration category, are also subject to the same ordinary tax rules.

Recommendation

That the submission be noted.

Issue: Primacy of double tax agreements

Submission

(John Shand (a))

The submitter sought confirmation that the proposed new rules would not override double tax agreements.

Comment

The proposed rules would be subject to the general rule that New Zealand's double tax agreements have overriding effect, meaning they prevail over domestic law when required. There are only limited exceptions to this general rule, for example to ensure that a tax avoidance arrangement is void against the Commissioner of Inland Revenue.

Recommendation

That the submission be noted.

Issue: Check ESCT and schedular payment cross-references

Submission

(John Shand (a))

Employer superannuation contribution tax and schedular payment cross-references should be checked when exempt income intersects with PAYE obligations.

Recommendation

That the submission be noted.

Issue: Lack of consultation

Submission

(J McCarthy, Nga Uri O Wharetakahia Waaka Whanau Trust)

One submitter thought more robust consultation, oversight, and clear legal safeguards are urgently needed to ensure this Bill does not expose already vulnerable populations to further harm. The submitter thought meaningful consultation with civil society groups and advocates should be undertaken. *(J McCarthy)*

Another submitter noted Māori consultation has not occurred, which is inconsistent with Te Tiriti o Waitangi principles. *(Nga Uri O Wharetakahia Waaka Whanau Trust)*

Comment

Officials acknowledge there was no public consultation on the proposals, including consultation with Māori, before introduction of the Bill.

However, as part of the policy development process, officials undertook limited, high-level targeted consultation with selected stakeholders and other government agencies on the problem definition and potential policy solutions. The feedback received was incorporated into final policy decisions.

Further consultation occurs during the select committee process.

Recommendation

That the submission be noted.

Issue: Impact on Māori communities

Submission

(Nga Uri O Wharetakahia Waaka Whanau Trust)

The submitter recommends avoiding polices that increase foreign visitor pressure on Māori communities and ensuring that local economic opportunities benefit Māori and future generations.

Comment

The proposed rules do not exclude particular areas of New Zealand or groups, so any economic benefits following the proposed rules would benefit the New Zealand economy, including the Māori economy.

Recommendation

That the submission be noted.

Issue: Post implementation measurement of proposed rules

Submission

(Andrea Morgan, Chartered Accountants Australia and New Zealand, Elaine Marshell, Emma Teutenberg, John Shand (d), Kathleen Ryan, Tax Justice Aotearoa)

The submitters thought there was merit in measuring and evaluating the success of the proposed new rules.

One submitter suggested further documentation could safeguard workers and thought that statistics should be published to assist in enforcement and understanding whether the purpose of the change is being achieved. *(Tax Justice Aotearoa)*

One submitter thought that immigration data could provide insights into the effectiveness and benefits of the tax changes. *(Chartered Accountants Australia and New Zealand)*

Comment

Like other tax policy changes, officials will monitor the effectiveness of the proposed rules on an ongoing basis, including regular engagement with tax stakeholders and government agencies such as Immigration New Zealand to gather feedback on the implementation of the rules and whether future changes need to be considered.

However, the scope of the proposed rules is wide. The rules would include persons entering New Zealand under various immigration pathways, which makes data collection and analysis difficult. Most visitors in scope of these rules are expected to be tourists and other short-term travellers. Although some submitters have suggested data collection from visitors before or on arrival in New Zealand, we think this would be excessive because of the character of the in-scope population as a whole (see Issue: Concerns for potential exploitation of vulnerable workers above).

Recommendation

That the submission be declined.

Issue: Further work on related issues

Submission

(Baucher Consulting, Bell Gully, BusinessNZ, EY, KPMG)

Submitters suggested further policy work on rules that affect cross-border workers and other migrants to New Zealand. They suggest this work should be prioritised, including:

- a review of the permanent place of abode rules *(Baucher Consulting)*
- issues relating to remote workers who are not non-resident visitors, including fixed and permanent establishment issues for foreign employers *(Bell Gully, BusinessNZ)*, and
- addressing employer compliance issues to reduce cost and complexity. *(EY)*

Comment

The issues raised by submitters are not currently on the Tax and Social Policy Work Programme. They may be addressed in future, subject to resources and prioritisation.

Recommendation

That the submission be noted.

Issue: Promote proposed rules as model for OECD

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters thought that New Zealand's approach should be promoted as a model for other OECD member states to follow.

Comment

The OECD's Working Party No. 1 on Tax Conventions and Related Questions has recently released additional guidance on the tax implications of remote working from home offices. That guidance is intended to assist businesses and tax administrations when considering whether a permanent establishment has arisen due to a remote worker's activities.

Further work on global mobility issues may form part of a future OECD work programme. Officials representing New Zealand are engaged in this work, which includes opportunities to provide country perspectives.

Recommendation

That the submission be noted.

Issue: Request for general guidance

Submission

(Emma Teutenberg, John Shand (c), (d))

The submitters sought detailed published guidance including examples to explain how the rules would work.

Comment

The Bill commentary contains examples that include discussions of elements of the proposed new rules, such as when remote work relies on a New Zealand presence, the treatment of multiple visits, prohibited activities, and the effect of obtaining a New Zealand job on the individual.

Officials will provide further guidance and examples in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Guidance will also be communicated on Inland Revenue's website, with other government agency websites (such as Immigration New Zealand) directing interested persons to the Inland Revenue website.

Recommendation

That the submission be noted.

Application date

Clause 2(23)

Issue: Alignment with immigration changes

Submission

(Chartered Accountants Australia and New Zealand, EY)

The submitters thought that the application date should be aligned with the changes to immigration settings (that is, the tax changes should be backdated to 27 January 2025).

One submitter thought that this would provide consistency and clarity and ensure that the tax and immigration frameworks operate in tandem. *(Chartered Accountants Australia and New Zealand)*

The other submitter was concerned there could be visitors who are, or were, in New Zealand earlier than 1 April 2026 who ought to be able to apply these rules and there was little reason to exclude them. *(EY)*

Comment

Although we can see the merits of supporting visitors already in New Zealand to benefit from the proposed rules, on balance, we continue to recommend that the proposed tax rules apply from 1 April 2026. Legislative changes of this nature normally apply on a prospective basis, providing certainty of treatment to taxpayers.

Backdating the rules would require Inland Revenue to deem people to have been a non-resident visitor to New Zealand, whether they intended to be one or not. This may "waste" up to six months of their allowable nine months in any 18-month period.

A further consequence is that individuals and other entities would then have to unwind tax positions previously taken, with the associated compliance costs. This could be when a person is retrospectively deemed to be a non-resident visitor when they had already become subject to another New Zealand tax regime, such as transitional residence. Rectifying this situation could be complex.

Recommendation

That the submission be declined.

Issue: Clarify visits before 1 April 2026 would not disqualify visitor from proposed rules

Submission

(KPMG)

The submitter was concerned that the Bill commentary could be read as suggesting that any prior visit to New Zealand could disqualify an individual from using the proposed new rules. The submitter recommended this be clarified.

Comment

The policy intent is to apply the proposed rules to persons who arrive in New Zealand on or after 1 April 2026. Any visitors in New Zealand before 1 April 2026, including those whose stay extends past 1 April 2026 would be ineligible. However, any visit by a person who arrived in New Zealand before 1 April 2026 would not be taken into account when determining whether the person has satisfied the proposed criteria. We agree the wording in the Bill commentary is unclear and will be revised in the Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be noted.

Issue: Drafting clarification of application date

Submission

(Matter raised by officials)

Officials recommend the application date is amended to reflect the policy intent that the proposed non-resident visitor rules would take effect from 1 April 2026 and would apply to persons who arrive in New Zealand on or after that date.

Recommendation

That the submission be accepted. (Rec 1)

Issue: Care and management for existing visitors

Submission

(EY)

The submitter preferred backdating the proposed rules to align with immigration settings. However, if that approach was not taken the submitter suggested that Inland Revenue should clarify whether it intends to apply its resources to enforce the existing requirements.

Comment

The Commissioner of Inland Revenue may occasionally exercise his care and management discretion by making decisions on the allocation of his resources. These decisions will be made on a case-by-case basis.

Recommendation

That the submission be noted.

Tax residence of visitors to New Zealand

Clauses 15, 95(15), 97, and 98

Issue: Tax resident in another jurisdiction requirement too narrow

Submission

(Findex, Russell McVeagh)

Submitters consider the requirement to be tax resident in another jurisdiction is too narrow to support the policy intent. They would prefer the requirement to be removed. They suggest that it is possible for people to have no tax residence jurisdiction and New Zealand does not have a general policy of avoiding double non-taxation when providing domestic tax relief.

In one submitter's view, the residence requirement means the proposed tax changes would not benefit true digital nomads. The other submitter suggests that an alternative approach would allow the residence requirement to be automatically satisfied when the individual is tax resident in a country with which New Zealand has a double tax agreement. This submitter also suggested other scenarios that would broaden the requirement while not creating double non-taxation (see Issue: Expand taxing income in residence jurisdiction requirement to other situations below).

Comment

The policy intent of the proposed changes is to encourage remote workers to stay longer in New Zealand. It is unlikely that requiring tax residence in another jurisdiction would unduly discourage visitors to New Zealand. Recent international visitor survey results show the median length of stay is 10 days for all visitors.[1]

The proposed requirement that a non-resident visitor must be tax resident in another jurisdiction is an important integrity rule to ensure the income earned while present in New Zealand is subject to tax in another jurisdiction. That is, the person does not use the proposed rules to become non-resident, globally. Without the integrity rule, the proposed rules would become an overly broad regime and potentially open to abuse.

A person who does not qualify to be a non-resident visitor may still benefit from the existing 92-day short-term visit income tax exemption, or an applicable double tax agreement.

Recommendation

That the submission be declined.

[1] International Visitor Survey – Year end December 2024

Issue: Expand taxing income in residence jurisdiction requirement to other situations

Submission

(Russell McVeagh)

The submitter thought that if the residence and taxation integrity requirements for the non-resident visitor rules are retained, then the proposed rule should be amended to consider situations in which a jurisdiction other than the residence jurisdiction taxes the income in question, that is, situations in which there is no double non-taxation.

The submitter provided three examples when the income derived may be subject to income tax regardless of the individual's tax residence: double source-based taxation, residence-based taxation (hybrid example), and citizen-based taxation. In each of these examples, there is no double non-taxation.

Comment

The purpose of the integrity rule is to ensure the income earned while present in New Zealand (that is subject to the proposed income tax exemption) is subject to income tax in the person's country of residence or other jurisdiction, that is, double non-taxation is not an intended outcome of this policy. The international tax framework seeks to avoid both double taxation and double non-taxation of income as far as practically possible.

Most non-resident visitors are expected to be short-term visitors such as tourists and New Zealanders visiting family and friends. Officials think that the proposed rules are appropriate settings for these persons.

Point of difference

Officials recommend amending the rule to include persons who are tax resident by way of their citizenship in a country that levies income taxes on all citizens of the country wherever they are located (for example, citizens of the United States). The proposed change would make the proposed benefits available to a broader group of visitors while still addressing integrity concerns.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 2)

Issue: Backdating non-residence by foreign jurisdiction

Submission

(Deloitte)

The submitter raised concerns that if there is backdating of non-residence by the foreign jurisdiction,[2] the person loses their non-resident visitor status from the effective date. This approach may create significant compliance costs.

The submitter recommends that, to give effect to the policy intent, any backdating of non-residency in the home country should be ignored. The submitter acknowledges this could give rise to double non-taxation of income but notes that such scenarios are rare.

Comment

It is acknowledged that the retrospective cessation of a person's non-resident visitor status due to a change in their tax residence status in another jurisdiction does not align with the policy intent of the proposed rules, that is, for people to have confidence to visit New Zealand for longer periods and for that person to be subject to the existing tax residence rules on a prospective basis.

Officials recommend that any backdated cessation of a person's tax residence in another jurisdiction is disregarded when assessing if the person is tax resident in another jurisdiction. This change is intended to support a person who has found themselves in the situation of ceasing their tax residence in another jurisdiction retrospectively.

This change would mean that in certain circumstances, income earned by a visitor may not be subject to tax in either New Zealand (because they would be deemed to be a non-resident visitor during this period) or the other jurisdiction (because they would be deemed to be non-resident retrospectively). Officials will observe the interactions of the non-resident visitor rules with other settings and will seek to make changes if unintended consequences are identified.

Recommendation

That the submission be accepted. (Rec 3)

---

[2] This could happen when the other country deems a person to be retrospectively non-resident when they meet certain criteria. New Zealand's 325-day in a 12-month period absence rule works in this way.

Issue: Eligibility should reference visa types

Submission

(Findex)

If this exemption is to cover only visitor visas, rather than referencing the Immigration Act 2009, the definition should reference the specific visa type.

Comment

The policy intent of the proposed rules is to include all persons lawfully entering New Zealand. The proposed rules seek to achieve this by reference to the Immigration Act. The reference to the Immigration Act is used elsewhere in the Revenue Acts (for example, the income tax exemption for visiting crew of a pleasure craft in section CW 21 of the Income Tax Act 2007).

Persons entering New Zealand who may be eligible to be a non-resident visitor include foreign nationals that may be entering New Zealand on a visitor visa, but also returning New Zealanders, Australians on an Australian resident visa and others that may be entering New Zealand on a different immigration visa.

Removing the reference to the Immigration Act and instead explicitly referring to visitor visa holders would unduly narrow the eligibility criteria beyond the stated policy intent by consequently excluding persons entering New Zealand that do not hold (or cannot hold in the case of New Zealanders) a visitor visa.

Recommendation

That the submission be declined.

Issue: Clarify treatment of Australian citizens

Submission

(PwC)

The legislation or accompanying commentary should clarify that Australian citizens are also eligible for the same exemptions, even though they generally do not require a visa for entry. This would ensure equitable treatment and avoid any interpretative uncertainty.

Comment

The proposed New Zealand visitor rules are intended to apply to any person who is non-resident for tax purposes entering New Zealand, which includes Australian citizens or persons departing

from Australia. The rules are not explicitly linked to requiring a person to be from a particular jurisdiction. Future guidance will explain that persons from countries such as Australia are eligible for the proposed rules.

Recommendation

That the submission be noted.

Issue: Permanent place of abode and non-resident visitors

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

Submitters support the proposed exemption from the 183-day residence rule for non-resident visitors and note that non-resident visitors will still be subject to the permanent place of abode test.

Submitters have suggested that because non-resident visitors remain subject to the permanent place of abode test, they may be concerned that they could still be treated as tax resident, for example when:

- a non-resident visitor stays with family in New Zealand, or
- a visitor leases an apartment for the duration of their stay in New Zealand as a non-resident visitor.

Submitters have asked for guidance to clarify that, in such cases, the relevant place (while it may be available to the non-resident visitor) is unlikely to be sufficiently "permanent" to constitute a permanent place of abode.

Comment

The permanent place of abode test is the primary rule for tax residence in New Zealand. The test is not defined in the Income Tax Act 2007. Instead, it has been described by case law[3] and guidance.[4]

The term permanent place of abode has been described in case law as a place where a taxpayer habitually resides from time to time even if they spend periods of time overseas. This requires an overall assessment of the person's circumstances and the nature and quality of the use the person habitually makes of a particular place of abode. The assessment turns on the facts and circumstances of each case.

[3] For example: CIR v Diamond [2015] NZCA 613 (CA)

[4] IS 2025/16 Tax residence

In our view, non-resident visitors are unlikely to have a permanent place of abode in New Zealand as a result of a temporary visit. However, in more difficult cases, taxpayers may require professional advice. When a person has a permanent place of abode in New Zealand, it is appropriate in policy terms to exclude them from the non-resident visitor rules because they are not the intended target of the proposed policy and should be subject to New Zealand's ordinary tax rules.

Officials will provide guidance and examples in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be noted.

Issue: Support for unlawful presence rule

Submission

(Findex)

Although the submitter thought that several issues arose from the position of overstayers, including whether the proposed approach was sufficient to dissuade a person from overstaying, they submitted that the exclusion for overstayers should be retained.

Comment

The purpose of the unlawful presence rule is to maintain the integrity of the tax and immigration settings by ensuring the tax benefits are not available to a person who is unlawfully in New Zealand. Such a person will be subject to ordinary tax rules instead. Further, the proposed unlawful presence rule is not intended to act as a penalty but to withdraw concessionary treatment due to the failure to meet a condition of that treatment.

Recommendation

That the submission be noted.

Issue: Discrimination under double tax agreements

Submission

(Russell McVeagh)

In the submitter's view the proposed rule requiring non-resident visitor status to cease if a person is unlawfully present in New Zealand is discriminatory. Instead, the rule should provide that non-

resident visitor treatment ceases prospectively in all cases. This would eliminate the punitive effect that currently only applies to foreign citizens.

The submitter was concerned that the retroactive denial of non-resident visitor status is likely to be discriminatory and in breach of certain New Zealand tax treaties. This is because a New Zealander who is also a non-resident visitor can never be unlawfully present in New Zealand. Based on Australian case law,[5] the submitter raised the point that visa status was not seen as a sufficient basis for the purposes of non-discrimination articles in certain of Australia's double tax agreements.

Comment

Officials acknowledge that the rules retrospectively remove non-resident visitor status from persons who overstay or are otherwise unlawfully present in New Zealand. The purpose of the rule requiring retrospective cessation of the New Zealand visitor rules is to maintain the integrity of the tax and immigration rules by ensuring the tax benefits are not available in these circumstances.

The effect of retrospectively denying non-resident visitor status conforms with New Zealand's general tax settings. Without the proposed new rule, a person will be a tax resident from the first day they have either a permanent place of abode in New Zealand or from the first of 183 days in a 12-month period. These ordinary tax rules would revive when a person was unlawfully present.

The non-discrimination requirement in double tax agreements prohibits unjustified discrimination based on nationality, among other things. Essentially, the obligation prohibits differential tax treatment when the difference arises **solely** from nationality. To make the comparison, all other relevant factors must be the same.

The proposed rules would not discriminate in that the concessionary treatment of non-resident visitors is open to non-resident New Zealanders and other nationalities alike. Any eligible individual can benefit from non-resident visitor status provided they comply with the conditions of the concession. This includes a requirement to be lawfully present under New Zealand immigration rules. A person who is unlawfully present in New Zealand is not in the same circumstances as a legally present person.

While we acknowledge the likely persuasive value of Australian case law, we think that the proposed rule can be distinguished from that case. In the Australian case, the differential treatment flowed from the visa held by the individual. Under the proposed New Zealand rules, any differential tax results from a breach of the visa, not from holding the visa itself. Further, the differential tax treatment results in the withdrawal of the tax concession and the application of ordinary New Zealand tax rules that are applicable to New Zealanders and other persons present in New Zealand (such as business travellers) alike.

[5] *Addy v Commissioner of Taxation* [2021] HCA 34

On balance, while we cannot rule out the possibility of challenge, we think that the non-discrimination article should not be construed as to require identical treatment of national and non-nationals when the outcome depends on the choices made by the non-national and results in the application of ordinary tax rules.

Recommendation

That the submission be declined.

Issue: Interaction of transitional residence rules and non-resident visitor rules

Submission

(Deloitte)

The submitter recommends the transitional residence rules be amended to clarify how they interact with the proposed non-resident visitor rules.

Comment

The policy intent of the proposed rules is that on ceasing to be a non-resident visitor (for reasons other than continuing to remain in New Zealand unlawfully), the existing tax rules would apply prospectively. This includes the transitional residence rules. The resulting outcomes may vary depending on the person's specific circumstances.

We agree clarification would assist in making the interaction between the non-resident visitor rules and transitional residence rules clearer and easier to understand.

Recommendation

That the submission be accepted. (Rec 4)

Issue: Substantially same income tax requirement for non-resident visitor tests

Submission

(Findex, KPMG, PwC, Russell McVeagh)

The submitters were concerned that the scope of the proposed requirement in the eligibility and income tests was unclear or too narrow.

One submitter sought further guidance on the requirement of the income being chargeable with substantially the same tax. *(PwC)*

One submitter was concerned that it is not clear which countries fall inside or outside the "substantially similar" test, and this lack of clarity undermines the purpose of the non-resident visitor regime. They suggest that Inland Revenue maintains a list of jurisdictions that are deemed to qualify for the "substantially similar" test, or by deeming residents of jurisdictions with which New Zealand has a tax treaty to qualify. *(Russell McVeagh)*

One submitter thought that it was not clear why this requirement was a condition of the tax exemption. Further, they thought that the requirement to determine whether the foreign income tax is "substantially the same as [New Zealand] income tax" had the potential to make the exemption unnecessarily complicated to apply. *(KPMG)*

Comment

The policy intent of the proposed rules is to address tax issues that may be discouraging short-term remote workers and other visitors from staying in New Zealand for longer, while maintaining the integrity of the underlying international tax rules. The proposed rules are not intended to provide an opportunity for a visitor to undertake remote work without subjecting that income to a tax regime anywhere.

Point of difference

However, the concerns raised by submitters have highlighted an issue whereby a visitor may not be easily able to apply their circumstances to the "substantially the same as income tax" test and whether their jurisdiction's income tax system meets the requirement. Additionally, we think that the "substantially the same" test imposes a relatively high threshold. This high threshold, combined with the lack of certainty, may ultimately act as a disincentive for a person to visit New Zealand.

Officials recommend amending the requirement so a person has satisfied the requirement when the person is liable to tax in the person's jurisdiction of residence (including when that person is a citizen of that jurisdiction, subject to officials' comments in Issue: Expand taxing income in residence jurisdiction requirement to other situations). Under this requirement, the person would only need to determine whether they are subject to tax in that jurisdiction, irrespective of the nature, form or rate of tax imposed. The proposed approach would simplify the application of the rules.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 5)

Issue: Work requiring person to be physically present in New Zealand

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, John Shand (a), PwC)

The submitters suggest further guidance should be published on what constitutes work that necessitates a physical presence in New Zealand. *Guidance should cover situations such as* attending meetings, site visits, or training sessions, and the treatment of incidental or short-term tasks. In addition, two submitters sought clarification of the application of the rules to influencer activities and promotional services.

Comment

Officials agree there may be situations when the work undertaken is of a minor or incidental nature and should not adversely affect the individual's non-resident visitor status. This could include situations when:

- the person's promotional activity may include a certain geographical feature of New Zealand in the background or involve engaging with other people present in New Zealand but that use or engagement is minimal, or
- a non-resident visitor is required to attend their employer's multinational corporate office in New Zealand to replace their IT equipment or attend a training seminar.

This approach would align with the approach taken for immigration purposes when an activity would not be considered work if the person is not receiving a gain or reward from a New Zealand business or employer. When a person undertakes promotional activity on behalf of a New Zealand business, they would require a work visa and would not be eligible for the proposed rules.

Additional guidance on the application of the proposed new rules to these types of scenarios will be provided.

Recommendation

That the submission be noted.

Issue: Define key terms or add new definitions

Submission

(Emma Teutenberg, Findex)

Submitters sought further legislative definitions to support application of the proposed rules.

Legislation should define key terms explicitly to reduce ambiguity. *(Emma Teutenberg)*

One submitter noted "New Zealand employer" does not appear to be defined but should include a non-resident with an existing presence. The submitter also thought that a new definition of "remote work", which mirrors the Immigration New Zealand definition, should be included and, in association with this, the definition of "non-resident visitor" should be amended to limit work to "remote work". *(Findex)*

Comment

The proposed rules leverage existing concepts. Generally, the terms bear their ordinary meaning and interpretation would be supported by existing legislation, case law and guidance. For example, both "New Zealand" and "employer" are defined in section YA 1 of the Income Tax Act 2007.

With regards to the concept of "remote work", the proposed tax rules focus on excluding certain types of work rather than explicitly defining remote work or including various types of remote work. This approach also provides some coherence between the immigration requirements and the proposed tax rules for remote workers.

Given the rapid evolution of remote work globally, it is unlikely a straightforward, definitive and enduring definition of remote working can be incorporated into the proposed tax rules.

If officials become aware of substantial difficulty in applying the new rules, we will consider further legislation.

Recommendation

That the submission be declined.

Issue: Ensure family scheme eligibility requirements align with existing family scheme rules

Submission

(John Shand (a))

Ensure family scheme eligibility tests align with the definitions in subpart MA of the Income Tax Act 2007.

Recommendation

That the submission be noted.

Issue: Amend student loan eligibility criteria

Submission

(Matter raised by officials)

When a person is a non-resident for tax purposes but is a "New Zealand-based" borrower for student loan purposes, the borrower is required to declare income from all sources including income and adjustments that apply to them as if they were a New Zealand resident (known as adjusted net income). This non-resident overseas income is included when calculating the borrower's student loan repayment obligation for a relevant tax year.

Income that is subject to the proposed income tax exemptions may be viewed as being both non-resident foreign-sourced income (included in adjusted net income), and exempt income (ignored for adjusted net income). Given the nature of the income being earned (salary and wages or self-employment income) and that the income would ordinarily be included as non-resident overseas income, the non-resident visitor's income should be included when calculating a borrower's adjusted net income.

Officials recommend amending the list of adjustments to net income in the Student Loan Scheme Act 2011 to clarify that income subject to the proposed income tax exemptions is not treated as exempt income for student loan purposes.

Recommendation

That the submission be accepted. (Rec 6)

Offshore entities

Clause 99

Issue: Disregard non-resident visitor activities for head office corporate residence test

Submission

(PwC)

The activities of a non-resident visitor should be disregarded for the purposes of the head office test and an amendment should be made to the draft legislation.

Comment

The policy intent of the proposed exemptions to the centre of management and director control corporate residence tests is to ensure the activities and decisions of a non-resident visitor present in New Zealand are disregarded when determining whether a company is tax resident in New Zealand. Consequently, New Zealand residence-based tax obligations and compliance costs are not imposed on the company as a result of the non-resident visitor's short-term visit to New Zealand.

The head office corporate residence test is based on the physical location where the company's administration and management of the business is directed and carried on. While a non-resident visitor may remain in New Zealand for up to nine months, officials consider that only in rare situations would their presence satisfy the head office test.

Discussions with the independent advisor to the select committee highlighted the merit in excluding the activities of a non-resident visitor from the head office corporate residence test. This exclusion would provide greater certainty, especially for small business owners who are undertaking a short visit to New Zealand.

Officials recommend including an exemption to the head office test with a similar approach to the existing centre of management and director control tests.

Recommendation

That the submission be accepted. (Rec 7)

Issue: Substantially same income tax requirement for corporate residence tests

Submission

(KPMG)

The submitter noted the proposed disregard of the non-resident visitor's activities for the purpose of New Zealand's corporate residence tests requires the entities to be resident in a country that imposes a tax that is substantially the same as New Zealand income tax. The submitter questioned the need for this restriction noting that it had not been imposed for the purposes of determining whether a fixed or permanent establishment existed in New Zealand.

Comment

We note the submitter raises a similar point to that discussed in Issue: Substantially same income tax requirement for non-resident visitor test above.

The purpose of the disregard for corporate residence is to mitigate the risk of dual resident entities arising from an individual's decision to stay longer in New Zealand. We expect that a visitor's associated entities will retain residence in another jurisdiction under their corporate or other entity rules. As such, we recommend the requirement that the jurisdiction of residence imposes a tax that is substantially the same as New Zealand's income tax is omitted from the Bill to simplify the rules.

Recommendation

That the submission be accepted. (Rec 8)

Issue: Impact of retrospectivity on non-resident employer

Submission

(KPMG)

The Bill proposes that a person who breaches their visa conditions (for example, by overstaying) would be deemed never to have had non-resident visitor status. However, this should not adversely affect a foreign employer who has reasonably relied on this status for an employee. For the foreign employer, the loss of any tax concessions should be prospective only from the breach.

Comment

The purpose of the unlawful presence rule is to maintain the integrity of the tax and immigration system by ensuring the tax benefits are not available to a person who is unlawfully in New Zealand.

Officials acknowledge the impact this retrospective treatment may have for a non-resident visitor's offshore employer who had reasonably relied on the person (such as an employee remote working in New Zealand) being a non-resident visitor throughout their time in New Zealand.

Officials note that while the impact on foreign employers is likely to be the most common example, there could be impacts for other associated entities of the non-resident visitors. We suggest that, for an associated entity of a non-resident visitor, the impact of the cessation of a person's non-resident visitor status should be prospective, from the date the person's non-resident visitor status has ceased. This approach better aligns with the policy intent underlying the proposed non-resident visitor rules. The approach for the individual would remain retrospective (see Issue: Support for unlawful presence rule and Issue: Discrimination under double tax agreements above).

Recommendation

That the submission be accepted. (Rec 9)

Clause 101

Issue: Change to source rules

Submission

(Chartered Accountants Australia and New Zealand, New Zealand Law Society, Russell McVeagh)

The submitters raised technical points regarding changes needed to give better effect to the proposed new rules.

Income attributable to permanent establishment has New Zealand source

It is clear the intention is to ensure activities of a non-resident visitor are disregarded in determining whether an enterprise has a permanent establishment in New Zealand. However, further changes are required to ensure the activities of the non-resident visitor are disregarded for the purposes of determining whether the enterprise has any New Zealand-sourced income.
(Chartered Accountants Australia and New Zealand, New Zealand Law Society)

Income taxable under double tax agreement has New Zealand source

If a non-resident visitor's actions give rise to a permanent establishment under a tax treaty definition, New Zealand has the right under domestic law to treat the income as having a New Zealand source.

As such, a further amendment to the source rules is required to exclude the activities of a non-resident visitor when applying the domestic rule that provides for a New Zealand source if the income may be taxed under a double tax agreement. *(Russell McVeagh)*

Comment

Officials agree further technical changes are required to ensure that the source rules appropriately interact with the policy intent. These amendments would ensure that permanent establishment risks within the context of the non-resident visitor rules are mitigated.

Recommendation

That the submission be accepted. (Rec 10)

Issue: Update required to Companies Act 1993

Submission

(EY)

Section 332(b) of the Companies Act 1993 should be amended to include a reference to the non-resident visitor rules to ensure overseas companies are excluded from "carrying on a business" if they only have an employee in New Zealand under these rules.

Comment

The Companies Act requires an overseas company that is carrying on a business in New Zealand to be registered with the Registrar of Companies. A short-term visitor working solely for their non-resident employer or client, when that work is not for a New Zealand business or engaged in sales to persons in New Zealand, is unlikely to result in a non-resident company being considered as carrying on a business in New Zealand.

Officials do not agree that the Companies Act requires amending to give effect to the proposed tax changes.

Recommendation

That the submission be declined.

GST changes for non-resident visitors

Clauses 108(7) and 124(1)

Issue: Non-resident visitors deemed non-resident for GST purposes

Submission

(Bell Gully)

The submitter is concerned that the proposed definition of a non-resident visitor for income tax purposes assumes that such a person would also be non-resident for GST purposes. They recommend clarifying that a "non-resident visitor" is deemed to be non-resident for GST purposes.

Comment

The purpose of incorporating the definition of a non-resident visitor in the Goods and Services Tax Act 1985 (GST Act) is to limit the benefits of the proposed GST change to those persons who qualify as a non-resident visitor, as defined in the Income Tax Act 2007. The inclusion of the non-resident visitor into the GST Act was not intended to amend the definition of resident for GST purposes.

Unlike the proposed changes to the income tax residence requirements, whether the person is required to comply with New Zealand's GST regime is dependent on whether the person is registered for GST (rather than whether the person is resident for GST purposes).

The proposed rule allowing a non-resident visitor to disregard certain zero-rated services when determining whether the GST registration threshold has been satisfied means the person would not be required to register for New Zealand GST, and therefore would not be required to file GST returns and incur other associated compliance costs.

Officials do not recommend deeming the non-resident visitor to be non-resident for GST purposes to give effect to the policy intent of the proposed changes because this is not required to achieve the policy intent of the GST changes.

Recommendation

That the submission be declined.

Issue: Extend GST treatment to any resident

Submission

(Bell Gully)

The proposed dispensation from registration could be expanded to any resident. In the submitter's view this would provide for ease of administration with no obvious revenue loss as a result.

Comment

There is merit in the submitter's suggestion to expand the approach to any person resident for GST purposes. Several other countries follow a similar approach and there are benefits such as reduced compliance and administration costs.

However, officials intend to consult on this issue in a GST issues paper expected to be released later this year, subject to prioritisation as part of the Government's Tax and Social Policy Work Programme. Further consultation will provide more exposure to the potential changes.

Recommendation

That the submission be declined.

Issue: Extend optional GST registration rule

Submission

(KPMG)

The submitter recommends extending the optional registration rule to apply when:

- supplies are made to a non-resident and zero-rating can be applied to the goods or services
- the non-resident visitor's input tax is likely to be minimal, such as less than $500, and
- the non-resident visitor elects not to file GST returns on an ongoing basis.

Comment

The proposed rule means that a person who meets the requirements to be a non-resident visitor would not need to register for GST if they only make supplies of services that are unrelated to land or moveable personal property in New Zealand, and when those services are supplied to a non-resident who is outside New Zealand at the time the services are performed.

Officials clarified the issue with the submitter, and understand the suggested change is more concerned with when a non-resident who is offshore is required to register for GST when exporting goods from New Zealand. This change would be broader than the proposed GST changes in the Bill, which are targeted at visitors temporarily in New Zealand and who provide services to their non-resident client(s).

Officials are currently exploring opportunities to reduce compliance costs in a broader range of circumstances when a person makes supplies to a non-resident. These policy options require full public consultation and are subject to prioritisation as part of the Government's Tax and Social Policy Work Programme.

Recommendation

That the submission be declined.

Issue: Extend GST treatment to all zero-rated services

Submission

(Bell Gully)

The submitter has proposed the rules could be extended to all zero-rated services rather than only supplies of services that are unrelated to land or moveable personal property in New Zealand, and supplied to a non-resident person who is outside New Zealand at the time the services are performed (as described in section 11A(1)(k) of the Goods and Services Tax Act 1985).

Comment

The submitter considers a non-resident visitor who makes supplies of any zero-rated services should be able to benefit from the proposal to allow them not to register for GST if all their zero-rated supplies exceed, or are expected to exceed, the $60,000 registration threshold. However, doing so would encompass services that, if then undertaken by a non-resident visitor, would immediately result in the person ceasing to satisfy the non-resident visitor criteria.

Therefore, officials consider it appropriate that the services subject to the proposed rule be limited to services supplied to the non-resident visitor's non-resident clients and that do not relate to land or moveable personal property in New Zealand, which would be subject to GST at 15%.

Recommendation

That the submission be declined.

Issue: Non-resident visitors can register for GST under proposed rules

Submission

(PwC)

The submitter is concerned that it is not clear that non-resident visitors who carry on a taxable activity and only make supplies of services that are zero-rated under section 11A(1)(k) of the Goods and Services Tax Act 1985 can voluntarily register for GST. Non-residents are unlikely to be familiar with New Zealand tax law and may misinterpret this rule.

The submitter recommends that further clarity is required to ensure that while supplies of services to which section 11A(1)(k) applies are excluded when determining whether a non-resident visitor is required to register for GST, a non-resident visitor carrying on a taxable activity in New Zealand would nonetheless remain eligible to voluntarily register for GST.

Comment

The Bill does not propose changes to whether a person can register for GST. A person can register for GST if they have a taxable activity. It is assumed that non-resident visitors would have a taxable activity in many circumstances and therefore would be able to register for GST. This is set out in the commentary to the Bill.

Under the proposed rules, the value of certain supplies made to a non-resident can be disregarded when determining whether the GST registration threshold has been satisfied. This means that GST registration is still available for non-resident visitors that choose to register, provided they meet the usual requirements for registration, allowing them to claim back input tax deductions on any goods and services acquired in New Zealand for the purpose of providing their services to their non-resident clients.

Officials note the approach taken in this Bill is the same approach that was taken for a unit title body corporate, which can choose to register for GST (or not) regardless of whether it exceeds the $60,000 registration threshold (or not).

Officials will provide guidance and examples in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be declined.

Issue: Confirm how GST thresholds are calculated

Submission

(John Shand (c))

Confirmation of how GST thresholds are calculated when zero-rated supplies to foreign clients are ignored, and interactions with other New Zealand-sourced income is required.

Comment

The proposed rules would allow the value of certain supplies made to a non-resident to be disregarded when determining whether the GST registration threshold has been satisfied. GST registration is still available for non-resident visitors that choose to register.

If a non-resident visitor makes other supplies while in New Zealand, these would be counted towards the GST registration threshold. Ordinary principles would apply for the purpose of determining whether the registration threshold has been, or will be, exceeded. Officials note, given the proposed definition of "non-resident visitor" and, in particular, the requirement that they cannot undertake work for a New Zealand business or sell goods and services to New Zealanders, it would be unlikely that a non-resident visitor would have other sources of income in New Zealand.

Recommendation

That the submission be noted.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

FIF – revenue account method

FIF rules: Introduction of revenue account method

Clauses 6, 12(2), 13, 24, 36, 37(2), 38, 46, 49, 50(1)(b), (2), and (3), 51, 52, 56 to 63, 64(2), (4), and (5), 65, 66, 71, 76, 78, 79, 92, and 95(4), (9), (10), (19), (20), (21), (22), and (23)

Issue: Support for proposal

Submission

(American Chamber of Commerce in New Zealand Inc, Baucher Consulting, Bell Gully, BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, Financial Services Council of New Zealand Incorporated, Greenhawk Chartered Accountants, John Shand (a), (c), (d), KPMG, Melissa Cameron, New Zealand Institute of Economic Research, New Zealand Law Society, OliverShaw, Patterson Legal, PwC, Samuel Blackman, Tax Advisory Limited, Will Lau)

There was strong general support for the proposed introduction of the revenue account method (RAM).

The reforms would substantively address the risk of foreign investment fund (FIF) interests held by United States citizens being double taxed. *(American Chamber of Commerce in New Zealand Inc)*

However, further reforms to the current FIF regime are needed to achieve the Government's policy objective of minimising tax barriers against the attraction and retention of talent and investment. Furthermore, the reforms may be too complex for the policy's success.

Comment

The proposed reform aims to address a significant barrier within the tax system that is commonly cited to be discouraging foreign talent from moving to, and staying in, New Zealand. Officials understand there are other issues within the FIF regime that could also be addressed to help achieve the policy objectives. However, those issues are being considered separately and are out of the scope of this reform.

Recommendation

That the submission be noted.

Issue: Form of election

Submission

(Chartered Accountants Australia and New Zealand, John Shand (c))

The election process to apply the revenue account method (RAM) on eligible foreign investment fund (FIF) interests should be explicitly clear (for example, a tick box on the tax return) so taxpayers are making a deliberate decision to elect into, or out of, the RAM. Legislation should be clear that a taxpayer returning nil FIF income in the first year they have to file FIF returns is not treated as them making an election.

Comment

Officials agree the election into or out of the RAM should be clear to prevent uncertainty regarding which method has been adopted.

Officials are working through how the election should be administered in practice, having regard to existing forms and rules. Officials do not consider a legislative solution would be required if the desired outcome could be achieved under existing processes and requirements.

Recommendation

That the submission be noted.

Issue: Late election

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The Commissioner of Inland Revenue should have an explicit discretion to approve late elections. This is essential for fairness and practical compliance because many taxpayers, particularly new migrants or returning residents, may not fully understand the complexity of the foreign investment fund (FIF) rules or realise that an election is required at the time they first meet the tests. Without this flexibility, taxpayers could face unintended consequences, such as being locked out of the revenue account method (RAM) permanently despite meeting the eligibility criteria. Allowing late elections under a Commissioner of Inland Revenue discretion ensures that genuine cases of oversight or lack of awareness do not result in disproportionate tax outcomes.

Allowing access to all FIF methods when a return is filed late or a voluntary disclosure is made is also consistent with QB 23/10. *(Deloitte)*

Comment

Allowing late elections would be in line with current practice. Officials do not consider an explicit discretion to approve late elections is necessary given existing legislation has already been clarified to allow late elections in QB 23/10.

Recommendation

That the submission be noted.

Issue: Rollover relief for corporation reorganisation

Submission

(FOSKA GmbH, OliverShaw)

The legislation is either unclear on, or the current proposal does not provide, rollover relief for situations when a corporate reorganisation results in a disposal of a foreign investment fund (FIF) interest, but there is no liquidity event or change to the shareholder's overall interest. For example, in a share-for-share exchange, a shareholder sells their shares in one group company (Company A) to another group company (Company B) in exchange for shares in Company B, but there is no change to their overall interest in the group.

These types of transactions are common in privately owned family groups, and most countries that tax capital gains would provide rollover relief in these situations to prevent deemed taxation. (*FOSKA GmbH*)

There is good reason for rollover relief for corporate restructure to be provided to all revenue account method (RAM) taxpayers and there should be no caveat that the person has no significant influence on the restructuring. A FIF interest is, by definition, a non-controlling interest so it is difficult to see when such a shareholder would have a significant influence on the restructure. Having such a rule only adds uncertainty and compliance costs. *(OliverShaw)*

Comment

Officials agree rollover relief should be provided in cases of corporate reorganisation when there has been no liquidity event or change to the shareholder's overall interest. This was intended to be included in the Bill at introduction, but the current drafting does not adequately provide this relief.

Point of difference

Officials note that rollover relief for corporate reorganisation should in principle only be available to extended RAM taxpayers. This is because aligning the tax treatment in New Zealand with the tax treatment in the other jurisdiction is important for eliminating double taxation and reducing uncertainty on whether foreign tax credits would arise in either jurisdiction. When concurrent taxation is not a risk, such as in the case of RAM taxpayers, the ordinary New Zealand treatment of such corporate actions should prevail.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 11)

Issue: Definition of dividend

Submission

(KPMG)

Under subpart CD of the Income Tax Act 2007, any transfer of value due to a shareholding relationship may be treated as a dividend unless specifically excluded. This may result in a mismatch if a corporate action is treated as a disposal in the other jurisdiction but as a dividend in New Zealand. For example, a share buy-back in a foreign jurisdiction (which is likely to be treated as a share disposal subject to capital gains tax in that jurisdiction) may be treated as a dividend for New Zealand tax purposes. Treating the gain on disposal as a dividend would mean the gain would not be entitled to the 30% discount.

Comment

Officials agree the tax treatment of corporate actions should be aligned because different tax rates may apply in the other jurisdiction. For example, in the United States, dividends are taxed as ordinary income at the person's marginal income tax rate while gains on disposal are taxed as a capital gain with a top rate of 20%. Similarly, the proposals acknowledge that capital income should be taxed differently to ordinary income given the proposed 30% discount applies to gains on disposal but not dividends.

Point of difference

However, when the taxpayer is not subject to concurrent taxation, as is the case with RAM taxpayers, officials do not consider alignment with other jurisdictions appropriate. RAM interests held by RAM taxpayers would only be taxed in New Zealand, so if a transaction is treated as a

dividend under New Zealand rules, it is a broader question whether this is the appropriate outcome. That is outside the scope of this proposal.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 12)

Issue: Transfer of ring-fenced losses

Submission

(Tax Advisory Limited)

Ring-fenced RAM net losses should be transferrable to the transferee when a disposal arises under a settlement of relationship property or in the case of a deceased or incapacitated person or settlement of a trust (including a United States grantor revocable trust).

Comment

Allowing losses to be transferrable goes against the well-established principle that a taxpayer is only allowed a deduction for losses that they have incurred. In principle, officials do not think transferees should be allowed the benefit of losses incurred by their spouse to offset against their own gains.

Recommendation

That the submission be declined.

Issue: Anti-arbitrage rules

Submission

(John Shand (d))

Anti-arbitrage rules against short sales and related-party transfers should be added to the current reform.

Comment

While officials agree there should be anti-abuse rules to protect the integrity of the proposal, officials consider the proposal already includes adequate safeguards. Specifically, the revenue

account method (RAM) would apply on a portfolio basis to all eligible RAM interests to prevent cherry-picking. The proposed exit tax is a base integrity measure to mitigate the risk of people leaving New Zealand to avoid tax payable under the RAM. Finally, the anti-avoidance rule in section GC 4 of the Income Tax Act 2007 (which applies when section EX 71 applies) is intended to address non-market transactions of foreign investment fund interests.

Recommendation

That the submission be noted.

Issue: Retrospective 1 April 2025 application date and safe harbour periods

Submission

(Emma Teutenberg, Ukes Baha)

Retrospective taxation offends the rule of law unless justified and with taxpayer protection. The Crown Law Office has cautioned against retrospectivity of the law. *(Ukes Baha)*

A safe harbour, grace period, or non-penalised adjustment phase should be provided for taxpayers who acted under the previous tax rules whose tax position may now be different given the new rules and their retrospective application. Further, Inland Revenue should focus on supporting guidance and compliance and refrain from aggressively penalising borderline cases in the first year or two if the proposed rules are passed. *(Emma Teutenberg)*

Comment

The retrospective application of the proposal is not expected to create uncertainty or increase the compliance burden for taxpayers. This is because the proposal, if passed, would apply before the end of the first affected income year (31 March 2026). Therefore, officials do not expect many income tax returns to be filed before the proposal would be passed. Officials also note that the proposal is elective so the proposal would not force a taxpayer to have to change their tax position if returns are to be filed before the end of the affected income year. Taxpayers can choose to continue to apply the current law to their foreign investment fund interests following enactment of the Bill.

On this basis, officials do not consider safe harbour, grace period, or non-penalised adjustment phases necessary to support the introduction of the new calculation method.

Recommendation

That the submission be declined.

Issue: RAM disclosures

Submission

(John Shand (d))

Annual disclosure should be required for foreign investment fund (FIF) interests that have the revenue account method (RAM) applied to them, including information relating to interests covered, elections, and disposals.

Comment

Disclosure of information related to FIF interests is already required unless an exemption applies. Officials will consider what information should be required to be disclosed in relation to the RAM but note that the current disclosure requirements include the name of the investment, the country of incorporation or tax residence, and the market value in New Zealand dollars at the beginning or end of the income year.

Recommendation

That the submission be noted.

Issue: Foreign tax credit in United States

Submission

(Baucher Consulting, New Zealand Institute of Economic Research, Tax Advisory Limited)

Inland Revenue should clarify with the United States (US) Internal Revenue Service, and any other overseas tax authorities, that foreign tax credits would be available overseas for taxes paid under the proposal.

The proposal may not qualify for foreign tax credits in the US because the proposed 30% discount may cause the proposal to fail the requirement of attributable significant costs and expenses allowed when computing the capital gain for US tax purposes. *(Baucher Consulting)*

Foreign investment fund tax paid for private equity investments through a foreign corporate limited partnership structure or a multi-member United States limited liability company (US LLC) is

currently unlikely to be creditable in the US, and the introduction of the revenue account method would be unlikely to resolve this issue. This is due to the timing mismatch that could arise when an entity is treated as being fiscally transparent in the other jurisdiction but as a company in New Zealand. *(Tax Advisory Limited)*

Comment

Officials agree that working with the US Internal Revenue Service to provide guidance on this issue would provide taxpayers clarity and certainty. Officials will undertake this work but note that any guidance will be dependent on US cooperation and is unlikely to be ready before the proposal is expected to pass.

Recommendation

That the submission be noted.

Issue: Ongoing risk of double taxation

Submission

(New Zealand Institute of Economic Research)

While the extended revenue account method (RAM) reduces the risk of double taxation for United States (US) taxpayers, it does little for those with obligations in other jurisdictions. New Zealanders who have worked in the United Kingdom, Australia, or elsewhere may face similar problems when local taxes on disposal are not creditable against foreign investment fund liabilities in New Zealand. Without broader international coordination, the risk of double taxation continues to deter people from basing themselves in New Zealand.

The Finance and Expenditure Committee should recognise the wider risks of double taxation beyond the US and direct officials to explore options through the generic tax policy process to extend relief to taxpayers with obligations in other jurisdictions.

Comment

Extended RAM taxpayers would be allowed to apply the RAM to all foreign investments, which alleviates double taxation by aligning the taxation of all foreign interests between New Zealand and the other jurisdiction. Throughout the various rounds of public and targeted consultation, officials have not been made aware of any double taxation issues other than those faced by US citizens or green card holders. However, the requirement for being an extended RAM taxpayer

includes being concurrently liable to tax in another country or territory, so the extended RAM taxpayer is not necessarily restricted to migrants from the US.

Officials would consider further changes to the RAM settings as appropriate if further issues not addressed by the proposed policy settings arise.

Recommendation

That the submission be noted.

Clause 6

Issue: Drafting clarification on section CD 36

Submission

(Findex)

Clause 6(1) of the Bill currently proposes that section CD 36 of the Income Tax Act 2007 be amended to add the revenue account method (RAM) to the end of a list of foreign investment fund calculation methods. This would also require a consequential amendment to section CD 36(1)(b)(iv), so there is a change from "the fair dividend rate method**; and**" to "the fair dividend rate method**:**" to reflect the fact that subparagraph (iv) would no longer be the final item on that list.

Comment

This will automatically be done by Parliamentary Counsel Office Publications when the legislation is prepared for reprint. No further action is required.

Recommendation

That the submission be noted.

Clauses 38, 60

Issue: Ring-fencing of RAM losses

Submission

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

The Bill currently limits the availability of losses from the disposal of RAM interests to offset gains from the disposal of RAM interests only. These losses should also be available to offset dividend

income derived from RAM interests because both dividends and gains are foreign investment fund (FIF) income derived from the same portfolio. Disallowing this makes no logical sense *(OliverShaw)*, creates an artificial distinction, and increases cashflow pressure that would undermine the stated policy objective. *(Chartered Accountants Australia and New Zealand)*

There is no clear rationale why losses that arise under the RAM would be ring-fenced and not be available to offset other assessable income. This is inconsistent with how losses are treated in relation to other revenue account items, such as financial arrangements, fixed-rate share FIFs, or cryptocurrency holdings. The proposal should be amended so losses arising from the disposal of RAM interests are not ring-fenced. *(PwC)*

Comment

Officials agree that losses that arise from the disposal of RAM interests should be available to offset dividends derived from RAM interests. This would be consistent with other FIF calculation methods.

Point of difference

The RAM is an alternative method for calculating FIF income; it does not propose to take eligible interests out of the FIF regime and tax them under ordinary income concepts. The treatment of RAM losses should remain consistent with other FIF calculation methods, where FIF losses may only offset income from FIFs arising under the same calculation method.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 13)

Clause 51

Issue: When taxpayer must elect to use RAM

Submission

(Tax Advisory Limited)

The revenue account method (RAM) is intended to take effect retrospectively from 1 April 2025. However, RAM applies to those taxpayers who became fully tax resident on or after 1 April 2024. Extended RAM interests are not limited to only those foreign investment fund (FIF) interests acquired before becoming New Zealand tax resident, unlike a RAM interest.

If a person first became fully resident on 1 April 2024, they would need to calculate their FIF income for the 2025 income year, which would be the year that the person first meets the test in section CQ 5 of the Income Tax Act 2007 (ITA). The 2025 tax return would be due before the RAM

legislation is enacted. Under the cost method and fair dividend rate (FDR), a quick-sale adjustment is required to be calculated for those FIF interests that are bought and sold within the 12-month period.

The RAM should be retrospective to 1 April 2024, and taxpayers should have an option to re-file for the 2025 year or apply RAM from 1 April 2025. When the taxpayer has applied another FIF method for the 2025 year and changes to RAM or extended RAM, the change in method should not trigger the deemed disposal under section EX 63 of the ITA.

Comment

The concepts of the RAM and RAM interests are not available in the 2025 income year so it is not intended that taxpayers would fail the proposed test if they had to use another FIF calculation method before RAM becomes available in the 2026 income year. However, officials will clarify this in the drafting as work on the Bill continues.

Point of difference

Officials do not recommend making the RAM retrospective to 1 April 2024. This is because most people will have already filed their tax return for the tax year ending 31 March 2025 by the time this proposal is passed. Extending the retrospectivity of the proposal would force people who want to use the RAM to reassess their 2025 income tax return. This would create an additional compliance burden for the taxpayers and their agents, and additional administration effort for Inland Revenue.

Officials do not recommend changing the trigger date for residency from 1 April 2024 to 1 April 2025 to match the proposed application date. A later trigger date would mean people who migrated to New Zealand during the height of the COVID-19 pandemic (between 1 April 2020 and 31 March 2021) would not be eligible for RAM. The Government had indicated it wants to include this group of people in the proposal.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 14)

Clause 51

Issue: RAM applied on portfolio basis

Submission

(KPMG, PwC)

Some submitters do not support the revenue account method (RAM) applying on a portfolio basis to all RAM interests.

The eligibility tests for a RAM interest would not be straightforward and easy to apply, and the incorrect application of these rules would inadvertently result in the RAM not being available. Instead, the RAM should be optional on a "per security" basis with a minimum lock-in period for changing to a different foreign investment fund (FIF) method for that security. *(KPMG)*

Taxpayers should retain the ability to apply the attributable FIF income method to RAM interests despite the RAM applying on a portfolio basis. Without this amendment, this could result in the RAM being viewed as punitive rather than facilitative. *(PwC)*

Comment

The attributable FIF income method requires taxpayers to own more than 10% of the relevant foreign company and is currently applicable to qualifying FIF interests individually and does not preclude the application of other FIF calculation methods that apply on a portfolio basis. The proposals did not intend to amend this treatment, and so officials recommend clarifying the proposed legislation to ensure the attributable FIF income method can still be used if available for individual FIF interests without restricting taxpayers from applying the RAM to other eligible FIF interests.

Point of difference

The RAM is proposed to apply on a portfolio basis to prevent taxpayers selectively applying different FIF calculation methods to different FIF interests to minimise their FIF income. The ability to selectively apply the 5% cap on the taxable return under the fair dividend rate and cost methods and the ability to incur and carry forward losses under the RAM would allow taxpayers to minimise their FIF income in a way that would reduce the integrity of the FIF regime.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 15)

Clause 51

Issue: Multiple entries and departures

Submission

(Deloitte)

The submitter supports the inclusion of the multiple entries and departures rule but considers the current design overly complex. Ways to simplify these provisions should be explored to ensure they do not become a barrier for migrants considering the revenue account method (RAM). Broadening the access requirements would address a lot of this complexity.

Comment

The proposed rules allow interests previously taxed under the RAM to continue being taxed under the RAM even if the taxpayer ceases to qualify as a RAM taxpayer due to migration and re-entry. In contrast, extended RAM taxpayers would not lose their eligibility on leaving New Zealand to ensure they would not inadvertently face double taxation risks. It would be difficult to simplify these rules while still achieving their intended policy outcome.

Broadening the access requirements is considered further below (see Issue: More people should be allowed to use RAM).

Recommendation

That the submission be declined.

Clause 51

Issue: Roll-over provisions for relationship property agreements

Submission

(Tax Advisory Limited)

Section FB 1B of the Income Tax Act 2007 defines a settlement of relationship property as a transaction under a "relationship agreement", which is defined as an agreement under the Property (Relationships) Act 1976 (PRA). This means that rollover relief would not be provided if a RAM interest is transferred in accordance with a relationship property settlement under an agreement entered overseas.

Comment

Officials note the definition of "relationship agreement" specifically refers to Part 6 of the PRA, which relates to contracting out of the PRA, and appears to contemplate agreements entered into outside New Zealand. However, further work is required to confirm whether there is an issue with the current rollover relief provisions.

In any case, this issue extends beyond the RAM and the foreign investment fund regime and is outside the scope of this project.

Recommendation

That the submission be declined.

Clause 51

Issue: Pre-migration assets should be exempt

Submission

(American Chamber of Commerce in New Zealand Inc, Melissa Cameron, New Zealand Institute of Economic Research)

Pre-migration investments should be exempt from taxation in New Zealand because taxing such investments has high deadweight loss and would undermine the expected tax outcomes for any investments already made.

This would remove a significant barrier to talent attraction while recognising that such holdings are typically illiquid, sometimes hard to value, and rarely a large source of revenue. *(New Zealand Institute of Economic Research)*

Comment

Exempting pre-migration assets altogether would not align with the broad-base low-rate principle that underpins the New Zealand tax system. Although the proposal targets new migrants, it only changes the taxation of foreign equity investments from an accrual basis to a realisation basis. The submission would introduce a permanent horizontal inequity where only a class of New Zealand tax residents (recent migrants) would be entitled to a tax exemption that would persist even if the revenue account method were subsequently expanded to all other tax residents.

Recommendation

That the submission be declined.

Clause 51

Issue: Follow-on investments in pre-migration interests

Submission

(PwC, Russell McVeagh)

The proposed scope of eligible RAM interests is too restrictive because it limits eligibility to contractual or mandatory follow-on investments. In practice, many taxpayers may acquire additional shares in the same foreign unlisted investment after arrival on a discretionary basis, without a formal obligation to do so. Excluding such discretionary acquisitions could reduce the proposed policy's effectiveness in encouraging migration and investment. A broader, principle-based approach that captures genuine extensions of pre-migration interests should be adopted, even when no contractual requirement exists. *(PwC)*

The revenue account method should be available to follow-on investments in shares of the same class and company. This would ensure that all economically identical interests are treated equally, and compliance costs are reduced. This would also ease administrative complexity for taxpayers who elect into dividend reinvestment plans after becoming New Zealand tax resident because shares acquired using reinvested dividends would not need to be subject to a different foreign investment fund (FIF) method. *(Russell McVeagh)*

Comment

RAM interests are limited to FIF interests acquired before migration to reflect the reality that migrants are unlikely to have considered New Zealand tax rules when they made those investment decisions. Following their immigration to New Zealand, it is reasonable to expect migrants to be aware of New Zealand tax laws and make their investment decisions accordingly, as is the expectation for existing residents. In light of this, there is no clear rationale for allowing otherwise ineligible FIF interests to be RAM interests (when there is no prior obligation to continue investing in the entity) merely because the taxpayer invested in the same entity before their immigration.

Recommendation

That the submission be declined.

Clause 51

Issue: RAM should apply to all foreign shares

Submission

(Baucher Consulting, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, KPMG, Melissa Cameron, New Zealand Institute of Economic Research)

The revenue account method (RAM) should be applicable to all foreign investment fund (FIF) interests.

The limited eligibility of qualifying FIF interests would further complicate an already complex FIF regime by creating further distinctions between assets. Broader eligibility would mitigate the liquidity and valuation challenges inherent in the current FIF regime. While it is acknowledged that liquidity concerns are more pronounced for unlisted shares, migrants would still be required to liquidate their investment portfolio to meet tax obligations based on deemed income on their other FIF interests. This is not an appropriate outcome or an outcome that is palatable to the target population. *(Deloitte)*

The proposals are too narrow to address the tax barrier posed by the FIF regime for migrants who are actively founding and/or funding high-growth firms, despite the objective to retain and attract talent and capital. Start-up equity often transitions through different structures as it grows, such as being listed on a recognised exchange or channelling its value through redeemable or fund-like structures, which could result in holdings in these entities falling outside the RAM. *(New Zealand Institute of Economic Research)*

As a result, the proposals are likely to have limited impact other than for new migrants who are taxed on their worldwide income on a citizenship or working-permit basis and can apply the RAM to all their foreign shares. *(EY)*

Given these taxpayers are not limited in the type of FIF interests they can apply the RAM to, there is a policy justification for the same extension to be afforded to other taxpayers. *(KPMG)*

A broader eligibility would likely result in more tax revenue for the Government over time, even after applying a discount to taxable gains, compared to the tax revenue collected under the current FIF calculation methods given global equity returns generally exceed the 5% fair dividend rate (FDR) benchmark. *(Deloitte)*

Comment

The problem definition was to address the liquidity and double taxation issues arising from the FIF rules faced by migrants and returning New Zealanders. However, the views expressed throughout

consultation were that the FIF rules still serve a base protection purpose and so the solution should apply alongside the existing rules. The proposal achieves this by only targeting the key problem area, being unlisted shares that are illiquid because taxpayers may not have any way to meet the FIF tax impost.

Officials note that a carve out has been proposed for extended RAM taxpayers to allow them to apply the RAM to all foreign investments on the basis that they are concurrently subject to taxation in another jurisdiction on the income derived from those interests. This difference in treatment compared to RAM taxpayers is justified because the intention is to reduce, if not eliminate, the double taxation risk that only extended RAM taxpayers face.

It is not clear to officials whether allowing RAM taxpayers to apply RAM to all FIF interests would increase tax revenue. While taxable gains would not be capped at 5% under the RAM, the proposal allows losses that can be offset against those gains. In addition, determining which FIF calculation method would result in more tax revenue collected is not straightforward because the FDR method calculates income annually while the RAM would only tax gains on realisation that may occur far into the future, if it happens at all.

Officials consider broadening the scope of the proposal to apply to all FIF interests unnecessary to address the target issue and note it would come with a much higher fiscal cost.

Recommendation

That the submission be declined.

Clause 51

Issue: RAM should apply to broader range of shares

Submission

(OliverShaw)

The revenue account method (RAM) is unlikely to be beneficial to eligible taxpayers compared with existing calculation methods, even with the proposed discount. Given this, the eligibility requirements for the application of the RAM should not be complex and should be expanded to other types of foreign investment fund (FIF) interests, specifically:

- listed shares acquired before migration by new migrants
- interests in index funds (that is, when the fund has a redemption facility) acquired before migration by new migrants, and
- shares in unlisted private companies acquired after migration by new migrants.

Comment

As discussed above, the proposal targets liquidity and double taxation issues. Liquid shares, such as listed shares and index funds, have been excluded from the proposal since the liquidity problem is less acute given they can be sold readily. Similarly, shares acquired after immigration have been excluded because taxpayers are expected to be aware of the FIF rules and invest accordingly following their immigration.

Officials do not recommend broadening the scope of the RAM to include pre-migration liquid shares or post-migration illiquid shares.

Recommendation

That the submission be declined.

Clause 51

Issue: RAM being limited to pre-arrival holdings only

Submission

(Melissa Cameron, New Zealand Institute of Economic Research, Will Lau)

RAM interests should not be limited to assets acquired before immigration. *(Will Lau)*

Returning New Zealanders who invest after they return, whether in follow-on rounds, co-investments alongside offshore backers, or portfolio diversification, continue to be taxed on an accrual basis. Founders and early-stage employees of successful high-growth firms often go on to fund other ventures, drawing on their capital, experience, and contacts. Limiting the RAM to pre-arrival holdings would undermine the ability of returnees to support domestic ventures at the stage when additional capital is often most needed. *(New Zealand Institute of Economic Research)*

Comment

Officials note that follow-on investments, including shares acquired through employment with a foreign company post-immigration, would be eligible for RAM if those shares are acquired because of a contractual obligation entered into before migrating to New Zealand.

Officials also note that the foreign investment fund (FIF) rules do not apply to domestic interests and therefore investing in New Zealand start-ups do not require engagement with the FIF rules. If the New Zealand business migrates overseas, the existing rules provide a 10-year FIF exemption if the criteria, such as the business maintaining a presence in New Zealand, are met.

Officials note that expanding access to the RAM is being considered as part of a further work programme. If the Government decides to proceed, the issue raised by this submission would be resolved.

Recommendation

That the submission be declined.

Clause 51

Issue: RAM interests should include shares in foreign company acquired during person's transitional residence period

Submission

(Bell Gully)

Foreign investment fund (FIF) interests acquired during transitional residence should also qualify for the revenue account method (RAM). Transitional residents generally undertake restructures, including in relation to their FIFs, during their transitional residence period. The proposal does not currently accommodate such restructures.

If this change is not accepted, then the definition of "RAM interests" should be expanded to cover FIF interests acquired before the Bill's release because RAM taxpayers may have already engaged in restructuring without knowledge of the proposed new rules. This could result in some FIF interests being excluded, which seems inappropriate.

Comment

The RAM is intended to accommodate investment decisions made before the person could be reasonably expected to consider the New Zealand tax system.

Migrants often treat the transitional residence exemption as a grace period to settle and align their financial affairs with New Zealand's tax system. On this basis, there is a case for shares acquired on a restructure of a transitional resident's investment portfolio to be eligible RAM interests. However, a blanket carve-out for all FIF interests acquired during transitional residence would capture investments made separately to any restructure for which the migrant would reasonably be expected to consider New Zealand tax rules.

Drawing a further distinction between which FIF interests acquired during transitional residence would be eligible RAM interests would add yet another complexity to the regime that may be

impractical. Officials therefore do not recommend allowing shares acquired during a person's transitional residence period to be RAM interests.

Officials note that expanding access to the RAM for all New Zealand taxpayers is being considered as part of a further work programme. If the Government decides to proceed, the issue raised by this submission would be resolved.

Recommendation

That the submission be declined.

Clause 51

Issue: Redemption facility criterion

Submission

(Chartered Accountants Australia and New Zealand)

The revenue account method (RAM) is intended to ease cashflow pressure from foreign investment fund (FIF) liability on illiquid pre-migration holdings. RAM ineligibility should therefore turn on effective, realisable liquidity of the FIF interest, not nominal or penal "on-paper" redemption facilities, especially those subject to issuer discretion. In private equity, venture capital, and many closed-ended or restricted vehicles, "redemption" is often constrained by features that make exits functionally illiquid for RAM purposes.

Shares should only be excluded from the RAM if a redemption facility provides effective access to arm's-length market value within a reasonable timeframe and volume, and without issuer discretion or pricing formulae that materially understate value.

Comment

Officials agree with the submission that a FIF interest that does not have a true redemption facility for market value available is, in substance, illiquid and should not be precluded from being a RAM interest.

Point of difference

Officials are wary of trying to legislate fine lines around when a redemption facility is or is not arm's length. Officials consider that the requirement for the redemption facility to be arm's length achieves the policy intent without introducing unnecessary complexity.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 16)

Clause 51

Issue: More people should be allowed to use RAM

Submission

(Baucher Consulting, Bell Gully, Boyd Multerer, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, FOSKA GmbH, Kathleen Torpie, KPMG, PwC, Sean Hadley, Tax Advisory Limited, Will Lau)

Allowing all taxpayers to access the revenue account method (RAM) would more effectively address the policy issues and better support the policy intent of removing barriers to investment.

Distinguishing between migrants, returnees, and existing tax residents exacerbates the complexity of the foreign investment fund (FIF) regime and erodes horizontal equity between taxpayers that could incentivise existing New Zealand residents to emigrate. *(Chartered Accountants Australia and New Zealand)*

The RAM could result in higher overall New Zealand tax revenue collected than under the current FIF income calculation methods, so it may be fiscally responsible to make the method available by election to all taxpayers. *(PwC)*

The integrity of the RAM could be supported by requiring the RAM to be applied on a portfolio basis and adding a consistency requirement that locks the taxpayer into a decision for a certain number of years (for example, four years). *(Deloitte)*

Alternatively, a narrower extension could be introduced to include only existing migrants who became a full New Zealand tax resident before the proposed 1 April 2024 date.

Comment

The proposal narrowly targets new migrants to quickly deliver a legislative solution. An extension to all New Zealand taxpayers would require consideration of broader issues that were outside the scope of the December 2024 issues paper and cannot be addressed within the timeframe for this Bill. However, this extension is being considered as part of a further work programme as recently published in the Government's Tax and Social Policy Work Programme.

Officials note one submission *(New Zealand Institute of Economic Research)* that illustrates the complexity of the extension and the need for detailed policy design. The submission argued that

allowing people who have always been New Zealand residents access to the RAM was not justified. These taxpayers have been subject to tax on foreign interests since the early 1990s and invested with knowledge of the New Zealand tax implications. This contrasts with immigrants and returning expatriates who have been absent for at least five years and who were not subject to New Zealand tax laws when making pre-migration investments. The submission also noted that replacing the accrual-based FIF regime with a realisation-based approach would introduce a significant distortion into the tax system because the FIF regime is designed to replicate, as far as possible, the domestic treatment of investments.

Recommendation

That the submission be declined.

Clause 51

Issue: People who recently left New Zealand

Submission

(John Wiley)

Recent migrants who ceased to be New Zealand tax residents before 1 April 2025 and return within five consecutive years of non-residence are excluded from the revenue account method (RAM) and extended RAM, even though their departure pre-dates the new policy. Their only recourse is to delay their return until the five-year clock has run. A grandfathering clause should be added so anyone who ceased New Zealand tax residence before 1 April 2025 is treated as meeting the five-year non-residence test on their first return on or after the commencement of this proposal. This preserves the Bill's intent while avoiding perverse incentives to delay New Zealanders' return.

Comment

This proposal intends to minimise the impact of the foreign investment fund regime as a barrier to attracting and retaining desirable migrants to New Zealand in keeping with the Government's priority to attract highly skilled, well-connected, and wealthy migrants. The proposed five-year non-resident rule mitigates the incentive for New Zealand residents to temporarily emigrate and return to access the RAM. Furthermore, those who have been away for fewer than five years are less likely to meet the Government's objective.

Officials note that expanding access to the RAM for all New Zealand taxpayers is being considered as part of a further work programme. If the Government decides to proceed, the issue raised by this submission would be resolved.

Recommendation

That the submission be declined.

Clause 51

Issue: 1 April 2024 requirement too restrictive

Submission

(Melissa Cameron, New Zealand Institute of Economic Research)

The proposal to limit the availability of the revenue account method (RAM) to those who became tax residents on or after 1 April 2024 would exclude many New Zealanders who returned home immediately before or during the height of the COVID-19 pandemic, even though they face the same problems. All immigrants and returning expatriates who meet the five-year non-residence test should have the option to use the RAM, regardless of when they arrived in New Zealand.

Comment

Officials have already addressed the suggestion that the RAM be available to all New Zealand residents, including existing migrants, above (see Issue: More people should be allowed to use RAM). For the same reasons, officials do not recommend extending the RAM to all existing migrants who were non-resident for a continuous period of five years before becoming a New Zealand tax resident, regardless of when they returned.

The proposal could be amended to allow those who became New Zealand tax resident on or after 1 April 2023 (rather than 1 April 2024) to access the RAM to address the submitted concern. This would capture migrants who arrived in New Zealand on or after 1 April 2019, before the first COVID-19 outbreak in February 2020, provided they were a transitional resident until 1 April 2023 (the maximum four-year transitional resident period).

However, people who came fully into the New Zealand tax net before 1 April 2024 will already be returning foreign investment fund (FIF) income under the current rules. The proposal is intended to address issues that have made migrating to and staying in New Zealand untenable. Officials have drawn the line at 1 April 2024 because taxpayers arriving earlier than what is covered under the current proposal have chosen to stay in New Zealand despite having to pay tax under the FIF rules.

Officials note that expanding access to the RAM for all New Zealand taxpayers is being considered as part of a further work programme. If the Government decides to proceed, the issue raised by this submission would be resolved.

Recommendation

That the submission be declined.

Clause 51

Issue: Family trust criteria

Submission

(Tax Advisory Limited)

The proposed definition of a RAM taxpayer and extended RAM taxpayer includes trusts that meet certain requirements. One such requirement is that the trust is mainly for the benefit of natural persons for whom the gifting settlors have natural love and affection or an organisation or trust with income that is exempt under section CW 41 or CW 42 of the Income Tax Act 2007. This would require an entity to be a "tax charity", which requires registration with the New Zealand Charities Services.

Migrants may have established a trust before moving to New Zealand that they may elect to become a complying trust. These trusts (for example, irrevocable grantor trusts, revocable grantor trusts, charitable remainder unitrusts) will have been established well before migration and typically allow for distributions for charitable purposes in their home jurisdiction.

The current definition is overly restrictive and should be amended to refer to:

> *…an association, club, institution, society, organisation, or trust not carried on for the private profit of any person whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere.*

Comment

The policy was primarily designed for individuals who can switch between fair dividend rate (FDR), comparative value (CV), and cost methods. On this basis, the current drafting relating to family trusts uplifts existing legislation for the CV method to ensure consistency.

Given the issue raised by the submission also involves access to the CV method and the definition of charities, officials consider the submission out of scope and that further work, subject to prioritisation and resourcing, is required.

Recommendation

That the submission be declined.

Clause 51

Issue: Other entities should be allowed to use RAM

Submission

(Deloitte)

The Bill proposes that RAM taxpayers include certain trusts if the principal settlor is eligible to apply the revenue account method (RAM). However, the definition of a RAM taxpayer should also include other types of entities to accommodate scenarios when a New Zealand resident company holds the foreign investment fund (FIF) interest, either because the RAM taxpayer set up a New Zealand-incorporated company or because a foreign-incorporated company is considered New Zealand tax resident.

Comment

As discussed above (see Issue: Family trust criteria), the target population of the proposals are those who can switch between fair dividend rate (FDR), comparative value (CV), and cost methods. On this basis, the RAM is proposed to only be available for natural persons and certain trusts.

Officials do not consider New Zealand resident companies equivalent to eligible trusts, given there are no limitations on the number of people that can be shareholders or the required degree of association between the shareholders, even for closely held companies. Furthermore, companies generally cannot use the CV method, and officials consider consistency with existing FIF rules and principles should be maintained.

Officials consider this issue to be out of scope. If allowing companies to use the CV method and/or the RAM is considered desirable, this could be considered in a future workstream, subject to resourcing and prioritisation.

Recommendation

That the submission be declined.

Clause 51

Issue: RAM should be available to treaty non-residents

Submission

(Deloitte, New Zealand Law Society, Patterson Legal, PwC, Will Lau)

Individuals who are New Zealand tax resident under New Zealand's domestic law but tie-break to another jurisdiction under a double tax agreement are treated as non-New Zealand tax residents. These people should be eligible for the revenue account method (RAM) if they later tie-break to New Zealand under the treaty on or after 1 April 2024 since they would not have been subject to New Zealand tax on their foreign-sourced income, including foreign investment fund (FIF) income, until then.

Comment

People who are non-resident under a double tax agreement do not have any reason to engage with the New Zealand tax rules relating to foreign-sourced income. Therefore, their circumstance falls within the rationale that access to the RAM should be limited to those who could not have been expected to have the FIF rules in mind at the time they were making their investment decisions.

Accordingly, officials recommend that individuals be eligible to use the RAM if they tie-break to New Zealand under a double tax agreement on or after 1 April 2024, provided they have also been a non-resident under a double tax agreement (or under New Zealand domestic law) for a continuous period of at least five years before tie-breaking to New Zealand.

Point of difference

Officials also recommend a consequential amendment to allow the RAM to apply to FIF interests acquired while the individual was a non-resident under a double tax agreement, provided those interests meet all other requirements in this Bill. This amendment is necessary to make the proposal workable because these FIF interests would otherwise not be eligible FIF interests because they were acquired while the individual was a New Zealand tax resident under New Zealand domestic law.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 17, Rec 18)

Clause 56

Issue: Dividend income

Submission

(Deloitte)

The wording for proposed new section EX 56B(2) of the Income Tax Act 2007 should be amended to refer to credits that may be allowed (before any limitation). The proposed definition would otherwise be unworkable, and circular, given the amount of foreign tax credit available would depend on the amount of dividend income.

Comment

Officials note that the current drafting follows the existing definition of dividend income under the comparative value method. Officials are not aware of any issues with the wording of the existing legislation so do not consider it necessary to depart from the existing drafting, especially when the intended outcome is the same.

Recommendation

That the submission be declined.

Clause 56

Issue: Discount rate too low

Submission

(Baucher Consulting, Corporate Taxpayers Group, Deloitte, Melissa Cameron, New Zealand Institute of Economic Research, New Zealand Law Society, OliverShaw, Patterson Legal, PwC, Samuel Blackman, Sean Hadley)

The proposed 30% discount on gains and losses from the disposal of RAM or extended RAM interests is too low. For those on the top marginal tax rate of 39%, the discount results in an effective tax rate of 27.3%. This is higher than the capital gains tax rates applicable in comparable jurisdictions (24% in the United Kingdom, 22.5% for long-term gains in Australia, and 20% for long-term gains in the United States (US)).

The discount rate should be increased to at least 40%, although a 50% discount rate would be more competitive internationally.

Although the higher discount rate may be contrary to the broad-base, low-rate principle that underpins the New Zealand tax system, consideration should be given to the reality of New Zealand's economic size and geographic location. *(New Zealand Institute of Economic Research)*

Alternatively, the short-term/long-term split used in Australia and the United States could be considered. If such a split is adopted, gains from disposals of assets held for under 12 months are taxed at the person's marginal tax rate, but the amount taxable is discounted if held for more than 12 months. *(Baucher Consulting)*

A 50% discount would cost $448,000 more than a 30% discount over the forecast period but this is immaterial relative to the total tax revenue ($115.6 billion in the previous year), especially when weighed up against the potential to attract and retain highly skilled and wealthy individuals. *(Deloitte)*

Comment

Officials acknowledge feedback on the importance of setting a rate that supports New Zealand's tax system to be internationally competitive to attract and retain global talent and capital. For context, the effective tax rate on capital gains across the Organisation for Economic Co-operation and Development's (OECD) 38 members ranges from 0% to 42%. At 27.3%, New Zealand would rank ahead of 14 other countries including Korea (27.5%), Spain (30%), Sweden (30%), Ireland (33%), and France (34%).

However, officials do not recommend increasing the discount rate due to the potentially distortionary impacts and limited empirical evidence that tax materially drives migration.

The Bill proposes a 30% discount rate, resulting in a 27.3% effective tax rate for those on the top marginal tax rate (39%). This was a deliberate policy design choice so that the top effective tax rate under the RAM is broadly aligned with the 28% rate investors would pay if they invested through a company or a portfolio investment entity. An effective tax rate materially lower than 28% could impair investment efficiency by creating a tax-driven incentive for investment decisions and could contribute to people temporarily leaving New Zealand to gain access to the RAM.

Migration decisions are complex and influenced by many factors, such as economic conditions, political stability, and family links. While there is some general evidence that tax can affect migration decisions for higher-skilled and wealthier individuals, international evaluation on the impact of migrant tax incentives on either migration or economic growth has been inconclusive.

To the extent an individual is not very tax sensitive, officials are unconvinced a higher discount rate would attract and retain enough additional migrants (who otherwise would not have migrated or stayed) to justify the cost of tax competition. To the extent an individual is very tax sensitive, it can

be argued even a 50% discount rate would be insufficient when compared to the 0% tax rate available in Singapore or the United Arab Emirates.

Officials further note that headline tax rates rarely tell the full story. In the US, a 3.8% net investment income tax applies on top of the federal capital gains tax, and state taxes can range from 0% to14.4%. After including all the taxes that a US resident may be liable to pay, the top effective tax rate for a US taxpayer can range from 23.8% to 38.2%. In light of this, officials consider the proposed settings to be reasonably comparable.

Finally, during oral hearings, one submitter *(Samuel Blackman)* raised the US qualified small business stock (QSBS) exemption – a US tax benefit that applies to investments in certain US incorporated entities operating in specific industries. The exemption, designed to incentivise founding, investing in, and working in start-ups, allows eligible shareholders to be tax exempt on income derived from shares up to US$15 million or 10 times the share cost basis, whichever is greater. The submission suggested investments that qualify for the QSBS exemption be made exempt from tax in New Zealand, comparing moving to the US and paying 0% on their QSBS-qualified shares with staying in New Zealand and paying 27.3% on those shares.

Officials note this decision is not unique to US migrants. The policy question is therefore whether New Zealand should match all other similar foreign investment exemptions, not just QSBS. Officials do not recommend this for the reasons outlined above regarding lower discount rates. We also note that matching the exemption risks the proposal being considered a "soak-up tax" (that is, a tax designed solely to "soak up" the foreign tax another jurisdiction applies so no foreign tax credit needs to be provided), meaning no foreign tax credits would be available and taxpayers could face double taxation.

Recommendation

That the submission be declined.

Clause 56

Issue: Foreign accruals need amending and broadening

Submission

(New Zealand Law Society, Patterson Legal)

What "foreign accruals" covers should be clarified. It is not clear whether the gains accrued during a taxpayer's transitional residence are included. In addition, it may not currently include gains and losses that accrue while an individual is tie-broken to another jurisdiction under a double tax

agreement. Furthermore, gains and losses that accrue in a period when another foreign investment fund (FIF) calculation method is used should be excluded from the calculations of gains or losses under the revenue account method (RAM). If this issue is not addressed, there is a real risk of double taxation, with an individual taxed once under the other FIF calculation method and again under the RAM when the interest is disposed of.

Comment

Officials accept the concerns raised by submitters and note that the intention is not to tax those interests in the situations raised by submitters. Officials will rework the formulae so they achieve this intent.

Recommendation

That the submission be accepted. (Rec 19)

Clause 56

Issue: Contemporaneous market valuation

Submission

(Findex)

The proposal requires a valuation to be obtained to apply the revenue account method (RAM) despite valuation issues being one of the main concerns with the existing rules. In addition, this valuation must be obtained within a certain timeframe. This prevents a person going back and obtaining the market value at the time of disposal but does require the person to obtain a market value that they may not use. Valuations obtained later can be more reliable than those obtained contemporaneously in some circumstances and the proposal that the valuation must be obtained contemporaneously should be removed.

Comment

The proposal that market value must be acquired contemporaneously is an integrity measure because obtaining the market value of unlisted shares retrospectively is difficult and can often be unreliable. On balance, the integrity risks outweigh the compliance burden imposed by the requirement.

Regarding the compliance burden, officials note that an alternative calculation, the time-based apportionment method, is provided in the Bill. If the taxpayer cannot obtain a contemporaneous market valuation, or chooses not to, they may calculate their taxable gain or loss based on the

proportion of days the interest was taxable relative to the total days they owned the interest. Accordingly, the proposal does not require a market valuation to be obtained to apply the RAM.

Recommendation

That the submission be declined.

Clause 56

Issue: Time-based apportionment not fit for all investment types

Submission

(Tax Advisory Limited)

The time-based apportionment method does not adequately account for some foreign investment fund (FIF) interests, such as those in a private venture capital type investment. It is unclear how the proposed definition of "cost" and "ownership period" would account for share reorganisations or capital calls/returns. A method that includes a weighted average capital calculation in the definition of "cost" and "ownership period" should be introduced.

Comment

Officials met with the submitter to clarify the issue. The concern specifically relates to foreign entities (such as United States limited liability companies) that are treated as fiscally transparent entities in the other jurisdiction but treated as a company under New Zealand tax law.

As discussed above (see Issue: Rollover relief for corporation reorganisation), officials recommend providing rollover relief for extended RAM taxpayers when there is a corporate re-organisation. The rollover relief would allow the taxpayer to match the tax treatment in the other jurisdiction when there is a corporate action to prevent double taxation or over taxation.

Capital calls appear similar to follow-on investments and so should be treated as if the taxpayer acquired further shares in the FIF after their initial investment. Capital returns involve payments from the entity to the taxpayer but may not involve a change to their stake in the entity. Officials consider these issues generally a matter of definition. If the payment is a dividend, then the payment would be taxed as a dividend. If the payment is a disposal, then the taxpayer would use one of the two formulae provided to determine their loss or gain. Officials therefore do not consider the issues raised require a change to the proposed formula.

Recommendation

That the submission be declined.

Clause 56

Issue: Deferred realisation tax

Submission

(OliverShaw, Tax Advisory Limited)

The reversal of the deemed disposal after three years is a practical response; however, the various proposals could give rise to anomalous outcomes when they interact with each other. For example, the current proposals appear to result in a deemed disposal if the taxpayer emigrated but died within three years of their migration, even though there would be no tax in the other jurisdiction. In another scenario, when a person transfers their shares to another on death, tax would be levied if the foreign investment fund (FIF) interests were left to a beneficiary that is not a partner (such as their child), even if that beneficiary has never been in New Zealand. In contrast, if the taxpayer had emigrated, such transfers would not be taxed after three years. The revenue account method (RAM) should have specific deemed disposal rules on death, similar to the general rule for relationship property transfers. There should be no deemed disposal on death, and the estate/beneficiaries should be deemed to acquire the FIF interests at the cost price of the deceased. If the beneficiary is not New Zealand resident, they would never be subject to New Zealand tax on ultimate actual disposal. *(OliverShaw)*

The proposed deferred realisation tax would be unworkable because it applies after the taxpayer ceases to be a New Zealand tax resident. New Zealand has no taxing rights over a non-resident's foreign-sourced income under section BD 1(4) of the Income Tax Act 2007 or under any of its double tax agreements. There are also equity concerns with penalties and interest applying to something that has not occurred and may not occur. Lastly, the feasibility of enforcing and collecting the deferred realisation tax after the taxpayer departs New Zealand is questionable. *(Tax Advisory Limited)*

Comment

It would be contrary to the policy intent for penalty and interest to apply in this instance without the taxpayer having the standard timeframes to pay the tax impost from the deferred realisation tax. Officials do not believe penalties would be charged in this situation but consider the provisions for use of money interest should be clarified to ensure it would not be charged inappropriately.

Point of difference

The deferred realisation tax is proposed to only be payable on actual disposals. Deemed disposals within three years of a person ceasing to be a New Zealand resident would not trigger the tax.

The rollover relief proposed in the Bill aligns with what is generally available in the Income Tax Act 2007, and officials see no reason for further relief just for the RAM. Noting the rollover relief does not distinguish between transfers to residents or non-residents, a beneficiary who has never been a New Zealand resident could still benefit from the rollover relief if all other criteria are met.

On workability, the proposal would only apply to gains or losses accrued in New Zealand. This means the calculation of the tax payable uses the market value of the interest at the time the person departs New Zealand, not the amount received when the interest is subsequently disposed of. On this basis, officials consider the tax to be on a New Zealand tax resident's foreign-sourced income, despite the payment not being required until they cease to be a New Zealand resident. This is allowed under section BD 1(4) and New Zealand's double tax agreements. Officials also note exit taxes are common in jurisdictions with capital gains tax regimes, so the proposal is not novel.

Furthermore, New Zealand's double tax agreements generally include provisions to facilitate cross-jurisdiction information exchange and assistance to collect taxes. We are also party to the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, which is a comprehensive multilateral instrument available for all forms of tax cooperation to tackle tax evasion and avoidance. Currently, over 150 jurisdictions participate in this Convention.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 20)

Clause 57

Issue: Foreign exchange exposure

Submission

(Deloitte, PwC)

RAM taxpayers should be allowed to calculate any revenue account method (RAM) gains or losses in their "home" or functional currency to avoid foreign exchange exposure on their foreign investment fund interests. The current proposals would require taxpayers to calculate their gains and losses in New Zealand dollars, exposing them to foreign exchange movements. While acknowledging this follows the general principle of calculating the tax payable in New Zealand in New Zealand dollars, taxing foreign exchange movements would likely make the rules less

attractive for key migrants and returning New Zealanders, especially since they are unlikely to view these investments in New Zealand dollar terms given they were acquired using the "home" currency. The foreign exchange exposure may also create mismatches with home-country tax calculations and potentially result in double taxation.

Comment

While officials acknowledge that taxpayers may only consider their investment gains or losses in their "home" currency terms, tax on foreign exchange gains is a common feature of tax systems internationally, including the United States and Australia.

The RAM would only tax realised foreign exchange gains or losses so there should be no liquidity issues or double taxation issues. Taxpayers would not be any further exposed to foreign exchange movements than they would be in another jurisdiction.

Recommendation

That the submission be declined.

Clause 58

Issue: Attribution of CFC's FIF income or loss

Submission

(Bell Gully, Deloitte)

Holding foreign investment fund (FIF) interests via a controlled foreign company (CFC), for example, a United States limited liability company, is common for high-net-worth individuals. Currently, section EX 58 of the Income Tax act 2007 only allows for the FIF **income** to be attributed to the CFC interest holder, not the FIF **interest** itself. Given a CFC cannot be eligible to apply the revenue account method (RAM) (because it is neither an eligible natural person nor an eligible trust), this means an eligible RAM interest that is effectively held by an eligible RAM taxpayer (through a CFC) could not have the RAM applied. Section EX 58 should be amended to allow the taxpayer to look through the CFC and calculate their portion of the CFC's FIF income as if they held the FIF interests directly.

Comment

This issue concerns the wider FIF regime because a taxpayer is also not allowed to apply the comparative value (CV) method if they hold the FIF interest through a CFC under section EX 58. Officials note this was raised in a previous taxation Bill, and the policy position then was to retain

this limitation. Officials consider that, subject to resourcing and prioritisation, further work should be done to understand the issue and any wider impacts of changing the current position.

Recommendation

That the submission be declined.

Clause 61

Issue: Electing out of RAM irrevocable

Submission

(Deloitte, KPMG)

The election to change from the revenue account method (RAM) being irrevocable under section EX 62(8B) of the Income Tax Act 2007 is unnecessary. A consistency period (for example, four years before being able to elect into the RAM) is more appropriate and is consistent with other parts of the foreign investment fund rules (for example, the rules for applying the fair dividend rate (FDR) annual and FDR periodic methods).

Comment

The proposal is designed to be a one-off election to minimise compliance and administrative burdens. Officials have not had time to consider the policy settings of any guardrails if taxpayers could switch between the RAM and other calculation methods, nor is there sufficient time to do so as part of this Bill.

Officials note that expanding access to the RAM for all New Zealand taxpayers is being considered as part of a further work programme. If the Government decides to proceed, the issue raised by this submission would be considered as part of that work.

Recommendation

That the submission be declined.

Clause 62

Issue: Interests no longer meeting RAM interest criteria

Submission

(Deloitte)

The taxpayer should be able to continue to apply the revenue account method (RAM) when a RAM interest later falls out of scope of RAM eligibility, for example, when an unlisted share later becomes listed on a recognised stock exchange. A deemed disposal at this point, which is generally outside the taxpayer's control, would potentially result in the same liquidity and double tax issues that the RAM is trying to prevent.

Comment

The current proposal has been designed to target shares that are illiquid because the liquidity issue is less acute for shares that can readily be sold at market value. However, officials accept that this situation is different because the deemed disposal would generally be triggered by factors outside the taxpayer's control. Officials are also concerned that the deemed disposal could result in a significant tax liability, creating a liquidity issue that may force the taxpayer to sell the interest to fund the tax impost. This would be contrary to the policy objective.

Recommendation

That the submission be accepted. (Rec 21)

Clause 63

Issue: Deemed disposal on migration

Submission

(Findex)

The proposed addition of the revenue account method (RAM) to section EX 64 of the Income Tax Act 2007 (which outlines how and when foreign investment fund interests are deemed to be disposed of or acquired on emigration and immigration) is not required because the RAM uses the original cost of the acquisition and foreign accruals.

Comment

Officials accept that deeming an acquisition of RAM interests on coming to New Zealand is not necessary given the standard calculation and time-based apportionment formulae as currently proposed.

Point of difference

However, a deemed disposal on becoming a non-resident would be necessary for the proposed exit tax rules to work. As a consequence of some of the other changes, officials have decided to remove the proposal to add RAM to section EX 64. A deemed disposal provision similar to section EX 64(2) is proposed to be inserted into the new provisions as section EX 56B(11B) instead.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 22)

Issue: Inland Revenue should provide guidance

Submission

(Bell Gully, Deloitte, John Shand (c), (d), PwC)

Inland Revenue should provide practical guidance on the new rules and further information on design choices.

Specifically, submitters asked Inland Revenue to provide clarification on:

- Why the retrospective application dates of 1 April 2024 and 1 April 2025 were chosen. *(Deloitte)*
- The intended scope of the eligibility criteria that requires the foreign investment fund (FIF) interest to "…not derive 80% or more of its value from shares that would not satisfy" the other two criteria (proposed new section EX 46B(5)). Specifically, how far up the corporate chain it is necessary to look in applying the test, noting it would usually be impractical to look beyond the second tier. *(Bell Gully)*
- Determining the market value of eligible RAM interests, specifically by reiterating the Commissioner's statement CS 24/01, which provides an established framework for valuing shares in circumstances when market data is limited.
- Whether a section 409A valuation (section 409A of the United States Internal Revenue Code) obtained for United States tax purposes would fall within CS 24/01 guidance given United States migrants are likely to use the section 409A valuation for their FIF interests. *(PwC)*

Submitters also requested worked examples of the operation of the rules on:

- eligibility
- "foreign accruals" calculations
- evidence standards
- switching rules
- ring-fencing cap operation
- cost-base measurement
- non-market transactions
- transition from other methods
- loss ring-fencing mechanics, carry-forward, and interaction with general loss rules. *(John Shand (c))*

Comment

Officials have noted the policies submitters requested guidance on. Guidance will be provided in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Regarding the eligibility criteria looking to the make-up of the FIF interest, officials agree and confirm that the test would stop at the second-tier companies; going further would generally be impractical due to the lack of access to necessary information.

Recommendation

That the submission be noted.

Issue: FIF regime requires further simplification

Submission

(American Chamber of Commerce in New Zealand Inc, Baucher Consulting, Corporate Taxpayers Group, EY)

The foreign investment fund (FIF) regime remains very complex by global standards. This, in turn, drives up compliance costs. Submitters advocate for simpler rules that are broadly intuitive for taxpayers, help build understanding of tax obligations, and reduce compliance costs. *(American Chamber of Commerce in New Zealand Inc)*

A broader review and change to the FIF regime should be considered. This is especially given no post-implementation review of the regime has been conducted since its introduction in 2008. *(Baucher Consulting)*

Consideration should be given to the necessity of the remaining available methods given the introduction of the revenue account method. *(EY)*

Comment

A broader review of the FIF rules is outside the scope of this proposal.

Recommendation

That the submission be noted.

Issue: Raise FIF de minimis threshold

Submission

(Bell Gully, Corporate Taxpayers Group, Deloitte, KPMG)

The current $50,000 de minimis threshold was set in 2000 and has not kept up with inflation.

The threshold should be increased to at least $100,000, or even higher, to account for future inflation.

Comment

A change to the de minimis threshold is outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Companies reincorporated offshore but still taxed in New Zealand

Submission

(New Zealand Institute of Economic Research)

When a New Zealand company changes its place of incorporation, such as when the firm "flips up" to the United States to secure investment, it may become a foreign investment fund (FIF). While operations often remain in New Zealand, employees holding shares may become FIF taxpayers and be taxed on deemed FIF income before they have any corresponding cashflow. For staff on ordinary salaries, this creates a strong disincentive to join such firms. This problem could be

addressed by amending the FIF regime to permanently exclude all shares in companies that have moved their place of incorporation from New Zealand but the underlying operations continue to be taxed in New Zealand. The Finance and Expenditure Committee should signal its in-principle support for this and encourage the Government to develop a detailed solution for enactment next year.

Comment

The issue is out of scope of this project. Officials note that any requested policy change would need to follow the normal policy process.

Recommendation

That the submission be noted.

Issue: Access to attributable FIF income method should be broadened

Submission

(Corporate Taxpayers Group, Deloitte, Samuel Blackman)

The 10% ownership threshold currently required to access the attributable FIF income (AFI) method creates an arbitrary barrier that fails to reflect modern business realities. In venture-backed start-ups, ownership percentage has become disconnected from active involvement, For example:

- a founder actively running a post-Series C start-up might hold 5% after dilution
- an early employee with detailed operational knowledge might hold 2%
- a passive investor might hold 15% with no involvement whatsoever, and
- the submitter's ownership share of the last start-up they founded dropped below 10% due to dilution while they remained a director, officer, and employee.

Access to detailed financial information better indicates active involvement than ownership percentage. The AFI method's requirement for comprehensive financial reporting creates natural self-selection. Only genuinely involved parties typically have access to such information. The threshold should be removed or substantially lowered. *(Samuel Blackman)*

Comment

Amending the AFI method is outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Introduce deferral method

Submission

(New Zealand Institute of Economic Research, Samuel Blackman)

Allowing people who have always been New Zealand residents access to the revenue account method is not justified. These people have faced some type of taxation of their foreign holdings since the early 1990s and made investment decisions knowing the tax implications. This is different from immigrants and many returning expatriates, who were not subject to New Zealand tax laws when they made their pre-arrival investments.

Second, moving from an accrual-based foreign investment fund (FIF) regime to realisation would introduce a significant distortion into the tax system given the FIF regime is designed to replicate, as far as possible, the domestic treatment of investments.

The deferral method proposed in the original officials' issues paper, which operates upon realisation but is economically equivalent to the fair dividend rate (FDR) method, would overcome the cashflow issues with the FDR method faced by existing residents. The proposal follows the approach in section CF 3 of the Income Tax Act 2007, which taxes foreign superannuation funds on realisation but adjusts liabilities for the timing benefit.

Comment

Introducing another FIF calculation method is outside the scope of this project. Officials note that introducing too many methods would increase the complexity of the FIF regime.

Recommendation

That the submission be declined.

Issue: Entities treated as fiscally transparent for tax purposes in another jurisdiction and opaque in New Zealand

Submission

(Financial Services Council of New Zealand Incorporated, KPMG)

There is a lack of clarity around the availability of foreign tax credits for interests in entities that may be treated as transparent for tax purposes in another jurisdiction but opaque for New Zealand tax purposes. A commonly cited example was interests in United States limited liability companies (US LLCs).

Section CD 18 of the Income Tax Act 2007 should be amended to reduce the taxable "dividend" amount under the revenue account method (RAM) by the amount of foreign tax paid on a look-through basis for these types of interests. A similar mechanism could also be introduced to reduce the foreign investment fund (FIF) tax payable if foreign capital gains tax is payable in relation to the underlying assets of the entity. These changes would mitigate risks of double taxation arising from common investment vehicles and undermining the policy objective. *(KPMG)*

Comment

Officials note that section CD 18 does not apply when the US LLC is a FIF because the distributions would be deemed to not be a dividend under section CD 36.

The five public ruling documents BR Pub 23/09 – 23/13 provide a comprehensive guideline with illustrative examples of when US tax paid in respect of a US LLC is creditable against a FIF tax liability. If necessary, and subject to resourcing and prioritisation considerations, additional guidance may be provided in relation to how US LLCs would be taxed under the RAM.

It is not New Zealand's tax policy to provide tax credits to shareholders for the foreign tax paid on the business profits of the overseas companies they invest in. Since such tax is not paid by the shareholder or on their dividend income, it does not directly result in double taxation. Furthermore, such tax does not accrue to New Zealand and so cannot be spent by the Government to provide services here. Therefore, providing a New Zealand tax credit for tax paid overseas by a non-New Zealand entity on its own profits would not be appropriate.

Recommendation

That the submission be declined.

Issue: Replace FIF rules with capital gains tax

Submission

(Andrea Morgan, Ani Mitcalfe, Elaine Marshall, Geoff Rashbrooke, John Rhodes, Jordan Wise, Laura Jones, Tax Justice Aotearoa, Victoria Quade)

The foreign investment fund (FIF) regime is understood to be a makeshift arrangement resulting from New Zealand's failure to tax capital gains the way most developed countries do. Rather than tinker with FIF provisions, it would seem desirable to introduce the comprehensive capital gains regime recommended back in the 1980s as part of general financial reforms at that time. *(Geoff Rashbrooke)*

A broad-based tax on the income from capital gains would be much simpler to implement and administer than the current FIF rules, would solve the problems the FIF rules aim to solve, and would have the added benefit of creating a much fairer tax system overall. *(Jordan Wise)*

Comment

The implementation of a comprehensive capital gains tax to replace the FIF rules is outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Changes to taxation of foreign superannuation funds

Submission

(Financial Services Council of New Zealand Incorporated, Melissa Cameron)

Further work is required to remove other tax barriers. These include the taxation of foreign superannuation funds under section CF 3 of the Income Tax Act 2007, where the value of an interest in a foreign superannuation fund becoming subject to New Zealand tax subsequent to the individual becoming New Zealand resident can be viewed as over-taxation. *(Financial Services Council of New Zealand Incorporated)*

Most foreigners will have foreign superannuation funds that are tax exempt on withdrawal in the foreign jurisdiction (for example, a United States Roth IRA). However, these withdrawals are treated as income in New Zealand and taxed at the individual's marginal tax rate. To have up to 39% of your retirement balances taken by the New Zealand Government is not attractive to anyone who expected this money to be fully available on retirement. It is also very inconsistent with how New Zealand treats retirement savings. *(Melissa Cameron)*

Comment

The current proposal is only intended to apply to foreign investment fund (FIF) interests. If the FIF rules were to apply to a particular form of savings, then it is generally intended that the revenue

account method could apply (subject to any existing or proposed exceptions). A review of the taxation of retirement savings and a reform of how non-FIF foreign superannuation funds are taxed are outside the scope of this project.

Recommendation

That the submission be declined.

Issue: Changes to financial arrangements rules

Submission

(American Chamber of Commerce in New Zealand Inc, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand Incorporated, Patterson Legal)

The financial arrangements rules apply on an accrual basis, creating similar liquidity and double taxation issues to those the proposed revenue account method seeks to address. In particular, the need to include foreign exchange fluctuations can result in additional taxes being paid in New Zealand on notional paper gains. For example, holding accounts, loans, or mortgages in a foreign currency can give rise to foreign exchange gains or losses under the financial arrangements rules whenever the New Zealand dollar strengthens or weakens against that foreign currency.

Addressing these issues is essential to ensure fairness, reduce complexity, and support the broader objectives of compliance simplification.

Comment

The application of the financial arrangements rules is outside the scope of this proposal. However, the Government's recently published refreshed Tax and Social Policy Work Programme includes a review of the impact of the financial arrangements rules on new migrants.

Recommendation

That the submission be declined.

Issue: Changes to CFC rules

Submission

(Corporate Taxpayers Group, Deloitte)

Further work on the controlled foreign company (CFC) rules is needed to ensure they are fit for purpose.

Comment

The CFC rules are outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Taxation of distributions from foreign trusts

Submission

(Greenhawk Chartered Accountants)

A significant remaining barrier for non-resident investors relocating to New Zealand is the taxation of distributions from foreign trusts. In many cases, foreign trusts are settled by overseas family members who may also act as trustees. When such trusts make distributions to New Zealand-resident beneficiaries, the ordering rules apply so that, regardless of the true nature of the distribution, a portion (or all) of it may be deemed to represent taxable accumulated income. That accumulated income is then calculated under the foreign investment fund rules, often tracing back to the establishment of the trust.

The legislation could be amended to provide that the calculation of accumulated income should be limited to the period the recipient beneficiary has been tax resident in New Zealand up until the distribution, excluding any transitional residency exemption period. This approach would be broadly consistent with the assessable period concept used in the foreign superannuation withdrawal rules, which appropriately disregard periods of non-residence.

Comment

This issue relates to integrity rules introduced to catch foreign trusts set up in tax havens. While the rules may be blunt and could be refined to be more targeted, such work is outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Grantor trusts

Submission

(Tax Advisory Limited)

The recently re-issued IS 25/18 reiterates that United States revocable living trusts (grantor trusts) are not valid trusts and/or are bare trusts in New Zealand and therefore disregarded for income tax purposes. This would mean that the assets of the trust are deemed to be held by the settlor personally until they pass away or become permanently incapacitated. When this occurs, the assets are passed to the trust, but the rollover provisions in subpart FC of the Income Tax Act 2007 would not apply because the foreign investment fund interests are deemed to be transferred to a newly established trust and not to a close relative. A new rollover relief provision should be introduced to provide that there is no deemed disposal under these circumstances and that the trust be treated as a RAM taxpayer or extended RAM taxpayer if the principal settlor meets either definition.

Comment

The introduction of new rollover relief provisions for foreign trusts is outside the scope of this proposal.

Recommendation

That the submission be declined.

Issue: Length of time before RAM applies

Submission

(Ryan Daniel)

The submission recommends the proposed extended revenue account method only "kicks in" after a person has been in New Zealand for 9 to 12 months, given an individual can visit New Zealand for less than 183 days with no New Zealand tax impact. This is raised in the wider context of the submitter's advocacy for United States/New Zealand dual residents who are primarily taxed in the United States to face minimal additional New Zealand tax.

Comment

The submission seems to be seeking an amendment to the residence rules, which is outside the scope of this proposal.

Recommendation

That the submission be declined.

Clause 62(3)

Issue: Clarify timing of deemed disposal and deemed reacquisition when electing out of RAM

Submission

(Matter raised by officials)

Drafting for proposed new section EX 63(6)(a) and (b) should be amended to align with the wording used in the Income Tax Act 2007 when a taxpayer switches between existing foreign investment fund (FIF) calculation methods.

Comment

When a person elects out of the revenue account method (RAM), the Bill currently proposes that their RAM or extended RAM interests are deemed to be disposed of "immediately before the end of the income year in which the person makes the election to change to the new method". The person is then deemed to reacquire those interests "at the start of the following income year".

This treatment is aligned with how an attributing interest in a FIF is currently treated when a taxpayer changes between the existing FIF calculation methods. However, the existing rules deem the disposal to occur "immediately before the start of the first income year to which the new method applies", and the reacquisition is deemed to occur "at the start of the income year".

The deemed disposal and reacquisition rules for RAM and extended RAM interests are intended to apply in the same manner as the existing rules, such as when a taxpayer changes between the comparative value method and the fair dividend rate method. Officials recommend that the current drafting be amended to align with existing legislation to prevent unnecessary confusion and unintended deviations from the way the proposed rules are intended to apply.

Recommendation

That the submission be accepted. (Rec 23)

Clause 62(3)

Issue: Align deemed disposal and reacquisition

Submission

(Matter raised by officials)

The deemed reacquisition of RAM and extended RAM interests under proposed new section EX 63(7)(b) and (8)(b) of the Income Tax Act 2007 should take place immediately after their deemed disposal under proposed new section EX 63(7)(a) and (8)(a) respectively, instead of taking place the next day.

Comment

When an interest no longer meets the criteria for being a RAM interest (for instance, the interest becomes listed), the Bill proposes that the interest is deemed to be disposed of on the day the interest ceases to be a RAM interest. The interest is then deemed to be reacquired the next day for its market value at the time of the disposal. Similarly, when a person no longer meets the criteria for being an extended RAM taxpayer, their liquid shares are deemed to be disposed of on the day before the person ceases to be an extended RAM taxpayer. Those interests are then deemed to be reacquired the day after for their market value at the time of the disposal.

While the Bill currently provides that the interests are deemed to be disposed of and reacquired for the same value, there is no reason why the reacquisition needs to be on the following day when the actual market value of the interest may be different. For clarity, and to prevent any unintended consequences, officials recommend that the wording be amended so that the reacquisition occurs on the same day, immediately after the deemed disposal.

Recommendation

That the submission be accepted. (Rec 24)

Issue: Delay application of time bar for deferred realisation tax

Submission

(Matter raised by officials)

For the deferred realisation tax to be administered as intended, the time bar should run from the end of the year in which the taxpayer files a return for the tax year in which the disposal subject to the deferred realisation tax occurs, rather than the tax year they leave New Zealand.

Comment

Currently, the time bar applies from the end of the fourth year after the end of the year in which the taxpayer provides their tax return for the relevant tax year. Once the time bar has passed, neither the Commissioner of Inland Revenue nor the taxpayer may amend the tax return.

When a person leaves New Zealand, they may file their income tax return before the end of the year if they have self-assessed they would be a non-resident. For these returns, the time bar would apply for the relevant tax year at the end of the fourth year after the year of the person's departure.

To administer the deferred realisation tax, the taxpayer would be required to notify Inland Revenue of any RAM interests that have been sold in each of the first three years they are non-resident, and what income or loss has arisen. However, any income or loss from subsequent share sales will be attributed to the year of their departure, and Inland Revenue will need to adjust the income for this tax year in respect of the share sales. It is intended that the current filing timeframes would apply to those disclosures. That is, the taxpayer would have until 7 July after the end of the tax year in which the disposal occurs, or 31 March the following year if use a tax agent with an approved extension of time status. Therefore, there could be situations when Inland Revenue would not be notified about an actual disposal of shares until the final day before the time bar is passed for the tax year of the taxpayer's departure. Officials recommend an exception to how the time bar is calculated for a tax return in relation to the deferred realisation tax, so that the time bar runs from the date the taxpayer notifies the Commissioner of any subsequent share sales.

Recommendation

That the submission be accepted. (Rec 25)

Issue: Align proposal with existing share lending arrangements policy

Submission

(Matter raised by officials)

Extended RAM taxpayers should be treated as holding their shares when they lend their shares to another person under a share lending arrangement.

Comment

A share lending arrangement occurs when a person (the share supplier) lends their shares to another person (the share user) with the expectation that the share user returns the shares to the share supplier at a later date.

The fair dividend rate calculation method currently includes a provision that deems the share supplier to still be holding the lent shares, unless the share user and the share supplier are related and/or the share lending arrangement is, or is part of, a structured arrangement. This Bill currently proposes to add a similar provision to the comparative value method.

To remain consistent with existing policy, officials recommend adding a similar provision to the revenue account method (RAM) proposal, so that the share supplier would still be treated as holding the shares under the RAM.

Officials note that share lending arrangements are unlikely to involve unlisted shares, so this is not an issue for RAM taxpayers. However, because extended RAM taxpayers are allowed to apply the RAM to all foreign equity investments, this recommendation should apply to extended RAM taxpayers.

Recommendation

That the submission be accepted. (Rec 26)

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

GST and unincorporated joint ventures

General submissions

Clauses 108(2), (3), (8), (9), (10), and (12), and 128

Issue: General support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, John Shand (c), (d), KPMG, Mayne Wetherell, New Zealand Law Society, New Zealand Taxpayers' Union, PwC, TAB NZ and New Zealand Thoroughbred Breeders' Association)

The submitters support the proposal to allow the members of a joint venture to choose to individually account for GST on supplies made or received in the course of the venture under their own GST registrations (referred to as "flow-through treatment") rather than registering the joint venture separately.

Two submitters note that, overall, they are supportive of the proposed legislative reform given Inland Revenue's draft interpretation of the existing law, which they say would have been problematic for certain joint ventures if it was ultimately finalised and published. *(Mayne Wetherell, PwC)*

Recommendation

That the submission be noted.

Issue: Support for proposed definitions

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposed changes to definitions.

Recommendation

That the submission be noted.

Issue: Definition of "joint venture"

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, TAB NZ and New Zealand Thoroughbred Breeders' Association)

Submitters have differing views on whether the Goods and Services Tax Act 1985 (GST Act) should include a definition of "joint venture":

a. The Bill does not specifically define "joint venture" but instead leaves the distinction between a joint venture and a partnership to be determined under general legal principles. This seems appropriate as long as Inland Revenue provides administrative guidance on how it will operate this distinction. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

b. The Bill should include a clear definition of "joint venture" instead of relying on the ordinary meaning of that term. This is needed to provide certainty and consistency for taxpayers and Inland Revenue, and is particularly important in distinguishing other similar-looking arrangements such as cost sharing arrangements. *(Chartered Accountants Australia and New Zealand, Deloitte)*

Comment

Currently, the GST Act does not define the term "joint venture". As submitters have noted, the Bill does not propose to change this. This means that, in the proposed definitions of "flow-through joint venture", "output-sharing joint venture", "elective flow-through joint venture" and "ordinary joint venture", "joint venture" would have its common law meaning. The proposed definitions do, however, clarify that a joint venture does not include a partnership (meaning the specific rules for joint ventures would not apply to partnerships as defined in the Partnership Law Act 2019).

On balance, officials consider it best not to attempt to define "joint venture" in the GST Act but instead allow that term to continue to have its common law meaning. Given the term applies to a wide range of arrangements and does not have a settled definition, attempting to define it would risk misalignment between the GST Act definition and the definition applying under general law. This would be undesirable and could lead to ongoing remedial amendments.

We further note that most submitters on the Government discussion document GST and unincorporated joint ventures who commented on this issue agreed with relying on the ordinary meaning of "joint venture" for the purposes of defining what arrangements are in scope of the proposed changes.

Inland Revenue will provide public guidance on the meaning of "joint venture". This will include an explanation of the distinction between a joint venture and other types of unincorporated bodies

including partnerships, as well as when co-ownership of property or a cost sharing arrangement will not give rise to a joint venture or any other type of unincorporated body.

Recommendation

a. That the submission be noted.

b. That the submission be declined.

Issue: Output-sharing joint ventures

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters consider there are problems with the proposed new concept of an "output-sharing joint venture", which they say may not adequately cover all cases and would impose additional compliance costs on taxpayers for them to confirm whether they fit within the definition of an output-sharing joint venture. Submitters are also concerned that members of output-sharing joint ventures would have no other option but to apply flow-through treatment. They suggest that it may be more appropriate to give all joint ventures a choice of applying flow-through treatment or the existing GST rules for unincorporated bodies.

One submitter also noted there are likely to be instances when an entity that thought it was an output-sharing joint venture in fact does not meet the proposed definition. If this discovery is made after 1 April 2027 (being the end of the transitional period for the new rules), there are likely to be significant compliance costs even when the correct amount of GST has been accounted for and paid by the members overall. *(Deloitte)*

Comment

In light of submitters' views, officials consider that the issues arising from the distinction between output-sharing joint ventures and other types of joint ventures could be addressed by removing the distinction altogether. This would simplify the proposal by ensuring the same set of rules applies to all joint ventures and by requiring only two categories of joint venture in the legislation ("flow-through joint ventures" and "ordinary joint ventures") instead of four.

Recommendation

That the submission be accepted. (Rec 27)

Issue: Default treatment of joint venture

Submission

(EY, Russell McVeagh, TAB NZ and New Zealand Thoroughbred Breeders' Association)

Submitters have differing views on what the default treatment for a joint venture should be:

a. The current GST rules for unincorporated bodies should apply to all joint ventures by default, with the ability for joint venturers to elect flow-through treatment. This would simplify the rules by not requiring as many different categories of joint venture in the legislation. *(EY, Russell McVeagh)*

b. Flow-through treatment should apply by default to all joint ventures (not just output-sharing joint ventures), with the ability for joint venturers to elect to apply the current GST rules. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

Comment

a. Officials agree that the current GST rules for unincorporated bodies should apply to joint ventures by default. Most joint ventures (especially those operating in industries such as forestry and transport infrastructure) would prefer to register for GST as unincorporated bodies and have done so without issue. For most joint ventures, having the joint venture register for GST as an unincorporated body (instead of all the members individually accounting for GST on their share of joint venture supplies and acquisitions under their own separate GST registrations) minimises compliance costs. This is likely to especially be the case if not all members of the joint venture are GST-registered.

b. As some submitters have noted, the discussion document GST and unincorporated joint ventures publicly consulted on a proposal to have flow-through treatment apply to all joint ventures by default, with the ability for joint venturers to instead elect to apply the current GST rules for unincorporated bodies by registering the joint venture for GST. While this proposal would have helped alleviate compliance costs for some sectors, some submitters on the discussion document were concerned that this proposal would result in confusion and complexity for taxpayers who are already complying with the current rules.

   Specific concerns that were raised included that an election for flow-through treatment under the original proposal required unanimous agreement by the members of the joint venture, with the potential result that unregistered joint venture members could be forced into applying the default flow-through treatment if not all members agreed to elect the joint venture as an unincorporated body.

   For these reasons, officials do not consider it would be appropriate for flow-through treatment to apply to all joint ventures by default.

Recommendation

a. That the submission be accepted. (Rec 28)

b. That the submission be declined.

Issue: Complexity of proposal

Submission

(Corporate Taxpayers Group, Deloitte, EY, PwC, Russell McVeagh)

The submitters are concerned at the complexity and volume of the proposed legislative amendments, which they consider may lead to unintended consequences (including that the proposals do not reduce compliance costs as they were intended to).

Comment

As submitters have noted (and as referred to above at Issue: Output-sharing joint ventures), some of the complexity in the proposed legislation arises from the definition of "output-sharing joint venture" and having flow-through treatment apply by default to output-sharing joint ventures, with the current GST rules for unincorporated bodies being proposed to apply by default to all other joint ventures. Accepting officials' recommendations at Issue: Output-sharing joint ventures and Issue: Default treatment of joint venture will therefore go some way to simplifying the proposed legislation.

Some submitters have also commented on the volume of joint venture-related amendments to the Goods and Services Tax Act 1985 (GST Act) included in the Bill. Officials note that many of the amendments are merely consequential to the zero-rating proposals in the Bill, which were consulted on in the discussion document (see Issue: Compulsory zero-rating and Issue: Support for deemed supply rule and zero-rating) and are taxpayer friendly amendments requested by those that were consulted. The quantity of these amendments is consistent with the existing zero-rating regime for business-to-business supplies of land.

Inland Revenue will provide detailed guidance on the new rules (including examples) in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be noted.

Issue: Guidance needed

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, EY, John Shand (c), (d), KPMG, Nga Uri O Wharetakahia Waaka Whanau Trust, TAB NZ and New Zealand Thoroughbred Breeders' Association)

Submitters request that Inland Revenue publish guidance on the new rules, including examples, before they take effect or shortly following enactment. They also state that:

- Explanation of the distinction between a joint venture and other arrangements such as cost sharing arrangements is likely to need a significant amount of additional guidance from Inland Revenue. *(Deloitte)*
- Public guidance should confirm that certain arrangements in the bloodstock industry are joint ventures and not partnerships. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*
- Inland Revenue should urgently finalise its draft public guidance on the GST treatment of a transfer of a joint venture interest, which is currently on hold. *(KPMG)*
- Detailed and practical guidance on apportionment, adjustments and error corrections should be published. *(John Shand (c))*
- Guidance on record keeping should be provided. *(John Shand (d))*
- Guidelines reflecting whanau, hapu and iwi governance should be developed. *(Nga Uri O Wharetakahia Waaka Whanau Trust)*
- The changes should be accompanied by an education campaign. *(EY)*

Comment

Guidance on the new rules will be provided in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Inland Revenue will also provide public guidance explaining the nature of various types of unincorporated bodies (including joint ventures) with the intention of assisting taxpayers to understand the distinctions between different types of unincorporated bodies and therefore which GST rules apply to their arrangement. Among other things, the public guidance will discuss the common law meaning of "joint venture" and the difference between a joint venture and a partnership, and will include examples as requested by some submitters. The public guidance will also explain when co-ownership of property or a cost sharing arrangement will not give rise to a joint venture or any other type of unincorporated body.

This guidance will be consulted on in draft in the normal way along with the guidance on the GST treatment of a transfer of a joint venture interest, which is currently on hold pending the outcome

of the joint ventures policy changes. Both guidance items will be finalised following the Bill passing into law.

Submitters have also asked for guidance on various other matters. Any issues identified as potentially requiring clarification may be considered for inclusion on Inland Revenue's public guidance work programme after undergoing a prioritisation exercise. The criteria for inclusion in the programme include the importance of the issues involved, the level of uncertainty/ambiguity, and the number of taxpayers potentially affected. A draft of the programme is consulted on with key stakeholders each year before finalisation and publication.

Recommendation

That the submission be noted.

Elective flow-through joint ventures

Clauses 124(2) and 128

Issue: General support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports most of the proposed rules for elective flow-through joint ventures, including the proposed requirements for the election and notification of changes in membership, as well as the proposed change of use adjustment when the taxable use of joint venture property changes.

Recommendation

That the submission be noted.

Issue: Election process

Submission

(Deloitte, TAB NZ and New Zealand Thoroughbred Breeders' Association)

Submitters disagree with the proposed election process and consider it should be simplified for taxpayers.

a. All existing joint ventures that presently operate on a GST flow-through basis should be deemed to have elected flow-through status automatically based on their past consistent GST treatment, without need for further action. *(Deloitte, TAB NZ and New Zealand Thoroughbred Breeders' Association)*

b. For new joint ventures formed after 1 April 2026, the election could be made by the administrative manager for the joint venture (without the need for written agreement of each member to be provided to Inland Revenue), either:

   - by taking a tax position in their own GST return that is consistent with a flow-through approach, or
   - via a single consolidated election form filed with Inland Revenue alongside their annual income tax return, with that election to be effective from formation of the joint venture. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

Comment

To make the election for flow-through treatment, the Bill proposes that the members of a joint venture would need to unanimously agree to the election in writing and notify the Commissioner of Inland Revenue of their election in a prescribed form.

a. Submitters have suggested that existing joint ventures that presently operate on a GST flow-through basis should be deemed to have elected flow-through status automatically based on their past consistent GST treatment (that is, without having to elect to be able to continue applying flow-through treatment going forward). The purpose of the information requirements under the proposed election process is to ensure that Inland Revenue has sufficient information for its compliance and enforcement purposes. Therefore, exempting existing joint ventures from the proposed election process would not be appropriate, since many of the joint ventures that would be subject to the new rules as of 1 April 2026 would have already been in existence before that date. We further note that joint ventures existing before 1 April 2026 would have 12 months to make the election, which we consider should provide them with sufficient time.

b. Similarly, allowing the election to be made simply by taking a tax position in a GST return that is consistent with flow-through treatment (instead of providing information about the joint venture and its members to Inland Revenue) would also mean that Inland Revenue would not have sufficient information for its compliance and enforcement purposes.

   The submitter has suggested that, alternatively, the flow-through election could be made via a consolidated form (in which the election could be notified for multiple joint ventures simultaneously), instead of notifying flow-through elections by way of a separate form for each joint venture. Officials note that allowing elections to be notified via a consolidated form would increase administrative costs for Inland Revenue by requiring more manual processing of these elections. Also, given our recommendation to decline the submissions requesting that the timeframe for notifying elections be extended (see Issue: Timeframe for election and notifying changes), this suggestion for a consolidated form would not be workable.

   The submitter has also suggested that the members should not be required to agree in writing to flow-through treatment as part of the election. The reason for requiring all the members to agree to the election in writing is to ensure there would be a presumption in the law that the current unincorporated body rules will apply to a non-output-sharing joint venture (given the existing rules are appropriate for most joint ventures). If an election for flow-through treatment is made, this should be a deliberate and unanimous decision by the members, especially since there may be consequences to electing flow-through treatment for joint venture members who are not already registered for GST in their own right.

For instance, as outlined at Issue: Application of total supplies rule, if the joint venture is above the registration threshold or later goes above the registration threshold, then all the members (whether they are individually above the registration threshold or not) would all be liable to register for GST under proposed section 51(5C) of the Goods and Services Tax Act 1985. Therefore, if the joint venture includes unregistered members, it might be more appropriate for the joint venture itself to register instead of electing flow-through treatment. At a minimum, the unregistered members should have a say in whether flow-through treatment will be elected or not.

The proposed requirement for the members to agree in writing is similar to existing tax rules applying in other contexts, such as the rules for look-through companies. To elect to become a look-through company, evidence of unanimous agreement of all owners of the company choosing to apply the look-through company rules must be provided to the Commissioner.

Recommendation

That the submission be declined.

Issue: Timeframe for election and notifying changes

Submission

(EY, TAB NZ and New Zealand Thoroughbred Breeders' Association)

Submitters disagree with the proposed 21-day timeframe for notifying the Commissioner of Inland Revenue of either a flow-through election or a change in the membership of a flow-through joint venture.

a. The period for notifying an election should be extended to 63 days. *(EY)*

b. Alternatively, the Commissioner should have discretion to backdate an election when notification is received late due to an error. *(EY)*

c. Flow-through elections, if required to be notified to the Commissioner in a prescribed form, should only be required to be notified annually, as should changes in membership. When joint venture assets have a cost under $250,000, notification of membership changes should not be required at all. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

Comment

As a transitional measure for the first year of the rules, joint ventures would have until 1 April 2027 to make and notify the election for the election to be backdated to 1 April 2026 or a later date notified by the joint venture. Starting on 1 April 2027, elections for flow-through treatment would

need to be notified within 21 days of the date of the written agreement between the members, with the election taking effect on the date of the agreement.

A notification requirement would also apply when a member of a flow-through joint venture leaves the joint venture or a new member joins the joint venture. Such changes in membership would need to be notified to the Commissioner within 21 days of the change occurring.

The 21-day timeframe for notifying elections and membership changes is consistent with the timeframes provided for all other persons under the Goods and Services Tax Act 1985 (GST Act). Section 51 of the GST Act requires that every person who becomes liable to be registered must apply within 21 days and provide the Commissioner with the specified information. Section 53 requires a registered person to notify the Commissioner within 21 days of any changes in the name, address, taxable activity or other relevant information for the person. For a GST group, this includes notification of changes of members of that group. There is no good policy reason to have different rules for flow-through joint ventures.

The reason for requiring such actions to be taken within 21 days is that the person needs to be registered (or the change needs to be notified) before they are due to file a return. Officials consider that the same rationale should also apply to a joint venture that is electing flow-through treatment. For a joint venture where the members intend to file returns individually (instead of registering the joint venture for GST as they would otherwise be required to do within 21 days), ideally, the election should be notified to Inland Revenue before the members file the first GST returns.

However, officials acknowledge there may be situations when, due to circumstances outside the control of the members of a joint venture, it might not be possible or feasible to notify a flow-through election within the required 21-day timeframe. As one submitter has noted, late elections might also in some cases occur as a result of a genuine error. This could have consequences for taxpayers and for the administration of the GST rules more generally, given the proposed treatment in the absence of a valid election is that the current unincorporated body rules would apply. This might mean that overall compliance and administration costs in not allowing an election (or not allowing it to be backdated) may outweigh the costs involved in instead allowing a backdated election.

Therefore, we recommend (as one submitter suggested, see submission point (b) above) that the Commissioner should have the discretion in such situations to accept late elections and backdate them when appropriate. We suggest that this discretion could be drafted in a similar manner to the existing Commissioner discretion to backdate GST registrations. Similar administrative criteria to those currently used for determining whether a late registration may be backdated could apply in this context to determine whether a late flow-through joint venture election may be backdated.

Recommendation

a. That the submission be declined.

b. That the submission be accepted, subject to officials' comments. (Rec 29)

c. That the submission be declined.

Issue: Nominated member of flow-through joint venture

Submission

(Matter raised by officials)

As currently drafted, the proposed legislation provides that any one of the members could satisfy the requirement to notify the Commissioner of Inland Revenue of a flow-through joint venture election or of subsequent membership changes on behalf of all the members. However, in practice, only the member who submitted the prescribed form for the election would automatically have access to the flow-through joint venture account in myIR. If other members wish to have access (such as if they want to check and update the members' details), they would need to specifically request it.

This means that in many cases, only one member would have the access required to notify any changes. Therefore, officials recommend that the proposed legislation should be amended to provide that a nominated member of the joint venture notifies the Commissioner of Inland Revenue of the election in the prescribed form on behalf of the joint venture, as well as any membership changes after making the election.

Recommendation

That the submission be accepted. (Rec 30)

Issue: Prescribed form for election

Submission

(EY, John Shand (d))

Submitters have the following suggestions regarding the prescribed form for notifying a flow-through joint venture election:

- The prescribed form for making an election should be finalised and made available by Inland Revenue in advance of the proposed commencement date of 1 April 2026. *(EY)*

- There should be a simple joint election notice with acknowledgement from Inland Revenue. *(John Shand (d))*

Comment

Inland Revenue intends to make the prescribed form for the election available by 1 April 2026. There may be a possibility of the form being made available slightly earlier than that date, after the Bill has passed. However, this will depend on Inland Revenue's resourcing and priorities, and the date the Bill is enacted. Officials note there will likely only be a few days between the Bill passing and 1 April 2026, so if the form is not available until 1 April 2026 there would not be a significant time difference. We also note that for the first year of the rules, all joint ventures wishing to apply flow-through treatment would have until 1 April 2027 to notify the election to Inland Revenue in the prescribed form.

The prescribed form for making the election will be an online form. When the form is submitted, there will be an acknowledgement that the form has been received.

Recommendation

That the submission be noted.

Issue: Irrevocability of chosen GST treatment

Submission

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

Submitters consider there are situations in which the proposed legislation should allow GST-registered joint ventures to elect flow-through treatment and, conversely, in which an election for flow-through treatment should be revocable. Scenarios that submitters consider would be desirable to have flexibility for include when the nature of a joint venture changes, its activities cease, or a new member enters the joint venture.

Some submitters suggest that if there are concerns with allowing revocation, these could be addressed by allowing revocation but with Inland Revenue's approval.

Comment

As discussed at Issue: Support for transitional rules, the Bill would allow a joint venture that was registered before 1 April 2026 to apply for its registration to be cancelled and elect for flow-through treatment. This deregistration rule would be available as a transitional measure for the

period of 12 months beginning on 1 April 2026. This means the joint venture would have until 1 April 2027 to apply to have its registration cancelled and elect flow-through treatment. After the expiry of this transitional period, GST-registered joint ventures would not be able to elect flow-through treatment, but would instead continue to be unincorporated bodies under the Goods and Services Tax Act 1985 (GST Act).

The Bill also proposes that a joint venture that elects to become a flow-through joint venture would not be able to subsequently cancel or revoke this election.

These rules essentially mean that, once the new regime is in place and a joint venture has actively chosen which set of GST rules it will apply (being the current unincorporated body rules or the flow-through joint venture rules), the joint venture must stick with this choice. This is to prevent "flip-flopping" between the two sets of rules, which could give rise to complications or unintended policy outcomes and consume Inland Revenue's administrative resources, and would require further complex transitional rules.

Officials consider that in some of the specific scenarios that submitters have mentioned (such as when the nature of the joint venture has fundamentally changed) there would in fact be a new joint venture, rather than the new joint venture activity being treated as a continuation of the existing joint venture. Therefore, officials do not consider there would be anything in this scenario to prevent the new joint venture from registering for GST or electing to become a flow-through joint venture.

We also note that another scenario that a submitter has cited is when the joint venture has ceased. Specifically, the submitter appears to be concerned that the inability of a GST-registered joint venture to elect flow-through treatment might prevent the joint venture from applying to have its GST registration cancelled when its activities cease. We note that the existing rules for deregistration in section 52 of the GST Act would still apply, meaning that a GST-registered joint venture could still have its registration cancelled if its taxable supplies fall below the registration threshold or if its taxable activity ceases. The inability to elect flow-through treatment would simply mean that the joint venture's status as an unincorporated body under the GST Act could not be cancelled or revoked. Therefore, if a GST-registered joint venture requests to have its registration cancelled because its taxable supplies have fallen below the registration threshold but its supplies later go over the registration threshold once again (with the nature of the joint venture being the same as it was before), the joint venture will be the person that is liable to register for GST.

Recommendation

That the submission be declined.

Issue: Penalties for failure to notify changes in membership

Submission

(John Shand (d))

The submitter supports the proposed requirement for a flow-through joint venture to notify Inland Revenue of changes in the joint venture's membership. However, they consider that penalties for failure to notify a change in membership should only be imposed for material non-compliance.

Comment

The Bill does not propose any new civil or criminal penalties in the context of these proposals. Existing civil (and in rarer cases, criminal) penalties in the Tax Administration Act 1994 may apply in cases of non-compliance.

Inland Revenue's approach to imposing discretionary penalties in respect of non-compliance, particularly with new legislation, is generally reserved for serious cases of non-compliance and when attempts to educate the taxpayer first have not been successful. Officials consider that Inland Revenue would adopt a similar approach in the context of these proposals.

Recommendation

That the submission be noted.

Issue: Application of total supplies rule

Submission

(Chartered Accountants Australia and New Zealand, Mayne Wetherell)

Submissions comment on the general application of the total supplies rule:

a. The "total supplies" rule in proposed section 51(5C) of the Goods and Services Tax Act 1985 should include a safe harbour or exemption for genuine cost-sharing arrangements. *(Chartered Accountants Australia and New Zealand)*

b. The threshold at which GST registration is required by members of an elective flow-through joint venture should be clarified. One possible solution would be to require registration by members when the joint venture itself would have been required to be registered, had the flow-through election not been made. *(Mayne Wetherell)*

Comment

The Bill proposes a "total supplies rule" that would apply when taxable supplies made by a flow-through joint venture are over the registration threshold. Under this rule, all the members of the joint venture would be liable to be registered, even if they would otherwise individually be below the registration threshold.

a. The total supplies rule would only apply to a joint venture. A cost sharing arrangement is not a joint venture and therefore would not be subject to these rules. Inland Revenue will publish guidance on the difference between a cost sharing arrangement and a joint venture or other type of unincorporated body in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

b. Officials agree with the submitter that the legislative drafting of the total supplies rule could be amended to be more technically precise.

Recommendation

a. That the submission be declined.

b. That the submission be accepted. (Rec 31)

Issue: Opposition to total supplies rule

Submission

(TAB NZ and New Zealand Thoroughbred Breeders' Association)

The submitters oppose the total supplies rule in proposed section 51(5C) of the Goods and Services Tax Act 1985. The current ability of non-GST registered joint venture members to remain unregistered should be retained.

If the total supplies rule proceeds, it should only apply to a bloodstock joint venture if the bloodstock was acquired after the application date. There are investors who have invested in what they have regarded as an activity outside the GST net and have not claimed input tax deductions. Therefore, they should not be brought into the GST net and required to account for GST on their share of the bloodstock when the bloodstock is sold. Alternatively, if such investors are to be brought into the GST net, they should be able to claim input tax deductions for their share of all pre-1 April 2026 costs.

Comment

Officials consider that the total supplies rule is a necessary integrity measure. The rule would prevent joint venture members from electing flow-through treatment to avoid GST registration (on the basis that the members are individually below the registration threshold) even though the joint venture itself would otherwise be required to register. An outcome where neither the members, nor the joint venture itself, are required to register even when the joint venture makes supplies over the registration threshold would be at odds with the treatment of other taxpayers carrying on taxable activities. The current law does not allow this outcome. Such an outcome would also have a fiscal cost.

If joint venturers consider the compliance costs involved with flow-through treatment are too onerous for unregistered members of the joint venture, they could instead register the joint venture for GST separately (rather than electing flow-through treatment). We also note that the total supplies rule would only apply when the joint venture is carrying on a taxable activity above the $60,000 registration threshold. Therefore, when the joint venture is below the registration threshold or is not carrying on a taxable activity (such as when its activities are instead a mere hobby), members of the joint venture who are individually below the registration threshold for their own individual taxable activities, or who do not individually have a taxable activity, would not be required to register.

The submitter has also raised a concern that the total supplies rule would result in unregistered members of bloodstock joint ventures missing out on input tax deductions for periods prior to the introduction of the new rules, when they were not registered, despite being required to register and pay GST after the introduction of the new rules. We note that this outcome already arises under the current law, when bloodstock sold at public auction is subject to GST even when the joint venture member is not registered for GST and has not claimed any prior input tax deductions.

We also note that an amendment in the Bill would allow previously unregistered joint venture members to claim some input tax deductions under the change of use rules when they become registered persons. As the submitter has noted, the amendment would not allow a member to claim input tax deductions for all prior expenses. However, that outcome is consistent with the rules that apply for all other taxpayers who become registered for GST part way through their activity. Officials do not see any reason why members of flow-through joint ventures should be treated differently to other taxpayers in similar circumstances.

Recommendation

That the submission be declined.

Issue: Clarification of example in Bill commentary

Submission

(TAB NZ and New Zealand Thoroughbred Breeders' Association)

Example 31 (page 63 of the Bill commentary) suggests that a GST-registered member of a bloodstock breeding joint venture must account for GST on the sale of their interest in the bloodstock even if the joint venture's activities are below the $60,000 GST registration threshold. The submitters did not anticipate this interpretation following from the flow-through joint venture proposal.

Comment

The outcome referred to in Example 31 is the ordinary outcome that arises when a person carries on more than one taxable activity. A person who is registered for GST must account for GST in relation to all taxable activities, even if one activity viewed by itself would not be over the registration threshold (see interpretation statement IS 25/21: GST – taxable activity at paragraph 8).

In the specific example referred to by the submitter, the joint venture is carrying on a taxable activity of bloodstock breeding (specifically, breeding and selling foals). Because the members have elected to apply flow-through treatment, each of the members must account for their share of the taxable activity. Because the joint venture activity does not involve supplies over $60,000 in a 12-month period the members are not required to register under proposed section 51(5C) of the Goods and Services Tax Act 1985. However, members that are already registered must account as required for any other person carrying on multiple taxable activities.

Recommendation

That the submission be noted.

Issue: Joint and several liability

Submission

(Corporate Taxpayers Group, Deloitte, John Shand (d))

Clarity as to joint and several liability should be provided by way of an explicit statement. *(John Shand (d))*

The submitters recommend that the Finance and Expenditure Committee confirm it agrees there should be no joint and several liability for the members of a flow-through joint venture. The

suggestion that there should be joint and several liability when the members are individually lodging their own GST returns would be impractical and would potentially seriously impact major commercial arrangements. *(Corporate Taxpayers Group, Deloitte)*

Comment

Under the current law, the members of an unincorporated body (including a joint venture) are jointly and severally liable for the body's GST payable. This ensures that Inland Revenue has options for collection if the body defaults on meeting its GST obligations.

Under the proposals, the members of a flow-through joint venture would be separate taxpayers (rather than being grouped together as a single taxpayer as per the current law). This means that each member would be liable for GST payable on its "share" of the supplies made or received, rather than being jointly and severally liable for the total GST payable the members incur as a group in the course of the venture.

Joint and several liability for the members of a flow-through joint venture was considered by the Government but ruled out due to concerns that it might present a commercially unacceptable risk for joint ventures that wish to apply flow-through treatment, and therefore may defeat the aims that the proposal is intended to achieve in the first place.

Officials note that Inland Revenue has an increased focus on GST debt management. Any integrity issues resulting from the absence of joint and several liability for flow-through joint ventures could be identified as part of Inland Revenue's work on monitoring GST debt and managed if necessary. This would include advising Ministers if any significant policy issues arise.

Recommendation

That the submission be noted.

Issue: Other integrity measures

Submission

(John Shand (a))

The following integrity measures should be included as part of the proposal:

a. The legislation should include an explicit cross-reference to the general anti-avoidance rule in section 76 of the Goods and Services Tax Act 1985 (GST Act).

b. Members of flow-through joint ventures should be required to use the same taxable period and accounting basis.

c. Joint venture agreements should be required to record apportionment.

Comment

a. The general anti-avoidance rule in section 76 applies in broad terms and is not cross-referenced by any other provisions in the GST Act. Officials do not see any reason why the proposed amendments for flow-through joint ventures should include a cross-reference to section 76, given the general anti-avoidance rule applies regardless.

b. As noted at Issue: Joint and several liability, the members of a flow-through joint venture would be treated as separate taxpayers under the proposal, even in relation to the activities of the joint venture. Given the members are unrelated parties and are not at all similar to different branches of the same company (being the current scenario when different GST-registered persons are required to have taxable period and accounting basis alignment), officials do not see any compelling reason to require the members to have the same taxable period and accounting basis. Further, the arbitrage concern referred to by the submitter is not clear.

c. Officials agree with the submitter that it would provide useful information for Inland Revenue's compliance and enforcement activities if the members of a flow-through joint venture record in writing the basis for which the members are apportioning input tax and output tax on joint venture acquisitions and supplies.

Point of difference

Rather than requiring members of all flow-through joint ventures to agree and record in writing the basis for which the members are apportioning input tax and output tax, officials suggest there should be a general requirement to keep and maintain a written record of information that is sufficient to enable the Commissioner to readily ascertain the basis for which the members are apportioning input tax and output tax on joint venture acquisitions and supplies. Many written joint venture agreements would already contain clauses making it clear in what proportions the members are sharing revenues and costs, in which case it should not be necessary for the apportionment ratios for GST to be specifically covered or specified by a written joint venture contract (as these would be easily ascertained from the existing terms of the contract).

However, some joint ventures do not have formal (written) agreements but are instead informal contractual associations. In such cases, there may not be a written record that would enable the Commissioner to readily ascertain the members' agreed apportionment ratios. Therefore, for these informal joint ventures specifically, officials recommend that the written agreement between the members to elect to become a flow-through joint venture should be required to specify the shares in which the members will make and receive supplies for GST purposes.

Further, a specific requirement should apply when the members of a flow-through joint venture collectively or jointly make both taxable and exempt supplies in the course of or as

part of the venture. In this circumstance, the members should have the same input tax apportionment ratio between taxable and non-taxable use of inputs that are used to make both types of supplies, and should also apply the same method for subsequent adjustments. Officials recommend that in this circumstance, the members should be required to agree on a fair and reasonable method of apportionment and adjustment that all members must use.

Recommendation

a. That the submission be declined.

b. That the submission be declined.

c. That the submission be accepted, subject to officials' comments. (Rec 32)

Supplies of interests in joint venture property

Clauses 108(4) and (5), 110, 111(3) and (4), 112(2), 113(2), 114, 119, 120, 123, 125, 129, and 130

Issue: Support for amendment to definition of "participatory security"

Submission

(Chartered Accountants Australia and New Zealand)

The submitter supports the proposal to exclude an interest in a flow-through joint venture from the definition of "participatory security".

Recommendation

That the submission be noted.

Issue: Compulsory zero-rating

Submission

(Chartered Accountants Australia and New Zealand, John Shand (c), TAB NZ and New Zealand Thoroughbred Breeders' Association)

a. The submitters support the proposal to compulsorily zero-rate a business-to-business supply of an interest in joint venture property when the recipient of the supply is a new or existing member of a flow-through joint venture. One of the submitters notes this would simplify transactions and reduce cash flow impacts for businesses. *(John Shand (c), Chartered Accountants Australia and New Zealand)*

b. The submitter does not support the proposal to compulsorily zero-rate business-to-business supplies of interests in joint venture property between members of a flow-through joint venture. This would impose substantial compliance requirements. They recommend that the proposed zero-rating be optional, similar to the existing rule for supplies of going concerns under which zero-rating applies only if the parties expressly agree in writing. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

c. The submitter requests clarification that a sale of joint venture property by the members of a flow-through joint venture to a third party purchaser (for example, a sale of an entire horse by the members of a bloodstock joint venture) is not treated as a transfer of joint venture property between members of the same joint venture for the purposes of the zero-rating rule. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

Comment

The design of the proposed zero-rating rule for business-to-business supplies of interests in joint venture property was publicly consulted on via the discussion document GST and unincorporated joint ventures. Most submitters on the discussion document who commented on this issue supported designing this rule similarly to the existing zero-rating regime for business-to-business supplies of land. Submitters' reasons for this included the familiarity of the land zero-rating rules for many taxpayers. One submitter considered having rules for business-to-business supplies of interests in joint venture property that are similar to the land zero-rating rules would simplify the process for taxpayers, compared with instead designing the zero-rating proposal similarly to the zero-rating rule for supplies of going concerns (given the zero-rating rule for supplies of going concerns requires an agreement in writing between the parties).

One submitter has requested clarification that a sale of an entire horse by the members of a bloodstock joint venture would not be treated as a transfer of joint venture property between members of the same joint venture for the purposes of the proposed zero-rating rule (see submission point (c) above. We confirm that the submitter's understanding is correct. In this scenario, the ownership of the horse is being transferred out of the joint venture entirely, as opposed to (for example) one member selling their interest in the horse to a person who is joining the venture in the exiting member's place. This is stated in proposed new section 11(1)(md) of the Goods and Services Tax Act 1985, which applies when there is a supply of an interest in joint venture property by a member of a flow-through joint venture to a new or existing member. Therefore, the proposed zero-rating rule would not apply in this situation, because the supplies of the members' interests in the horse are not to a new or existing member of the joint venture.

Recommendation

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

Application date and transitional rules

Clauses 2(23) and 133

Issue: Support for application date

Submission

(John Shand (c))

The submitter supports the proposed 1 April 2026 application date.

Recommendation

That the submission be noted.

Issue: Support for transitional rules

Submission

(Chartered Accountants Australia and New Zealand, John Shand (c))

The submitters support the transitional rule in proposed new section 93 of the Goods and Services Tax Act 1985 (GST Act), which would validate tax positions taken by a joint venture member for taxable periods starting before 1 April 2026 provided those tax positions were taken consistently with the amendments in the Bill allowing for flow-through treatment.

One submitter also expresses support for proposed new section 92 of the GST Act, which would allow existing joint ventures that are already GST registered to elect to become flow-through joint ventures within the first year of the new rules. The submitter considers the 12-month transitional period would ensure joint ventures have sufficient time and information to transition smoothly to the new regime. *(Chartered Accountants Australia and New Zealand)*

Recommendation

That the submission be noted.

Issue: Transitional rules should be more flexible

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed transitional rules in clause 133 of the Bill should be more flexible on the basis that many joint ventures may be unaware the rules are changing and the resulting rules that are being created are very complicated.

One submitter suggests that such flexibility could include an increased ability to make flow-through elections retrospectively (that is, after the expiration of the transitional rules on 1 April 2027) when the correct amount of GST has been returned by the joint venture members overall. *(Deloitte)*

Comment

Under the proposal, the current GST rules for unincorporated bodies would continue to apply to most joint ventures by default. Therefore, to apply flow-through treatment, these joint ventures would need to specifically elect for it.

Under the proposed transitional rules, members of existing joint ventures who wish to apply flow-through treatment and have their election for this treatment take effect from the start of the new rules (being 1 April 2026) would have an entire year to make the election and notify it to Inland Revenue. Flow-through elections could still be made after 1 April 2027 if the joint venture is not GST registered but would need to be notified to Inland Revenue within 21 days of the date the members agreed in writing to elect flow-through treatment, and would take effect on the date of that written agreement.

Officials consider that the 12-month transitional period should generally provide sufficient time for joint ventures wishing to apply flow-through treatment within the first year of the rules to make the election and notify it to Inland Revenue. We note that guidance on the new rules will be provided in an Act commentary published on the Tax Policy website shortly after enactment of the Bill, which will provide taxpayers and advisors with notice of the changes many months before the expiry of the transitional period on 1 April 2027.

However, similar to our comments at Issue: Timeframe for election and notifying changes, we accept there may in some cases be exceptional circumstances that result in an election being notified after the 1 April 2027 deadline. Therefore, our above recommendation that the Commissioner of Inland Revenue should have discretion to accept late elections and backdate them as appropriate should also apply in this context, rather than being limited to when a notification is made outside the 21-day timeframe that is proposed to apply after 1 April 2027.

Recommendation

That the submission be accepted. (Rec 33)

Issue: Validation of past periods

Submission

(Deloitte, TAB NZ and New Zealand Thoroughbred Breeders' Association)

The transitional rule in proposed section 93 of the Goods and Services Tax Act 1985 is not adequate for the following reasons:

a. The requirement in the rule that each member of the joint venture must be registered if the joint venture itself is above the registration threshold is unduly restrictive. At a minimum, flow-through treatment prior to 1 April 2026 should be protected for all joint ventures, regardless of whether a member chose not to register for GST. *(TAB NZ and New Zealand Thoroughbred Breeders' Association)*

b. Tax positions taken prior to 1 April 2026 should automatically be validated without requiring a specific election, provided those past tax positions were taken consistently with a GST flow-through approach. *(Deloitte, TAB NZ and New Zealand Thoroughbred Breeders' Association)*

Comment

a. For pre-1 April 2026 tax positions taken by joint venture members based on a flow-through approach to be validated by the transitional rule, the rule requires that the joint venture members were all GST-registered if the joint venture itself was above the $60,000 GST registration threshold (meaning the joint venture was liable to register for GST under the law applying at that time, even though it did not).

   If the transitional rule did not include this requirement, then the Bill would validate past GST treatment when no one, or only some members of a joint venture, registered (due to the members being individually below the registration threshold, even though the joint venture itself should have been registered). This would potentially allow some taxpayers to avoid paying GST that should have been accounted for, which would be inappropriate and would give rise to a fiscal cost. Therefore, officials consider that the proposed requirement in the transitional rule is an important integrity measure that is necessary to ensure that past GST treatment is only validated when all GST that should have been accounted for was in fact accounted for.

b. The transitional rule also requires a joint venture to elect to become a flow-through joint venture before 1 April 2027 for validation of past tax positions to be effective. The submitters

are of the view that an election should not be required for validation of past tax positions. Rather, the submitters consider the validation of past tax positions taken consistently with a flow-through approach should be automatic.

Officials note that most joint ventures (including those already existing and applying flow-through treatment before 1 April 2026) would need to elect for flow-through treatment under the proposal anyway if they want to continue applying flow-through treatment once the new rules are in place. This is so that Inland Revenue has sufficient information about the joint venture and its members for compliance and enforcement purposes.

Requiring an election for past periods to be validated ensures continuity of the GST treatment applying to the joint venture. If past tax positions based on a flow-through approach were automatically validated but the joint venture did not elect for flow-through treatment going forward, then the joint venture would essentially end up switching between the two sets of rules (being the flow-through rules, and the unincorporated body rules) which the proposal is designed to prevent (see Issue: Irrevocability of chosen GST treatment).

As noted above, joint ventures would have until 1 April 2027 to make the election and have their past periods validated, so this should provide them with sufficient time to elect. When circumstances mean the election cannot be made before then, officials have recommended in this report that the Commissioner should have discretion to accept such a late election and backdate it (see Issue: Transitional rules should be more flexible).

Recommendation

That the submission be declined.

Other technical amendments

Clauses 109, 111(3) and (4), 112(2), 113, 114, 120, 123, 125, and 127

Issue: Support for deemed supply rule and zero-rating

Submission

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

The submitters support the proposal to treat an unincorporated body as making a taxable supply to its members of any assets of its taxable activity when the body's GST registration is cancelled. They also support the proposal to zero-rate this supply when the recipient of the supply is a registered person and intends to use the goods and services for making taxable supplies.

Recommendation

That the submission be noted.

Issue: Application date of deemed supply rule

Submission

(Mayne Wetherell)

The present uncertainty around the GST consequences of an unincorporated body (such as a joint venture) ceasing to be GST registered may result in some businesses delaying restructures until 1 April 2026 or later. Therefore, the amendment in clause 127 and related amendments in clause 114 and other clauses should come into force:

a. on 1 March 2026, or

b. if a 1 March 2026 commencement date is not feasible, on the day after the Bill receives Royal assent.

Comment

Under the current law, when a registered person (including an unincorporated body) applies to cancel its registration, sections 5(3) and 10(7A) of the Goods and Services Tax Act 1985 (GST Act) treat the person as making a taxable supply of any goods and services that form the assets of its taxable activity at market value immediately before the cancellation of its registration. This mechanism ensures that GST is accounted for on the goods and services before they are removed from the GST net.

Section 5(3) does not deem the supply to be made to any person. Usually, this does not cause a problem because the same person continues to own the goods and services before and after deregistration. However, in the context of an unincorporated body, this means the body will be liable for GST on the market value of the assets that formed part of its taxable activity when its registration is cancelled, but the members who will retain the assets (assuming those assets were not sold to the members before deregistration) would not be entitled to a corresponding input tax deduction if they continued to use those assets in their separate taxable activities.

To prevent this outcome, the Bill proposes an amendment (in clause 127) to ensure there is a deemed supply of the assets from the unincorporated body to its members in this scenario.

a. Based on our discussions with the submitter, officials understand that the submitter views the proposed deemed supply rule as a mere clarification, hence their suggestion of a retrospective application date of 1 March 2026. Officials view the proposed amendment differently and consider it to be a policy change rather than a mere clarification. This being the case, officials consider prospective (rather than retrospective) application to be most appropriate, since tax law changes generally apply prospectively in accordance with best practice. We also note that under current law, an unincorporated body could sell its assets to the members before cancellation of the body's registration so that there are no assets for the existing deemed supply rule in section 5(3) to apply to.

b. Officials consider it would be appropriate for the deemed supply rule in clause 127 (and a consequential amendment in clause 113) to come into force prospectively on the day after Royal assent. This may mitigate the submitter's concern about potential business restructures that may be planned to take place at the end of the 2025–26 financial year.

   While the Bill currently proposes that the deemed supply rule would come into force on 1 April 2026, there is no special reason for this application date other than alignment with the application date of the other joint ventures-related amendments. Rather than strictly being part of the flow-through joint venture changes, the deemed supply rule would apply to unincorporated bodies more generally (which, as noted above, already have to apply a very similar deemed supply rule when they deregister). Therefore, there is no reason why the rule cannot apply from the day after Royal assent instead of 1 April 2026.

Point of difference

Officials do not agree with the submitter's suggestion of changing the application date of clause 114, which contains two new zero-rating rules, only one of which is related to the amendment in clause 127.

The proposed new zero-rating rules are policy changes that would require changes to taxpayers' processes when they undertake certain transactions. Officials' view is that these amendments should apply prospectively from a "hard" date so that taxpayers have sufficient warning about when the changes apply from. The Bill proposes that these amendments

would apply from 1 April 2026 (consistent with the other joint ventures-related amendments), which officials consider to be appropriate.

While the amendment in clause 114 inserting new section 11(1)(mc) of the GST Act is related to the deemed supply rule in clause 127, it is not essential that the two amendments have the same application date. If an unincorporated body cancels its registration when the new deemed supply rule is in force but before the zero-rating changes come into force, the deemed supply on deregistration would be subject to GST at the standard rate of 15% (as it is currently under the existing deemed supply rule). However, because of the amendment in clause 127, the members of the unincorporated body could claim this GST back as an input tax deduction if they are GST registered and will use the assets for making taxable supplies, thus ensuring there would not be an irrecoverable GST impost for a business-to-business supply.

We have discussed these points with the submitter. They agree that the proposed zero-rating changes are substantive policy changes. They have also confirmed that having the deemed supply rule apply from the day after Royal assent and having the zero-rating changes apply from 1 April 2026 would not cause any practical issues from their perspective.

Recommendation

a. That the submission be declined.

b. That the submission be accepted, subject to officials' comments. (Rec 34)

Issue: Requirement to value deemed supply at market value

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

It should not be necessary to determine the market value of a zero-rated supply that is deemed to occur on deregistration of an unincorporated body. Establishing the market value of such assets may be complex and resource-intensive, particularly when valuation evidence is difficult to obtain.

If it subsequently becomes apparent that a supply on deregistration was treated as zero-rated when it should not have been, a valuation could be obtained at that later date.

Comment

Under the current law, when a registered person (including an unincorporated body) applies to cancel its registration, rules in the Goods and Services Tax Act 1985 treat the person as making a taxable supply of any goods and services that form the assets of its taxable activity at market value immediately before the cancellation of its registration. The intention of the proposed amendment

is not to change this basic proposition. The proposed amendment merely intends to resolve an issue that may arise when an unincorporated body's registration is cancelled, when the members are left holding the relevant assets. Under the current rules, the members are unable to claim an input tax deduction for the GST charged on deregistration of the body, even if those goods and services are subsequently used by the members for making taxable supplies.

While the Bill includes a proposal to zero-rate this deemed supply in certain situations, officials do not consider there is any good policy reason for treating unincorporated bodies differently from any other taxpayer who is subject to a deemed supply on deregistration. When assets are used by the member for making taxable supplies, such that the supply can be zero-rated, it is likely that the member will wish to record the value of the assets at market value in their books in any event (especially since, as submitters have said in response to other amendments, parties in these cases are usually dealing with each other on an arm's-length basis).

Recommendation

That the submission be declined.

Issue: Definition of "associated persons"

Submission

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

a. The submitter supports the proposed changes to the definition of "associated persons", including the proposed new test associating two members of a joint venture when they transact with one another in their capacity as members of the joint venture. *(Chartered Accountants Australia and New Zealand)*

b. The submitters do not support the proposed association test for two members of a joint venture transacting in their capacity as members of the joint venture. They say that such transactions can be expected to occur on arm's-length terms and on a business-to-business basis. They are particularly concerned that treating such transactions as associated supplies changes the time of supply, which they say could increase complexity. If there is a logical reason for there to be association between the joint venture members in certain circumstances, the effects of association (such as the time of supply consequences) should be limited to situations when one of the members is not GST registered. *(Corporate Taxpayers Group, Mayne Wetherell)*

Comment

The Bill proposes two main amendments to the definition of "associated persons" in the Goods and Services Tax Act 1985:

- A new association test would ensure that two members of a joint venture are associated persons when they transact in their capacity as members of the joint venture. This test would apply regardless of whether the joint venture is a flow-through joint venture or an "ordinary joint venture" (being a joint venture that is an unincorporated body).
- Another amendment would limit the tripartite test of association so that it does not interact with the existing association test for a joint venture and a member of the joint venture. This would prevent the outcome that the members of an ordinary joint venture are always associated whenever they transact, including when the supply occurs outside the context of the joint venture and therefore will clearly be on arm's-length terms.

The submitters seem to agree with the proposal to ensure that members of a joint venture would not be associated with one another when they do not transact in their capacity as members of the joint venture. However, submitters have differing views about the proposed new association test for two members of a joint venture that transact in their capacity as members of the joint venture. The submitters opposed to this amendment consider that it is an overreach to associate the members of a joint venture (who are not otherwise associated persons) with one another under any circumstance.

The proposed new test is consistent with the existing association test for a joint venture and a member of the joint venture. That test was introduced in 2023 as an integrity measure to ensure that a joint venture is associated with its members for GST purposes to reflect their aligned economic interests. Officials consider that the same rationale should also apply when the members of a joint venture transact in their capacity as members of the joint venture. This would ensure that the same GST outcomes are attained in similar intra-joint venture transactions, regardless of whether the current unincorporated body rules apply to the joint venture or if, instead, the joint venture has been elected as a flow-through joint venture. Examples 37 and 38 in the Bill commentary illustrate this point.

The submitters at submission point (b) have also raised a more general point about the time of supply rule for associated supplies, which does not solely affect joint venture arrangements but is a wider policy issue that has not been publicly consulted on to date. An attempt to address this issue through an amendment to this Bill could therefore lead to unforeseen consequences. We consider it would be more appropriate to consider this issue outside the process of this Bill and undertake further consultation on it. Such policy work would require prioritising and resourcing as part of the Government's Tax and Social Policy Work Programme.

Recommendation

a. That the submission be noted.

b. That the submission be declined.

Issue: Taxable supply information requirements

Submission

(KPMG)

It is not clear how flow-through treatment for joint ventures will interact with the taxable supply information rules. The submitter recommends more practical guidance is provided on this, and suggests the following possible changes to the legislation:

a. Add new rules for "recipient groups" to the Goods and Services Tax Act 1985 (GST Act), similar to the existing rules for supplier groups.

b. Alternatively, if a supply is made to a member of a flow-through joint venture in respect of activities undertaken by the joint venture, it could be deemed to be sufficient for that supply to be treated as made to all members of the joint venture and the taxable supply information to be valid for all members.

Comment

a. Officials do not consider adding new rules for recipient groups to be necessary. Officials consider that when a member of a flow-through joint venture acquires goods and services for the purposes of the joint venture, the person would likely be doing so as an agent for the other members. The agency rules in the GST Act provide that, when a registered person makes a taxable supply to an agent acting for a principal:

   - the supply is deemed to be made to the principal and not the agent, and
   - the agent may nevertheless be issued with taxable supply information for the supply as if the supply was made to the agent.

   These rules allow the principal to claim an input tax deduction for the supply by using the taxable supply information issued to the agent to support their claim. Therefore, under the agency rules, the members of a flow-through joint venture should all be able to deduct their share of input tax when one of them acquires goods and services for the joint venture, on the basis of taxable supply information held by the members that was issued to the acquiring member and includes the acquiring member's details. Therefore, officials consider the current agency rules are likely to be sufficient in practice.

b. Officials consider the agency rules likely already provide the desired outcome described by the submitter. However, to put this beyond doubt, we recommend that a clarifying amendment be made along similar lines to what the submitter has suggested.

Point of difference

The suggested amendment would provide that when a member of a flow-through joint venture (referred to here as the "acquiring member") acquires goods and services for the benefit of all the members, the acquiring member is deemed to have acquired the other members' share of the supply as their agent. This would ensure that (consistent with the submitter's suggestion) when a taxable supply is made to a member of a flow-through joint venture in respect of activities undertaken by the joint venture:

- the supply is treated as made to all members of the joint venture, and
- the taxable supply information issued to the acquiring member is valid for all members, even if it only includes "recipient details" for the acquiring member and not the other members.

Recommendation

a. That the submission be declined.

b. That the submission be accepted, subject to officials' comments. (Rec 35)

Issue: Aspects of current rules should be clarified

Submission

(PwC)

The opportunity should be taken to clarify:

a. the treatment of transfers of interests in a GST-registered unincorporated body (for example, by specifically deeming these to be participatory securities)

b. the treatment of supplies made between a GST-registered joint venture and its members (noting that a flexible or optional approach may be most appropriate for this).

Comment

a. Legislative clarification of the GST treatment of a transfer of an interest in an unincorporated body is outside the scope of this Bill. Given the submitter's suggestion applies to interests in unincorporated bodies generally (not just joint ventures), further policy work and consultation would be required to determine whether deeming an interest in an unincorporated body to be a participatory security would provide the appropriate policy outcome. Such work is not on the current Tax and Social Policy Work Programme. Given it would involve resourcing decisions, any policy work on this matter would need to be

considered against work programme priorities. Also, as noted at Issue: Guidance needed, Inland Revenue's public guidance work programme includes an item (currently on hold pending the passage of this Bill) on the GST treatment of a supply of an interest in a joint venture that is an unincorporated body. This guidance will be finalised following the Bill passing into law.

b. Officials do not consider that it would be appropriate to give taxpayers the option of disregarding a supply between a joint venture and a member of the joint venture as the submitter is suggesting. When a member of a joint venture acquires goods and services in their capacity as a member of the joint venture and in the course of the joint venture's taxable activity, the unincorporated body rules in the Goods and Services Tax Act 1985 already treat this as a supply made to the joint venture instead of to the member (meaning there is no supply from the member to the joint venture for GST purposes). However, when, for example, a member of a joint venture acquires goods and services other than in their capacity as a member of the joint venture but then supplies the goods and services to the joint venture, or when the joint venture makes a taxable supply to the member, it would defeat the purpose of the association rule for a joint venture and a member of the joint venture if the parties could simply choose to disregard the supply. Given the anti-avoidance purpose of the rules for associated supplies, such an outcome would not be appropriate.

Recommendation

That the submission be declined.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Employee share schemes

Employee share schemes deferral regime

Clause 40

Issue: Liquidity events without corresponding liquidity

Submission

(Avid.legal Limited, Bell Gully, Deloitte)

Submitters have identified various events that would constitute a liquidity event under proposed section EA 4B(4) of the Income Tax Act 2007 when the shareholder would not necessarily have gained the rights to a liquid asset:

- The sale or transfer of shares to an unlisted holding company, in exchange for shares in that unlisted holding company. *(Avid.legal Limited)*
- The cancellation of shares as part of a restructure, if the shareholder is compensated in shares in the new company. *(Deloitte)*
- The employer business is listed, but the shares held by the employee are subject to a further lock-up period. *(Deloitte)*
- The employee has received vesting rights to shares but has not exercised them at the time of a liquidity event. *(Bell Gully)*

Submitters recommend that these situations be excluded from the definition of a liquidity event under proposed section EA 4B(4).

Comment

Officials agree that a liquidity event, and the corresponding realisation of a tax obligation, should not be triggered when the shareholder does not have an asset that can be liquidated. The intention of the proposed rules is to allow shareholders to defer their tax liability to the point that they have the means to satisfy the obligation, and these events would not meet the intention of the rules.

However, events that give the shareholder the option to liquidate their shares, even if not exercised, should remain covered as liquidity events. For example, when an employee has the option to exercise their vesting rights at the time of a liquidity event, they could liquidate their shares to meet their tax obligation.

Point of difference

Officials therefore recommend that the rules be amended to ensure that shareholders that have a liquidity event, but who have not received or become entitled to a liquid asset, would be entitled to continue to defer their taxing date until the next qualifying liquidity event.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 36)

Clause 40

Issue: Payment of a dividend triggering a liquidity event

Submission

(Avid.legal Limited, Bell Gully, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, PwC, Russel McVeagh)

Submitters have raised a broad range of concerns with the payment of dividends qualifying as a liquidity event:

- The legislative definition of "dividend" within the Income Tax Act 2007 is broader than just cash dividends, meaning the receipt of some non-cash (and therefore non-liquid) dividends would trigger a tax obligation. *(Bell Gully, Deloitte, KPMG)*
- Employees may be unable to satisfy their deferred tax obligation when the value of the dividend is lower than the deferred tax liability. *(Avid.legal Limited, Bell Gully, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)*
- The dividend may not have been paid at the time it is declared, meaning the employee has not received any income to satisfy their deferred tax obligation. *(Russell McVeagh)*
- Taxing the shares at their pre-dividend value, while also then taxing the dividend itself, results in double taxation of the value of the dividend. *(Avid.legal Limited, Deloitte, PwC)*

All submitters support removing dividends as a liquidity event. Alternatively, some submitters would support the following modifications to the current proposals:

- Prevent small or non-cash dividends from triggering a liquidity event. *(Deloitte)*
- Prevent one-off dividends from triggering a liquidity event. *(Deloitte)*
- Confirm that a dividend only triggers a liquidity event if it is paid to the employee. *(Russell McVeagh)*
- Allow the employee to continue to defer the tax obligation to the extent the obligation exceeds the value of the dividend. *(Russell McVeagh)*

Comment

Dividend payments were originally included as a liquidity event for two main reasons:

- Officials were concerned that (in the absence of dividends as a liquidity event) the payment of dividends could be used to lower the value of shares before a sale that would trigger a liquidity event.
- Officials also took the broader view that if a business was capable of regularly paying dividends, then it was sufficiently mature enough to have its shares valued.

However, we agree with submitters that the current proposals trigger tax obligations in many situations when the taxpayer does not have corresponding liquidity to satisfy that obligation. This is at odds with the intention of the deferral rules and imposes high costs relative to the integrity concerns of officials.

On balance, we do not believe that an amended rule for dividends would meaningfully resolve these issues without also imposing large compliance costs. Additionally, given any dividends would generally be taxable on receipt, we acknowledge that our integrity concerns would be limited to a limited number of non-taxable dividend events.

Point of difference

Therefore, we recommend that the definition of "liquidity event" in proposed section EA 4B(4) be amended to remove paragraph (a) of section EA 4B(4), functionally removing dividends as a liquidity event from the proposed rules.

However, officials will continue to monitor this area and may recommend amendments regarding dividends in the future if it becomes clear that they are being used to subvert the integrity of the deferral rules.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 37)

Clause 40

Issue: Employee election into the deferral regime

Submission

(Avid.legal Limited, Bell Gully, Chartered Accountants Australia and New Zealand, Deloitte, KPMG, Russell McVeagh)

As currently drafted, only employers would be entitled to designate employee share scheme (ESS) shares as subject to the proposed deferral rules. Submitters have raised two concerns about this approach:

a. It is unclear whether, when an employer issues shares to more than one employee with one issuance, that the employer can designate one employee's shares as deferred while not designating other employees' shares as deferred.

b. Employees should be able to designate their ESS shares as deferred and notify the Commissioner of Inland Revenue of this (that is, making the election is not limited to the employer).

Comment

a. Officials agree with submitters that it is not currently clear that ESS shares from the same issuance can have different designations. The intention of the rules is that different ESS shares can have different designations, and we recommend the drafting be updated to clarify this.

b. Officials do not agree with submitters on allowing employees to designate their ESS shares as deferred for the following reasons:

   - "Designation" within the context of the rules is the point at which the employer must notify the Commissioner of Inland Revenue that the shares are deferred. It is not intended that this "designation" is a unilateral decision for the employer only, and we would expect that they would engage in discussions with their employee as to whether the shares should in fact be designated. To the extent ESS shares are offered as a non-cash means of remuneration to retain talent in start-ups (which is the purpose of the rules), we would expect that the employee's preferences on the designation of those shares would be taken into account.
   - Different ESS shares from the same issuance will be able to have different designations, so we expect that this would remove one of the main barriers to employers offering employees their preferred designation. We expect that this will lower the need for employees to be able to adopt a different designation than what their employer would adopt.
   - For the remaining situations (those when employees and employers disagree on which treatment should apply, but ESS shares have nonetheless been issued), officials are concerned that employee-led election would be administratively complex. It would be difficult to track which employing company had issued the shares, and therefore whether they are either aware that they should also be deferring deductions for these shares, or that they are claiming them in the correct income year.

Recommendation

a. That the submission be accepted. (Rec 38)

b. That the submission be declined.

Clause 40

Issue: Allow income spreading for deferred tax liabilities

Submission

(Deloitte)

The submitter suggests that the deferral regime include a mechanism for spreading income arising from a liquidity event over three to five years. The submitter notes that such a mechanism would increase the attractiveness of the deferral regime and encourage greater adoption of employee share scheme arrangements.

Comment

The purpose of the deferral regime was to allow employees to defer their taxing point until their shares could be more readily valued and liquidated to satisfy their tax obligation. The scheme was not designed to be explicitly concessionary to encourage additional use of the ESS rules.

Recommendation

That the submission be declined.

Clause 40

Issue: Deferred ESS shares should be valued at original acquisition

Submission

(Avid.legal Limited, KPMG)

Submitters have proposed that the tax deferral regime be amended so that the value of employee share scheme (ESS) shares is the value of the shares when they were originally received, not the value of the shares at the liquidity event as currently proposed. Submitters suggest that this would make the deferral rules more attractive by materially reducing the amount of tax that would be paid by employees at their liquidity event.

Comment

The purpose of the deferral regime was to allow employees to defer their taxing point until their shares could be more readily valued and liquidated to satisfy their tax obligation. The scheme was not designed to be explicitly concessionary. The submitters' proposals would represent a material concession to employees receiving ESS shares and would likely carry a material fiscal cost.

Recommendation

That the submission be declined.

Clauses 10(3) and (4), 40, 95(7) and (14)

Issue: ESS deferral notification requirements

Submission

(Matter raised by officials)

Proposed new section EA 4B(2) of the Income Tax Act 2007 provides that eligible companies could issue shares to an employee that defer the recognition of income and tax liabilities until a liquidity event occurs. Section EA 4B(2) would require a company to notify Inland Revenue of the issue of "employee deferred shares" to an employee, however in its draft form it does not define a notification period.

Proposed section EA 4B(2) should be amended to require a company to notify Inland Revenue of the issue of "employee deferred shares" within 20 days from the date of issue to an employee, or by a later date if the Commissioner allows.

Comment

This proposed 20-day notification period is aligned with the notification period for non-deferred employee share schemes.

Recommendation

That the submission be accepted. (Rec 39)

Employee share scheme remedials

Clause 39

Issue: Clarifying timing of employers' deductions

Submission

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

A range of submissions have been received both in support of, and in opposition to, the proposal to clarify that employers' deductions for employee share schemes (ESS) arise on the share scheme's taxing date.

However, submitters opposed to the amendment have raised a specific concern with the effect the proposals would have on active (or recently concluded) merger and acquisition (M&A) deals. (*Chartered Accountants Australia and New Zealand, New Zealand Law Society, KPMG, PwC)*

These submitters note that the businesses subject to these deals will attribute the value of any ESS deductions under the current rules, and that the proposals may change the actual economic value of those deductions. For active or recently concluded deals, this can materially alter the valuations parties have agreed to.

Additionally, one submitter notes that businesses with ESS shares with vesting dates within close proximity to the effective date could potentially lose their deduction entirely because the deduction would arise in an income year in which the law is not effective. *(KPMG)*

Comment

Officials agree that, as currently drafted, the proposal would have outsized effects on businesses under current or recent M&A agreements.

Point of difference

We therefore recommend that:

- taxpayers who were parties to an M&A deal before the date of enactment, but the M&A deal had not concluded at the date of enactment, would be entitled to recognise a deduction on the ESS deferral date, and
- a transitional provision be added to permit deductions when the share scheme taxing date retrospectively occurs in the prior income year.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 40)

Clause 10(1) and (2)

Issue: Clarify taxing date for shares when employee has unconditional right to presently receive shares

Submission

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

The proposed amendment to section CE 7B of the Income Tax Act 2007 would clarify the meaning of "share scheme taxing date" to prevent income and deduction mismatches when employers had not transferred shares to the employee who was otherwise entitled to the shares.

Submitters are broadly opposed to the proposal as drafted, and generally either support withdrawing the amendment, making the proposal optional, or largely redrafting the amendment.

Submitters are generally concerned that the amendment would introduce uncertainty, compliance costs, and may result in some employees having tax obligations arise without corresponding liquidity. Submitters then contrast these concerns against the narrow problem definition of the amendment and argue the benefits of the proposal are outweighed by its costs.

Comment

Officials agree that, as currently drafted, the amendment may give rise to a range of additional costs not originally foreseen when it was proposed. As submitters note, these costs are outsized relative to the issue the amendment seeks to resolve.

Point of difference

Officials believe it would be possible to amend the section to resolve the initial issue, but do not believe that this can be done without further consultation. Given the concerns raised to date, we recommend that the proposal be withdrawn from the Bill so that further consideration can be given to the issue at a later date.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 41)

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Income from residential supply of electricity

Income from residential supply of excess electricity

Clauses 19 and 95(8)

Issue: Support for proposal

Submission

(Corporate Taxpayers Group, Deloitte, EY, John Shand (a), (c), (d), New Zealand Law Society, PwC, Rewiring Aotearoa)

Submissions expressed support for the proposal to introduce a tax exemption for income derived by an individual from the residential supply of excess electricity.

Recommendation

That the submission be noted.

Clause 19

Issue: Opposition to proposal

Submission

(Elaine Marshall)

The proposed tax exemption should not proceed until there is more qualified data available and a more thorough regulatory impact statement (RIS) undertaken.

The proposal would incentivise the sustainable source of electricity generation and sale. However, this would allow certain individuals to exploit this tax loophole and the amount earned could be substantial if they owned multiple properties. There is no income cap for an exemption, and this would likely result in abuse of the tax exemption. The RIS suggested a cap of $1,000 to $4,000 but noted difficulty in estimating a cap given a lack of data.

Inland Revenue needs to be able to collect data on the number of residential domestic households selling electricity and their income earned.

Comment

Officials acknowledge that we lack data on the income derived from the sale of excess electricity from a dwelling. However, the RIS included estimates of the likely income that could be generated

from home solar systems of various capacities. This was based on information provided by the Electricity Authority.

Obtaining more detailed data on the amount of income derived from the sale of excess electricity from a dwelling would be very costly.

Recommendation

That the submission be declined.

Clause 19

Issue: Extend exemption to trusts

Submission

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

The proposed exemption should be extended to cover non-natural persons (for example, family trusts).

- The proposed exemption creates an arbitrary outcome because the treatment would be different depending on whether the account holder is an individual in their own name, or a trustee of a family trust. *(New Zealand Law Society)*
- Extending the exemption is particularly important when the trustee has no other sources of income, and the property is clearly used for residential purposes. *(Deloitte)*
- It would be disproportionate to impose compliance costs in these cases because many family trusts may not otherwise file tax returns. *(PwC)*
- If extending the exemption is not supported, a de minimis threshold for non-natural persons of $2,000 gross income should be introduced. *(PwC)*
- Extending the exemption to trusts in these circumstances ensures consistency and fairness, recognising that many residential properties are held in trust for asset protection or succession planning. *(Chartered Accountants Australia and New Zealand)*
- Trustees of a trust that owns a residential property should be able to benefit from the exemption, particularly if the trustees do not have any other sources of income. *(Corporate Taxpayers Group)*

Comment

Extending the exemption to non-natural persons would introduce complexity. Furthermore, in the absence of income from the sale of excess electricity from a dwelling, many non-natural persons

would still have a tax filing obligation. As such, the compliance cost rationale for the exemption for natural persons does not apply.

Officials acknowledge that, in the absence of income derived from the sale of excess electricity, some family trusts would have no tax filing obligations. However, there is no requirement for a trustee to be the electricity account holder for a dwelling just because the dwelling is held in a family trust. We expect that in many cases, electricity account holders for dwellings held in trusts will still be natural persons and therefore eligible for the exemption.

Recommendation

That the submission be declined.

Clause 19

Issue: Exemption should be limited to residents of dwelling

Submission

(Annette Penman, Barbara Langton, Eileen Wright, J McCarthy, Mollie Bremner, Pamela Henson, Peter Carey, Richard Northey, Sandy Holden, Virginia de Joux)

Only persons residing in a property, whether they are owners or tenants, should be eligible for the tax exemption on income from the residential supply of excess electricity.

Many submitters expressed concern that the exemption would provide a tax break for landlords, allowing them to earn significant untaxed income. Submitters expressed concern this could exacerbate inequality and housing unaffordability.

Comment

Officials do not agree with submitters' concerns that the proposed exemption would provide a tax break for landlords. To be eligible for the tax exemption, a landlord would need to be the electricity account holder for their rental property. However, landlords charging all-inclusive rent are rare and in most situations a tenant will be the account holder.

While we do not agree with submitters' concerns, we still recommend narrowing the exemption to only apply when the person deriving income is a resident (either as an owner-occupier or tenant) at the dwelling where the electricity is generated. This includes both when the dwelling is the person's main home and when the dwelling is a secondary residence of the person (for example, a bach).

The rationale for the proposed tax exemption for income derived by an individual from the residential supply of excess electricity is to address disproportionate compliance costs associated

with declaring income derived from the residential supply of excess electricity. Most individuals supplying excess electricity from a dwelling would, in the absence of this income, not be expected to file tax returns because their only other income would be salary, wages, and investment income subject to withholding tax. However, this rationale does not apply to landlords who derive income from the supply of excess electricity from a rental property.

In this situation, the proposed exemption would increase compliance costs because it would require landlords to apportion costs that relate to both the taxable rental income and exempt electricity income. The denial of deductions related to the exempt income may also increase landlords' after-tax costs and discourage landlords that charge all-inclusive rent from installing solar panels.

Recommendation

That the submission be accepted. (Rec 42)

Clause 19

Issue: Confirm exemption applies to landlords

Submission

(Rewiring Aotearoa)

The legislation and guidance should explicitly clarify that the tax exemption applies to rental properties, including situations when either the landlord or tenant exports electricity to the grid. This clarification is essential to ensure equitable treatment and encourage uptake among renters and landlords.

Comment

The proposed exemption currently in the Bill does apply to rental properties so long as the electricity account holder is a natural person. This includes both when the tenant is the account holder or when the landlord is the account holder (so long as they are a natural person).

As noted in Issue: Exemption should be limited to residents of dwelling, officials now recommend narrowing the exemption to only apply when the electricity is generated from a residence of the account holder. This would exclude landlords who export electricity from their rental properties from the ambit of the exemption. However, owner-occupiers and tenants exporting electricity would still be subject to the exemption.

Applying the exemption to landlords is likely to increase compliance costs because it would necessitate apportionment of expenditure that relates to both the taxable rental income and exempt income. The denial of deductions related to the exempt income may also increase the after-tax costs of landlords that export electricity from their rental properties. As such, including landlords in the ambit of the exemption may discourage landlords from installing solar panels at their rental properties.

Recommendation

That the submission be declined.

Clause 19

Issue: Support for uncapped exemption

Submission

(Corporate Taxpayers Group, Deloitte)

Submitters strongly support an uncapped level of income to qualify for the exemption. This materially simplifies the rules and ensures they are future-proofed against fluctuating electricity prices, which may otherwise flip taxpayers in/out of the exemption.

Recommendation

That the submission be noted.

Clause 19

Issue: Exemption should be capped

Submission

(Abigail Kirby-Neill, Andrea Morgan, Angela McAllister, Ani Mitcalfe, Barbara Gilchrist, Christiaan Day, Florence Micoud, John Rhodes, John Shand (d), Julianne Leggott, Kathleen Ryan, Lin Roberts, Lu Tyree, Mary-Anne Poa, Mishael Coulter, Mollie Bremner, Peter Carey, Tara D'Sousa, Tax Justice Aotearoa, Victoria Quade, Virginia de Joux)

The tax-exempt income derived from the sale of excess electricity from a dwelling should be capped:

- The level of the cap should be at a level that allows an exemption for reasonable levels of home generation and sale for a domestic rather than predominately commercial purpose. *(Tax Justice Aotearoa, Andrea Morgan, Lin Roberts)*
- A cap should be at the lower end of the $1,000 to $4,000 range proposed in the regulatory impact statement. *(Ani Mitcalfe)*
- A soft cap (for example, 10,000 kWh/year) should be considered to exclude quasi-commercial generation while allowing genuine household export. *(John Shand (d))*

Many submitters expressed concern that the exemption would provide a tax break for landlords, allowing them to earn significant untaxed income. Submitters expressed concern this could exacerbate inequality and housing unaffordability. A cap on the exemption was proposed to address this concern.

Comment

As noted in Issue: Exemption should be limited to residents of a dwelling, officials now recommend narrowing the exemption to only apply when the electricity is generated from a residence of the account holder. This is being recommended because the exemption would otherwise increase compliance costs for the few landlords that might derive income from the supply of excess electricity from a rental property.

We do not agree with submitters' concerns that the exemption would provide a tax break for landlords. However, narrowing the exemption to residents of the dwelling where the power is generated would still address these concerns and make a cap unnecessary.

Recommendation

That the submission be declined.

Clause 19

Issue: Extend exemption to small businesses and farms

Submission

(Rewiring Aotearoa)

The tax exemption for income from the supply of excess electricity should also apply to small- and medium-sized businesses (including farms). This could incentivise small- and medium-scale power generation and lead to more consumer and community energy.

To ensure the exemption only applies to small- and medium-scale power generation, it could either be limited to electricity generation systems less than 500kW or capped at $10,000 per year to ensure it only applies to small- and medium-sized businesses.

The exemption for businesses could apply for just five years to accelerate more power generation and ensure fiscal prudence.

Comment

The proposed exemption is targeted at the generation of electricity from residential properties because the compliance costs associated with current tax obligations are disproportionate to the amount of tax at stake. In the absence of income derived from selling excess electricity, the majority of these individuals are not expected to be filing tax returns because their only other income would be salary, wages, and investment income subject to withholding tax.

The compliance cost rationale for exempting the residential supply of excess electricity does not apply to businesses supplying excess electricity. Exempting small- and medium-scale supply of excess electricity by businesses may actually increase compliance costs by requiring apportionment of costs (for example, interest) that relate to both the supply of power and wider business activities.

Furthermore, exempting excess electricity supplied by businesses may discourage businesses from investing in power generation systems. The denial of deductions resulting from exempting the income may increase the costs incurred by businesses in generating electricity on site.

Recommendation

That the submission be declined.

Clause 19

Issue: Exemption should not be mandatory

Submission

(Corporate Taxpayers Group, Deloitte)

In situations when apportionment would otherwise be required, taxpayers should have the option to include all income and claim all associated deductions, rather than being compelled to undertake apportionment calculations. This flexibility would reduce compliance costs and better reflect the practical realities faced by taxpayers.

Comment

The Bill commentary includes an example of Carl who lives in a house on a farm and has solar panels on his house, garage, a barn and in a paddock. Income derived from the supply of excess electricity from the solar panels on the house and the garage is exempt. However, income derived from the supply of excess electricity from the solar panels on the barn and in the paddock is taxable.

If, instead of Carl being the electricity account holder, Carl Farm Co was the account holder, no apportionment would be required because all the income would be taxable. As such, the outcome sought by submitters can be achieved by ensuring that a non-natural person is the electricity account holder.

Making the exemption optional would also not reduce the need to undertake apportionment calculations. An individual choosing to treat the income from the supply of excess electricity from a dwelling as taxable would still need to determine the private use of the solar panels on their house and apportion their deductions.

Recommendation

That the submission be declined.

Clause 19

Issue: Application of current law

Submission

(Deloitte, PwC)

Inland Revenue should not devote resources to enforcing the current law prior to the proposed application date of 1 April 2026.

Comment

Inland Revenue does not intend to devote resources to review the prior tax positions taken by individuals deriving income from the sale of excess electricity from a dwelling. The resources required to review prior tax positions would likely far outweigh any tax revenue.

Recommendation

That the submission be noted.

Clause 19

Issue: Guidance on exemption

Submission

(John Shand (a), (c), (d))

The submitters recommend an education campaign. Guidance should address shared solar, body-corporate or community energy arrangements, and renters with sub-metering.

Comment

Inland Revenue will provide guidance on the proposed exemption, including in an Act commentary published on the Tax Policy website after enactment of the Bill.

Recommendation

That the submission be noted.

Clause 19

Issue: Fiscal benefit

Submission

(Corporate Taxpayers Group)

The regulatory impact statement (RIS) references the revenue impact to be both $200 million and $200,000. It is assumed the intended estimate is $200,000; however, this seems extremely low. Further work should be undertaken on the estimate to ensure that a reasonable amount of additional tax revenue is added to the "tax policy scorecard" to facilitate other tax changes being made.

Comment

The proposed exemption is estimated to have a notional fiscal benefit of $200,000 per year over the forecast period. The references to $200 million in the RIS are a mistake.

The estimated $200,000 per year benefit has taken into account the low likelihood that income from the residential supply of excess electricity is currently being declared.

Recommendation

That the submission be noted.

Clause 19

Issue: Tax policy should work in tandem with broader energy policy

Submission

(EY)

Further work will be needed to ensure that tax policy continues to work in tandem with broader energy policy. Proposals should go beyond the income tax considerations and consider the broader policy settings through the lens of the creation of a "distributed virtual generator", which can help support increased energy supply.

Comment

The proposed tax exemption is intended to address disproportionate compliance costs that would otherwise arise if individuals had to declare income from the residential supply of excess electricity.

Broader energy policy questions, including what role household generation should play in energy supply, are matters for others such as the Ministry of Business, Innovation and Employment, the Electricity Authority, and the Ministers for Energy and Resources to consider. If tax policy can play a role in supporting the Government's energy policy objectives, Inland Revenue will engage with other agencies on this.

Recommendation

That the submission be noted.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Information disclosure by way of Ministerial agreement

Disclosing information via Ministerial agreements

Clause 143

Issue: Support for proposal

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand)

The submitters support the proposal to disclose information by way of Ministerial agreements.

The proposal would improve the efficiency of public service delivery and strengthen crime detection, while maintaining public trust through strict purpose limitation, privacy consultation, and transparency. It is essential that these safeguards remain central to the regime and that any expansion of information sharing is subject to further scrutiny.

Recommendation

That the submission be noted.

Issue: Disallowable secondary legislation

Submission

(John Rhodes, John Shand (a), Tax Justice Aotearoa, Ukes Baha, Victoria Quade)

The submitters recommend that the agreements be elevated to disallowable secondary legislation level under the Legislation Act 2019.

The Minister of Revenue must consult the Privacy Commissioner and the Commissioner's comments must be taken into account. However, the submitters do not agree that such arrangements should be in Ministerial hands.

Comment

The proposed Ministerial agreements are below the level of secondary legislation and are limited to areas where social license already exists, namely for benefit entitlement purposes or combatting serious crimes punishable by terms of imprisonment of two or more years. These agreements are a timelier way to share information. Elevating these agreements into disallowable secondary legislation imports a lot of procedural requirements, such as an Order in Council, that is not

required when social license already exists and does not achieve the policy objective of providing a mechanism to share information in a timely manner.

In making the decision to legislate these agreements, the Government considered the absence of parliamentary oversight and concluded that the functions outlined in the legislation on Ministerial agreements are areas where social licence already exists. When there is uncertainty as to whether social license exists for the sharing of information, other mechanisms such as an approved information sharing agreement or legislation would be used to share information, both of which involve Government agreement and public consultation.

Whether the authorisation to conclude Ministerial agreements should be either a Minister or Cabinet decision was a decision made by Cabinet, who agreed to the authorisation resting with Ministers.

Recommendation

That the submission be declined.

Issue: Proportionality/necessity tests

Submission

(John Shand (a), New Zealand Law Society)

Submitters suggested requiring amendments to be made to the Bill to include proportionality and necessity tests in the legislation to mirror the approved information sharing agreement regime under the Privacy Act 2020.

The requirement to consult with the Privacy Commissioner is a positive feature of the Bill that the submitter supports. However, the proposed consultation is insufficient on its own to guarantee that the agreements will operate in a proportionate and justifiable manner. *(New Zealand Law Society)*

Comment

In the design of each Ministerial agreement, the proportionality and necessity tests will be considered by officials, the Minister, and the Privacy Commissioner, to ensure only the minimum information necessary to achieve the goals is disclosed by Inland Revenue. Also, each agreement would set out the purpose of the agreement, the functions to be undertaken by the other agency, the use to which the information will be put, the types of information to be shared, restrictions for on-sharing of information, who can access the information, and the audit review period.

Recommendation

That the submission be declined.

Issue: Bill of Rights and search and surveillance

Submission

(Andrew Riddell, John Shand (b), Ukes Baha)

The submitters commented that the agreements risk breaching section 21 of the New Zealand Bill of Rights Act 1990 (NZBORA), which relates to freedom from unreasonable search and seizure, and the Human Rights Act 1993 privacy protections. The absence of parliamentary oversight weakens democratic legitimacy, and the submitters recommend requiring parliamentary approval or select committee scrutiny of all such agreements.

Comment

The unreasonable search and seizure relate to the collection of information by Inland Revenue, which is on-shared to other agencies. Inland Revenue only uses its collection powers to collect information for tax purposes, and the courts are comfortable with this. Inland Revenue will not use its collection powers to collect information for non-tax purposes, such as solely for New Zealand Police. Information that is collected for a tax purpose may later be on-shared to other agencies, and this occurs with other sharing agreements, such as approved information sharing agreements (AISAs). However, any evidence acquired under sections 17I (Commissioner may conduct inquiries) and 17J (Commissioner may apply for District Court Judge to conduct inquiries) of the Tax Administration Act 1994, when the taxpayer has to appear and give evidence under oath, cannot be shared under these Ministerial agreements. This is the same as occurs under the AISA between Inland Revenue and the New Zealand Police, New Zealand Customs Service and the Serious Fraud Office targeting serious crime.

Before being introduced into Parliament, the Bill went through a Ministry of Justice Bill of Rights vet, and the Ministry concluded that the agreements are a proportionate response to ensure maintenance of the law.

See also Issue: Self-incrimination under "Impact on tax collection and integrity of tax system".

Recommendation

That the submission be noted.

Provision of safeguards

Issue: Privacy safeguards

Submission

(Barbara Gilchrist, Corporate Taxpayers Group, Eileen Wright, J McCarthy, John Shand, Maire Leadbeater, Mary-Anne Poa, Lu Tyree, Mollie Bremner, New Zealand Law Society, Privacy Foundation, Sandy Holden, Sue Bagshaw, Tera D'Sousa)

While submitters acknowledge the safeguards in the proposed provision, they consider that further safeguards are required to provide sufficient privacy protections in the Bill to ensure that sensitive personal or financial information is not misused or accessed inappropriately.

Submitters recommend the following safeguards be added to the Ministerial agreements:

- mandatory privacy impact assessments (PIAs) to be completed and publicly released with the agreement
- short review cycles for these agreements, or a sunset clause requiring re-authorising agreements after a period of time
- a requirement for independent audits
- stronger transparency before establishing an agreement (including public consultation) as well as ex post facto
- requiring Inland Revenue to provide a copy of its audit review to the Privacy Commissioner
- specifying in the agreement what adverse actions are to be taken by the other agency and the notification requirements to be given to individuals, as well as any grounds for departing from these notification requirements
- specifying the reporting requirements for inclusion in Inland Revenue's annual report
- requiring Ministers to consider the comments made by the Privacy Commissioner following the conclusion of a Ministerial agreement, and
- requiring three Ministers, including the Minister of Justice, to agree to a Ministerial agreement being made.

Comment

The Bill provides the following protections. Before entering an agreement, the Minister of Revenue must be satisfied that:

- the disclosure is reasonable and practical
- the disclosure will not undermine the integrity of the tax system and will support the maintenance of voluntary compliance

- adequate safeguards exist to protect the privacy of individuals and the commercial confidentiality of information
- there are sufficient compliance and audit requirements for the use, disclosure, and retention of information
- appropriate procedures for the disclosure and retention are included in the agreement
- the Privacy Commissioner has been consulted and the comments received are considered.

Also, the written agreements must:

- be published on Inland Revenue's website for transparency
- have its ongoing performance included in Inland Revenue's annual report
- specify the positions or designations of the person in the requesting agency who the information is to be disclosed to
- ensure safeguards exist to protect personal or commercially sensitive information
- set out the requirements as to storage and disposal of the information
- set out the circumstances, if any, for the on-sharing of information with another agency.

We consider these safeguards will protect the privacy and confidentiality of information and are included in other agreements.

Recommendation

That the submission be declined.

Issue: Mandatory privacy impact assessments

Submission

Submitters consider release of the mandatory privacy impact assessments (PIA) strengthens the requirement for a structured, privacy focused analysis to assist in determining whether the safeguards are sufficient and appropriate.

Comment

A PIA is prepared by Inland Revenue for all information shared with other agencies and is available through an Official Information Act request. These documents contain sensitive information, so some information is redacted to preserve the integrity of the tax system. Non-redacted copies of the PIA are available to the Privacy Commission on request. Retaining the Official Information Act process ensures sensitive information, when appropriate, can be withheld.

Recommendation

That the submission be declined.

Issue: Shorter review cycle/sunset clauses

Submission

Incorporating a review clause in agreements enables re-evaluation and potential amendments to be made to maintain the effectiveness of Ministerial agreements.

Comment

A sunset clause would set a termination date for the agreement. This would require renegotiation or review, so could be resource intensive and risk the unintended lapse of the agreement if not reviewed in time.

The same outcome could be achieved from adverse publicity or negative Ministerial correspondence being received about the agreements either from the public or from the Privacy Commissioner.

These agreements would not preclude a review and/or a sunset clause being included, but currently do not require them to be included, leaving it up to the specific agreement to determine.

Recommendation

That the submission be declined.

Issue: Public consultation

Submission

Requiring a short period of public consultation on a proposed Ministerial agreement before finalising it would not delay the process unduly. It is important for legitimacy and will assist in providing Ministers with information relevant to their decision. If, in some cases, the agreement affects a smaller group of people than the general public, there should at least be targeted consultation with those likely to be affected, and/or organisations that may represent affected groups.

Comment

The Ministerial agreements do not preclude a short round of public consultation occurring when there is uncertainty around whether social license exists for the proposed disclosure. However, the agreements do not require it.

Recommendation

That the submission be declined.

Issue: Requirement to provide reviews and independent audits

Submission

(14 submitters)

Submitters have suggested that the proposed legislation should require independent audits to be undertaken.

One submitter commented that there is no provision for the Privacy Commissioner to formally review the operation of Ministerial agreements, only an ability under proposed new section 18HB(8) of the Tax Administration Act 1994 to "raise concerns". The submitter is concerned that, in the absence of a formal review mechanism, it will be more difficult for the Privacy Commissioner to systematically identify concerns. They recommend empowering the Privacy Commissioner to review the operation of a Ministerial agreement and publicly report on findings, with any appropriate recommendations. This could occur either at regular intervals (for example, every three years) or at the Privacy Commissioner's discretion, as occurs for approved information sharing agreements (AISAs). *(New Zealand Law Society)*

Comment

The proposal already requires that the agreement includes a provision for its review. With other information sharing agreements, a review usually occurs annually, with the ability for either party to request a review at any time.

Independent audits are not usually included in sharing agreements involving Inland Revenue because a third party would require access to sensitive revenue information about taxpayers or the tax system to undertake such a review. Instead, the parties review the operation of the agreements themselves, and a copy of the review is available under the Official Information Act 1982.

Officials do not recommend independent audits or that the provision should be amended to require a copy of the review be provided to the Privacy Commissioner.

If the Privacy Commissioner receives a copy of the report, and they have any concerns, then these can be raised directly with Ministers.

Recommendation

That the submission be declined.

Issue: Reporting requirements in annual report

Submission

(2 submitters)

While the proposal requires the Commissioner of Inland Revenue to report on the performance of the Ministerial agreement in Inland Revenue's annual report, it does not specify what that report should contain. In contrast, under the approved information sharing agreement framework, the Privacy Commissioner specifies what should be in the report. Typically, this will include details such as the frequency of sharing, number of records, number of errors, number of challenges received, and so on. Such reporting enhances accountability for the information sharing and provides public transparency.

Comment

The proposal outlines that information will be included in Inland Revenue's annual report but does not go into detail on the information that will be included. The exact information will depend on the agreement but could include such items as the frequency of sharing, the number of requests received, the number of cases disclosed, and the types of information shared.

Recommendation

That the submission be declined.

Issue: Complaints process and steps before adverse action taken

Submission

(2 submitters)

There is no obligation in the Ministerial agreement to inform people before taking adverse action against them as a result of a disclosure under an agreement.

Under the Privacy Act 2020, information-sharing or matching agreements have to set out how agencies provide written notice to individuals before any adverse action is taken against them based on the information shared. This provides an opportunity for the individual to correct any errors. Usually, agencies provide 10 working days to dispute the decision before adverse action is taken. However, under approved information sharing agreements (AISAs), if providing this notification of adverse action would undermine the compliance activity, then an agency could dispense with the notice period under the agreement.

One submitter commented that for AISAs, the provision enabling the Privacy Commissioner to have input is more robust than that proposed in new section 18HB of the Tax Administration Act 1994 (TAA). The Bill proposes a requirement only for Ministers to "consider any comments received" from the Privacy Commissioner. This contrasts with existing section 18E of the TAA: "the Commissioner has consulted the Privacy Commissioner on the terms of the agreement, and the Privacy Commissioner agrees that the disclosure is appropriate". *(New Zealand Law Society)*

Also, one submitter recommended that the Privacy Commissioner should also have the ability to require the Minister of Revenue to review the agreement. *(Privacy Foundation)*

Comment

Specifying the adverse action that could result from disclosing information for the detection, investigation, prosecution, or punishment of suspected or committed crimes punishable by terms of imprisonment of two years or more would undermine law enforcement.

The submitter references section 18E of the TAA, which enables Inland Revenue to share information in relation to consented sharing under the Privacy Act. This section seeks the approval of the Privacy Commissioner to the terms of the consented sharing agreement, because consented sharing agreements occurs under the Privacy Act. Therefore, the Privacy Commissioner has the decision-making function. Under Ministerial agreements made under the TAA, the Privacy Commissioner has a consultative role, and the Minister of Revenue has the decision-making function.

An individual can complain about the operation of the Ministerial agreement or request information under the Privacy Act or the Official Information Act 1982. The complaints or requests are considered by the agencies. The agreement or memorandum of understanding will outline that when a complaint is received by an agency, it will consult the other agency before making a decision about the complaint or request.

Remedies for breaches of agreements are a standard clause in memoranda of understanding or agreements between the two parties, and the legislation does not need to specify this point.

Recommendation

That the submission be declined.

Issue: Privacy Commissioner comments post signing

Submission

(4 submitters)

Submitters note that proposed new section 18HB(8) of the Tax Administration Act 1994 allows the Privacy Commissioner to raise concerns about a signed agreement or its operation with the signing Ministers. However, unlike proposed section 18HB(3)(b), which requires Ministers to consider the Privacy Commissioner's comments before signing, proposed section 18HB(8) does not impose a similar obligation post-signing. This would ensure that privacy concerns are taken seriously throughout the lifecycle of any agreement. *(Corporate Taxpayers Group, New Zealand Law Society)*

Comment

Under the proposal the Privacy Commissioner can raise concerns about the agreement or its operation with Ministers and seek a review at any point.

Recommendation

That the submission be declined.

Issue: List of government agencies

Submission

(2 submitters)

Submitters have commented that the list of agencies with which the Minister of Revenue can make an agreement for information disclosure is very broad, ranging from policy departments (like the Ministry for Women) through to security agencies (such as the New Zealand Security Intelligence Service). Even if strict principles for disclosure are adhered to, the impression could be created among the public that their tax information can go anywhere in the government machine.

Submitters queried whether, considering the extent of the list of allowed receiving agencies, it is necessary to include all the departments listed in part 1 of schedule 2 of the Public Service Act 2020. That list includes, for example, the Department of Conservation and the Ministry for Culture

and Heritage, and submitters cannot envisage what purposes either of these departments would have for tax sensitive information. They submit the list of allowed recipients should be significantly narrowed to agencies that would receive the greatest benefit from accessing taxpayer sensitive information.

Comment

The list of agencies is intentionally broad as the future needs for information disclosure for benefit entitlement or law enforcement is uncertain.

Recommendation

That the submission be declined.

Issue: Limit agreement to urgent information disclosure initiatives

Submission

(2 submitters)

Submitters suggested limiting the proposed provision to cases when social licence exists and when the time is not sufficient to progress amendments to primary legislation or to conclude an approved information sharing agreement (AISA) without rendering the sharing ineffectual. If time is available to progress information disclosure under existing mechanisms, the AISA process (which best supports the Privacy Act 2020 requirements) should not be avoided in the interests of administrative efficiency alone.

Comment

One of the uses of the proposed provision could be to combat emerging criminal activity or to assist with the enactment of legislation when information disclosure was not previously considered. However, the original intent was also for these agreements to be used when urgency is not a factor, for example, when one way disclosure of information is only required.

Recommendation

That the submission be declined.

Issue: Government assistance

Submission

(3 submitters)

Submitters understand that in some instances a government may wish to have a new policy implemented quickly and a Ministerial agreement may help facilitate this. *(Deloitte, Corporate Taxpayers Group)*

There has been uncertainty among submitters as to what is intended by the wording in the Bill around entitlement to government assistance. Some submitters consider that information disclosed under these agreements could be used, for example, to roll out flu vaccines, help homeowners access healthy homes insulation subsidies, or encourage drivers to pay their road user charges on time.

Submitters were concerned that the function of disclosing information to determine entitlement to, or eligibility for, government assistance could lead to individuals losing their entitlement to government assistance and incurring debts, which must be recovered.

Therefore, submitters recommend that if this proposal is to proceed, the benefit entitlement function should be limited to situations when that form of government entitlement is not currently received (for example, a new entitlement or an existing entitlement not previously received by the person). This ensures the function is to the benefit of individuals rather than the removal of entitlement.

Comment

Limiting the government assistance function, as suggested by submitters, would constrain the future use of these agreements. If the public has concerns about the possible reduction or removal of entitlements then this would be an area where Ministers would be uncertain whether social licence exists, and therefore question whether Ministerial agreements (without public consultation) would be an appropriate mechanism to disclose information. In these instances, public consultation on the proposal, either under Ministerial agreements or by an approved information sharing agreement under the Privacy Act 2020, would be appropriate.

Recommendation

That the submission be declined.

Issue: Limit offences to violent crimes

Submission

(Sam Spekreijse)

The submitter recommends either omitting the information-sharing sections from the Bill or restricting them to violent crimes.

Comment

The types of sharing that could be enabled by a Ministerial agreement are to make it easier for individuals to claim their entitlement to government benefits and subsidies as well as assisting New Zealand Police and other law enforcement agencies to fight serious crime, including violent crime. Removing the provision would remove these benefits and restricting it to violent crimes would exclude other serious crimes that do not involve violence, for example, most drug-related offences, corruption or bribery offences, trafficking in persons, smuggling migrants, or participation in organised criminal groups.

In introducing this provision, the Government wanted to share information for all serious offences, not just serious violent offences, and so the submission would go against the policy objectives of the proposal.

Recommendation

That the submission be declined.

Issue: Migrant workers

Submission

(Barbara Gilchrist, Eileen Wright, J McCarthy, Lu Tyree, Mark Baker, Mary-Anne Poa, Mollie Bremner, Peter Carey)

The submitters oppose this Bill because there is no need to share information between Inland Revenue and Immigration New Zealand to target immigrants. Without robust oversight and consultation, this expansion could erode public trust and create risks for vulnerable communities, including migrant and temporary workers.

Submitters recommend revising the Bill to not include any information sharing between Inland Revenue and Immigration New Zealand because there is the potential for exploiting vulnerable groups, such as migrant or temporary workers, instead of supporting them. This is compounded by

the "digital nomads" provisions, which may inadvertently facilitate the exploitation of temporary migrant labour under the guise of innovation or labour mobility.

Comment

Vulnerable populations are unlikely to be harmed by these agreements. The penalties for being in New Zealand illegally is usually deportation, which does not fit within a category 3 offence under the Criminal Procedure Act 2011. Therefore, migrants or temporary workers will not be penalised by these agreements.

However, these agreements could target those persons who exploit migrants or illegal immigrants because these offences are crimes with penalties of at least two years imprisonment or more. Therefore, officials recommend retaining agreements between Inland Revenue and Immigration New Zealand within the provision.

Recommendation

That the submission be declined.

Issue: Double standards, section 17GB compared to Ministerial agreements

Submission

(Barbara Langton, Joanne Davidson, J McCarthy, Kathleen Ryan, Marilyn Head, Mary-Anne Poa, Pamela Hansen, Peter Carey, St Peter's on Willis Social Justice Group)

There is a clear double standard in favouring privacy in the case of the repeal of section 17GB of the Tax Administration Act 1994 yet proposing to hugely expand the Minister's power to share tax information with a wide range of other government agencies against the advice of the Privacy Commissioner as proposed in clauses 136(2) and 143 of the Bill. It appears privacy for a small number of the wealthiest individuals in Aotearoa New Zealand is more important than the privacy of all taxpayers. The information sharing proposed is much more intrusive than section 17GB in that the information would explicitly be able to be used for prosecutions, which is largely ruled out in section 17GB.

Submitters recommend that the proposal for Information sharing by way of Ministerial agreement should not proceed. This is rushed and poorly considered legislation, which could have significant negative consequences. The Bill undermines tax transparency for the wealthy while expanding surveillance powers for ordinary taxpayers. This double standard threatens public confidence in the integrity of our tax system.

There is a significant difference in the information the Government holds on people drawing a benefit, working for wages, or in care, and the information held on people of independent means. This proposal further alters the balance of responsibility and burden of information sharing in favour of the wealthy at the expense of the poor.

Recommendation

That the submission be noted.

Impact on tax collection and integrity of tax system

Issue: Integrity of tax system

Submission

(Abigail Kirby-Neill, Barbara Gilchrist, Christiaan Day, Corporate Taxpayers Group, Deloitte, Eileen Wright, John Rhodes, Jordan Wise, Kathleen Ryan, Lin Roberts, Marilyn Head, New Zealand Law Society, New Zealand Taxpayers' Union, Peter Carey, St Peter's on Willis Social Justice Group, Sandy Holden, Sarah Hoefhamer, Tera D'Sousa, Tax Justice Aotearoa, Victoria Quade)

A number of submitters commented that the provision threatens to undermine the integrity of our tax system. Sharing tax information with others undermines the Commissioner of Inland Revenue's confidentiality requirements. Failing to keep information confidential calls into question why Inland Revenue has such wide information collection powers and whether these powers should be relaxed. Any weakening of these powers could impede the effective administration of the tax system and put the tax base itself at risk.

Two submitters believe it is imperative for clear guidance on how an agreement upholds the integrity of the tax system and voluntary compliance. One is concerned that information sharing in relation to crime forces the hidden economy further underground and the existing approved information sharing agreement (AISA) between Inland Revenue and New Zealand Police should be sufficient and if it is not, that agreement should be updated. (*Deloitte, Corporate Taxpayers Group)*

Some submitters were in favour of government departments sharing information to avoid the need for businesses to repeatedly provide the same information to different parts of government. However, they had some reservations about the proposed provision allowing information sharing through Ministerial agreement, particularly due to the privacy implications.

If the proposal is to proceed, some submitters recommend that either:

- further restrictions and protections are introduced in the Bill to limit the scope of the proposal to ensure the proposal does not erode the taxpayer confidentiality obligations in the Tax Administration Act 1994 (TAA), or
- the information collection powers are suitably restricted to reflect the reduction in taxpayer confidentiality protections.

The existing AISA and information collection framework is a robust and established process, providing a greater degree of transparency over information sharing and supporting the information privacy principles (IPPs) of the Privacy Act 2020. The proposal to allow sharing by way of Ministerial agreement appears to be intentionally loosening these criteria, undermining the

integrity of the existing information-sharing protocols. The submitters therefore do not recommend these proposals proceed.

Limit what receiving agency can do with data

The overarching data principles that underpin the Privacy Act 2020, require data to be used only for that purpose for which it was collected, and retained only for so long that it is necessary for that usage. Submitters have commented that if the proposal allows other agencies to in effect use the data for purposes well beyond the purposes for which it was initially collected, this will undermine the integrity of the proposal. The proposal overrides the IPPs and as such a higher threshold of obligations should be imposed on the agencies receiving the information.

Comment

The AISAs Inland Revenue has with other agencies enable the IPPs to be modified so that information can be disclosed to other agencies for a use other than what it was collected for. Also, other legislative exceptions in the TAA enable Inland Revenue to disclose information for uses other than tax collection. Therefore, officials disagree with the submitter's suggestion to limit the agreements to the Privacy Act wording.

Recommendation

That the submission be declined.

Issue: Self-incrimination

Submission

Submitters have suggested that taxpayers should be proactively advised that their information may be disclosed by Inland Revenue to third parties to assist with parallel criminal investigations under section 17 (Commissioner may obtain information by accessing property or documents) and section 17B (Commissioner may require information or production of documents) of the Tax Administration Act 1994 (TAA). This would enable the taxpayer, if they choose, to challenge the exercise of the Commissioner's information gathering powers, consistent with section 25(d) of the New Zealand Bill of Rights Act 1990 and section 60 of the Evidence Act 2020 (privilege against self-incrimination). Submitters acknowledge that if this approach hinders investigations, it may itself be seen as jeopardising the integrity of the tax system. This only serves to illustrate the tensions involved in the proposed new powers. To be regarded as reasonable, the heightened powers that are proposed will require additional safeguards.

The Bill proposes to exclude section 17I (Commissioner may conduct inquiries) and section 17J (Commissioner may apply for District Court Judge to conduct inquiries) of the TAA from its ambit. However, the proposed provision does not go far enough to exclude information obtained under section 17 (search) or section 17B (request for information) from disclosure. *(New Zealand Law Society)*

Bill of Rights advice provided by the Ministry of Justice puts weight on the fact that the powers proposed are to provide for the maintenance of the law. This is a sufficiently important objective that is "broadly aligned" with information privacy principle 11 under the Privacy Act 2020 (which permits the disclosure of personal information if it is necessary for the maintenance of the law). The submitter is, however, concerned that the Ministry's advice has not addressed section 25(d) of the Bill of Rights Act, which Inland Revenue considers is engaged by the present proposals. The section 25(d) right not to be compelled to be a witness or to confess guilt is closely associated with the privilege against self-incrimination. The essence of the privilege is that "[w]e cannot be required by the State to provide information which may expose us to criminal liability". In the submitter's view, it would be triggered by information sharing, as proposed, for the purpose of detection, investigation, prosecution or punishment. The proposition that sharing the information is reasonably justified because it supports enforcement of the law is tautologous. *(New Zealand Law Society)*

Comment

Inland Revenue informs taxpayers of its sharing and disclosure obligations on its website. The website includes details as to which agencies information is shared with, what information is shared, the form the sharing takes (for example an approved information sharing agreement (AISA) or information matching agreement under the Privacy Act) and also provides copies of the agreements. The privilege risk currently occurs under AISAs and information matching agreements under the Privacy Act. The information on Inland Revenue's website informs taxpayers and they are able to reduce this risk.

The submitter suggests that information obtained under sections 17 and 17B of the TAA should be excluded from information disclosed to other agencies under Ministerial agreements because individuals have the right not to be compelled to be a witness or to confess guilt. These sections do not compel a person to be a witness or to confess guilt.

Sections 17 and 17B are compliance provisions and simply reinforce other information provision obligations in the Revenue Acts, such as the requirement to file tax returns. For example, these provisions are engaged when a taxpayer has not complied and fails to provide a tax return, as required by law. The Commissioner can then use section 17B to obtain the information.

If the return was filed by the due date by a compliant taxpayer, then the information in the return could be disclosed to third parties. For symmetry, information obtained under section 17B from a non-compliant taxpayer can also be disclosed to third parties under Ministerial agreements. Otherwise, a perverse incentive would exist.

The proposal correctly excludes information collected under sections 17I and 17J of the TAA from being disclosed to third parties, which are the provisions enabling the Commissioner of Inland Revenue or District Court Judge to conduct an inquiry and compel a person being a witness. We recommend no changes be made to the provision.

Recommendation

That the submission be declined.

Issue: Voluntary compliance

Submission

The disclosure of tax information may impact tax integrity and voluntary compliance. Submitters have sought the development of a framework to analyse the impact on integrity of the tax system and voluntary compliance.

Comment

One of the safeguards built into the legislation in considering whether to enter into an agreement is to assess the impact of sharing on the integrity of the tax system and voluntary compliance. This ensures that Inland Revenue can still collect information and tax in the future.

The submission regarding the development of a framework to outline how taxpayer confidentiality and voluntary compliance are to be maintained is noted.

Recommendation

That the submission be noted.

Office of the Privacy Commissioner comments and AISA timelines

Issue: Privacy issues and Privacy Commissioner comments

Submission

(Tax Justice Aotearoa, Victoria Quade, Florence Micoud, John Rhodes, Alexander Mitcalfe Wilson, Annette Penman, Andrew Riddell, Eileen Wright, Privacy Foundation New Zealand, Baucher Consulting, Elaine Marshall, J McCarthy, Lin Roberts, Lu Tyree, New Zealand Law Society, Pamela Henson)

One submitter considered that the requirement to consult with the Privacy Commissioner is a positive feature of the Bill. However, the proposed consultation is insufficient on its own to guarantee that Ministerial agreements would operate in a proportionate and justifiable manner. They consider that the Privacy Commissioner should have a power of veto and should have the ability to report to Ministers or report publicly on the agreements.

Other submitters echoed concerns raised about the proposal by the Privacy Commissioner in the disclosure statement and regulatory impact statement for the Bill, and that that the Commissioner opposes this proposal. The Privacy Commissioner considers the proposal unnecessary and disproportionate and that existing information-sharing mechanisms (legislative change or the use of approved Information sharing agreements (AISAs)) are sufficient. The Privacy Commissioner formally objected to this structure, noting the unjustified disapplication of information privacy principles (IPPs) 10 (limits on use of information) and 11 (limits on disclosure of information) under the Privacy Act 2020, If enacted, the proposal would enable Inland Revenue to lawfully transmit identifiable taxpayer data to enforcement or welfare agencies without consent or warrant.

Submitters also consider that it is unnecessary to create a new framework to allow for information sharing. A similar, and, in submitters view, more appropriate and privacy protective framework already exists under the Privacy Act, in the form of AISAs. Therefore, they consider the proposed clause is superfluous.

Submitters acknowledge there are a few steps in the AISA process that involve a little more time than the proposed framework in clause 143 of the Bill. In practice, some submitters have observed that the sometimes lengthy delays associated with AISAs are most likely to be operational; that is, reliant on the operational capacity and resourcing of the relevant agencies and priorities at the time, not an inherent fault of the mechanism. However, they considered those steps add value and enhance trust in the quality and legitimacy of the sharing process. In contrast, clause 143 does not create this visibility at Cabinet level or through public consultation. These are important levels of oversight, and contribute to other objectives such as transparency, public confidence, external

scrutiny, refinement of proposal, which are absent from these agreements to achieve timely sharing of information.

The Bill does not contain any consultation requirement, except with the Privacy Commissioner. Also, the Privacy Commissioner does not have a veto power and does not set the reporting standards for the agreement. It is also not the Privacy Commissioner's role to be a proxy for public views on the share. It is certainly not correct to suggest, as the papers do, that it is the Privacy Commissioner's role to be the arbiter of social licence.

Submitters note that Inland Revenue has a number of existing AISAs with other agencies and considers that the AISAs are a preferred mechanism to share information. Therefore, the existing AISAs, like the serious crime AISA, should be amended to cater for future needs because these provide a balanced framework and contain essential safeguards of personal information. *(New Zealand Law Society, Privacy Foundation)*

Comment

These Ministerial agreements are a timelier way to disclose information to other agencies for crime prevention or to assist people to claim the entitlement they are entitled to.

The existing information-sharing mechanisms outlined by the Privacy Commissioner do not address the need for a timely disclosure of information to address emerging risks, such as serious crime punishable by imprisonment of two years or more and which are within social license. If there is any doubt as to whether social license exists for the disclosure, then the exiting mechanisms would be used. Although the existing mechanisms take longer to enact, they provide for public consultation and government or parliamentary oversight.

Also, the ability to disclose information under the exceptions to the IPPs in the Privacy Act can only be used for disclosure on a case-by-case basis. They do not enable bulk disclosure of information or on an ongoing basis. This provision provides for the same disclosures under the exceptions to the IPPs and the Privacy Act but enable ongoing and bulk disclosures. Alternatively, the Privacy Act could be amended to provide for Ministerial agreements.

Recommendation

That the submission be noted.

Issue: Cabinet oversight

Submission

(3 submitters)

Submitters have pointed out that the proposal lacks external scrutiny and allocates responsibility for agreements to two Ministers, rather than involving all of Cabinet oversight with its external scrutiny.

Comment

While having two Ministers making decisions may not reflect other perspectives, Cabinet considered this proposal and agreed with two Ministers concluding these agreements. This also reflects a similar provision in the Customs and Excise Act 2018 enabling disclosure of information via Ministerial agreement.

Recommendation

That the submission be declined.

Issue: Lack of consultation

Submission

(Abigail Kirby-Neill, Andrea Morgan, Ani Mitcalfe, Barbara Langton, Charlotte Evans, Elaine Marshall, Eileen Wright, John Rhodes, Kathleen Ryan, Lin Roberts, New Zealand Law Society, New Zealand Taxpayers' Union, St Peter's on Willis Social Justice Group, Tax Justice Aotearoa, Victoria Quade)

Submitters recommend that the proposal for information sharing by way of Ministerial agreement does not proceed. This is rushed and poorly considered legislation that could have significant negative consequences. Submitters also note that contrary to good legislative principles, "No public, stakeholder or other agency consultation has taken place. This is due to compressed timeframes and Ministerial direction."

This proposal deserves nothing less than a full generic tax policy process to properly assess the merits and demerits of it, in public. *(New Zealand Taxpayers' Union)*

Proposed new section 18HB of the Tax Administration Act 1994 (TAA) is also a betrayal of good faith. This is further reinforced by the lack of consultation on this aspect of the Bill before select committee. The proposed changes under this section do not appear to have been well-publicised,

which has likely denied people a fair chance to object to the harm it stands to cause. *(Charlotte Evans)*

All existing approved information sharing agreements should be deleted and section 18E (Disclosures made under information-sharing arrangements) of the TAA should be repealed. *(New Zealand Taxpayers' Union)*

Recommendation

That the submission be noted.

Issue: Support expansion of information sharing

Submission

(BusinessNZ)

The Bill commentary points out that "Inland Revenue has information that other agencies could use and sharing it could lead to greater administrative efficiency, especially for law enforcement".

In principle, the submitter supports the proposed change. However, information sharing should not be viewed solely through the lens of social challenges such as law enforcement. Inland Revenue holds data that, if used constructively, could help reduce compliance costs for businesses and individuals, and create more seamless interactions with government agencies. For example, better data integration could remove duplication across agencies, simplify reporting obligations, and unlock opportunities for more citizen-focused services. Therefore, the submitter believes that a broader approach to information sharing would likely maximise the benefits of this reform.

The submitter recommends that the proposal proceeds provided it is used as an opportunity to reduce compliance costs for businesses and individuals.

Recommendation

That the submission be noted.

Issue: Oppose expansion of information disclosures

Submission

(Alexia Woodroffe, Annette Penman, Charlotte Evans, EY, Kathleen Ryan, Lin Roberts, Maire Leadbeater, New Zealand Taxpayers' Union, The Religious Society of Friends (Quakers))

The Bill would significantly expand information sharing between Inland Revenue and other government agencies. The submitters oppose this expansion. By the same token, permitting disclosure of that information between agencies would be a deterrent to providing honest and accurate information to Inland Revenue in the first place. Other submitters commented that there is a significant difference in the information the Government holds on people drawing a benefit, working for wages, or in care, and that held on people of independent means. This proposal further alters the balance of responsibility and burden of information sharing in favour of the wealthy at the expense of the poor.

Submitters were also concerned about the workability of the requirements of proposed section 18HB(3) of the Tax Administration Act 1994. In particular, when information-sharing purposes have no connection to tax administration (for example, the sharing of taxpayer contact information with the Ministry of Health to support the delivery of childhood vaccines), how are delegated officers meant to determine whether the proposed information share would "support the maintenance of voluntary compliance" as required by proposed new section 18HB(3)(a)(iii)? It may be that the list of considerations in that section needs to be considered "only as relevant" to the information that is proposed to be shared.

Another submitter claimed that the proposed section would make it dangerous for sex workers to pay taxes. This is bad for everyone concerned because workers would be placed in the unjustifiable position of having to choose between following the law and keeping themselves safe, while the Government would be needlessly making it more difficult and unappealing for people to pay taxes. *(Charlotte Evans)*

Comment

The disclosure of information to other agencies would not impact the implied social contract in the Prostitution Reform Act 2003. Before entering any agreement, the Minister of Revenue must be satisfied that the disclosure would not undermine the integrity of the tax system and that disclosure would support the maintenance of voluntary compliance.

Recommendation

That the submission be noted.

Issue: Co-design with Māori

Submission

(Nga Uri O Wharetakahia Waaka Whanau Trust)

Sharing information of whanau, hapu, and iwi members without consultation risks breaching sections 22 to 26 of the Privacy Act 2020, Te Tiriti o Waitangi, and tino rangatiratanga.

The submitter recommended that sharing information requires co-design, oversight, and monitoring of all disclosure arrangements (Te Tiriti o Waitangi articles 1 to 3 (Māori text) and sections 81 and 81A of the Tax Administration Act 1994).

Comment

There was limited time to develop the Ministerial agreement proposal in time to include it in the Bill. Limited consultation occurred with the Office of the Privacy Commissioner, and the proposal was amended to incorporate some of their concerns. However, the Bill process enables public consultation to occur on Ministerial agreements.

Disclosure under Ministerial agreements is in relation to areas where social license exists. Namely, crimes punishable by terms of imprisonment of two years or more, or to assist in determining entitlement to a benefit or subsidy. If there is doubt as to whether social license exists, then it would be more appropriate to disclose information under an approved information sharing agreement or primary legislation because these mechanisms require public consultation to occur and provide government oversight.

Once a Ministerial agreement is entered into, the agreement will be published on Inland Revenue's website and Inland Revenue will report on the operation of each agreement in its annual report.

There is also the ability for the Privacy Commissioner to raise any concerns directly with the Minister of Revenue.

Recommendation

That the submission be noted.

Issue: Minor drafting changes

Submission

(New Zealand Law Society)

The submitter has made previous submissions on other similar proposals. They note that some of the transparency measures and rights-safeguarding measures in the Bill are broadly consistent with some of their earlier recommendations. For example, the requirements for Inland Revenue to report regularly on the ongoing operation of an information-sharing agreement and publish certain information about the agreement online. However, they consider the safeguards are not sufficient and more safeguards are required.

Inconsistent drafting

A concern with proposed new section 18HB of the Tax Administration Act 1994 (TAA) is the inconsistent use of terminology. Some of the proposed terminology in subsections (3) and (4) does not fully align with drafting language in the Privacy Act 2020 and the information privacy principles (IPPs) in section 22 of that Act. The reasons for the disparity are unclear.

a. Approved information sharing agreements (AISA) provisions in the Privacy Act refer to "prevention, detection, investigation, and prosecution of offences", but proposed section 18HB(1)(b) refers to "detection, investigation, prosecution, or punishment", omitting "prevention" and adding "punishment". Both the words "punishment" and "prevention" appear in the IPPs in the Privacy Act. However, the submitter considers there is a potential distinction to be drawn in an information-sharing context, whereby punishment should not be part of the reason for disclosure. Punishment is something a recipient agency with appropriate powers might use the information for following receipt, but it is not why the information is disclosed. The submitter recommends omitting "punishment" and including "prevention", consistent with the approach taken in AISAs.

b. Proposed new section 18HB(3)(a)(i) refers to disclosure that is "reasonable and practical". "Practical" does not appear in the Privacy Act or the IPPs. The term "practicable" is in the IPPs, although not in the context of allowing disclosure. The Committee may wish to seek the advice of officials as to whether "practical" is intended to differ at all from "practicable" as presently used in the Privacy Act; and if not, whether consistent language would be preferable. There is also a question of for whom the disclosure must be either practicable or practical. Presumably, the intended answer is for the two agencies concerned. This would be desirable to clarify.

c. Under proposed new section 18HB(3)(a)(iv), there must be "adequate safeguards" for the "retention" of the information. In the Privacy Act, IPP 5 is about reasonable security safeguards for the storage of the information (in other words, there is discrepancy between the words "storage" and "retention"). It is also unclear who determines the "adequacy" of safeguards (as compared to the Privacy Act language of reasonableness).

   Proposed new section 18HB(4)(h) refers to requirements for "storage and disposal"; however, under subsection (3), as discussed above, the draft refers to "retention" (not "storage"). This is not only internally inconsistent, but in the Privacy Act, storage and retention are not the same thing (storage is holding information safely, retention is having a lawful basis to keep it).

d. Expressly clarify the interaction between the proposed provision and the Privacy Act. The Customs and Excise Act 2018 provides (section 303(2)) that "[n]othing in the information

privacy principles in section 22 of the Privacy Act 2020 limits the use or disclosure of personal information by Customs in the carrying out of its functions under this Act." If it is similarly the intention of this Bill that the agreements are intended to override the normal protections in the Privacy Act, then the legislation should make this clear. We recommend inserting a comparable subsection (10) (or other appropriate number) in proposed new section 18HB.

Comment

a. The submitter pointed out that the exceptions to the IPPs under the Privacy Act refer to "prevention, detection, investigation, prosecution and punishment of offences", but Ministerial agreements leave out the word "prevention" and refer to the functions of "detection, investigation, prosecution, and punishment of offences" punishable by imprisonment of two years or more. For consistency, the submitter recommends the proposed functions be aligned with the Privacy Act.

   The use of the word "prevention" would bring in a social welfare aspect to disclosing information, which was not what the Government intended. Instead, the Government limited the functions to combatting and punishing serious crimes, and so the word "prevention" was omitted.

   The word "punishment" of offences, as pointed out by the submitter, is the term used in the IPPs in the Privacy Act, which was used as a basis for the current Bill wording and enables sharing on a case-by-case basis to avoid prejudice to maintenance of the law. We recommend this part of the submission be declined.

b. In proposed section 18HB(3)(a)(i) the use of the words "reasonable and practical" was based on the serious crime AISA wording, where Inland Revenue must meet certain requirements, among others, before information is disclosed to another agency.

   Alternatively, we recommend that we revert to the wording in the TAA, namely "…the Minister must be satisfied that—…the information is readily available to Inland Revenue; and it is reasonable and practicable for Inland Revenue to disclose the information…"

   To clarify the confusion in the draft proposal, officials recommend the submission be noted and the proposal be amended to reflect the TAA wording, as outlined in the previous paragraph.

c. To ensure consistency of drafting, officials recommend the references in proposed section 18HB(3)(a) to:

   - "adequate safeguards" should be changed to "reasonable safeguards", and
   - "retention of information" should be changed to "storage of information".

d. On the suggestion regarding incorporating the wording in section 302(2) of the Customs and Excise Act 2018, we consider the current provision in the Privacy Act relating to the IPPs and other New Zealand law provides for disclosures under this proposal at this point. We do not support the change recommended by the submitter.

Recommendations

That the submission be accepted, subject to officials' comments. (Rec 43)

Issue: Collection and use of information disclosed to other agencies

Submission

(Office of the Clerk of the House of Representatives)

Agencies able to access information under Ministerial agreements

Proposed new section 18HB(9) of the Tax Administration Act 1994 (TAA) specifies the agencies that Inland Revenue would be able to share information with under a Ministerial agreement. The list of agencies includes departments that do not perform any of the functions that are specified in proposed section 18HB(1). The Committee wish to ask advisers whether the list could be narrowed to agencies that carry out the functions specified in proposed section 18HB(1).

Use of information-gathering powers for non-tax-related purposes

The Commissioner of Inland Revenue has extensive powers to obtain personal information. These powers are set out in sections 17 to 17C of the TAA. These powers may only be used for the purposes of maintaining the integrity of the tax system and similar goals (section 16B of the TAA).

The TAA also includes a general purpose for the powers, so that they may be used "for any other function lawfully conferred on the Commissioner". The Bill's provisions could include the use of these powers to obtain information for other agencies, when they would not normally be able to, or face greater scrutiny for doing so. The Committee wish to assure itself that there is no potential under the Bill for the use of powers under sections 17, 17B, and 17C for non-tax-related purposes.

Consultation with Office of the Privacy Commissioner

The Committee wish to consider whether the Bill's protections for the sharing of sensitive tax information could be tighter, in addition to requiring Ministers to consult the Privacy Commissioner when the agreements are being made. The Committee also wish to ask advisers to provide it with:

- the Privacy Commissioner's comments during consultation
- a summary of the Commissioner of Inland Revenue's powers to obtain information

- assurance that there is no potential under the Bill for the use of sections 17, 17B, and 17C powers, and other Commissioner search powers, for non-tax-related purposes
- assurance that fair trial rights will not be affected by the Bill, given the compulsion on taxpayers to provide information or a tax position during the TAA civil disputes process
- details as to how these information disclosure provisions will operate in practice.

Comment

Agencies able to access information under Ministerial agreements

The submitter has pointed out that the list of agencies in the legislation should be reconsidered. We have reviewed the list of agencies elsewhere in the report.

Use of information-gathering powers for non-tax-related purposes

Sections 17, 17B, and 17C powers can only be used for the collection of information for tax purposes. These sections cannot be used to gain information for non-tax-related purposes such as for New Zealand Police. However, if information has previously been collected using these sections for a tax purpose, then the information can be subsequently disclosed to other agencies under existing information-sharing provisions, such as approved information sharing agreements (AISAs), and would also be disclosed under the proposed Ministerial agreements.

This is to ensure that compliant and non-compliant taxpayers are treated the same. Compliant taxpayers file tax returns, and the information from that return can be disclosed to other agencies under existing agreements (AISA) or the proposed Ministerial agreements. However, the New Zealand Law Society proposal would mean a non-compliant taxpayer who fails to file their tax return and whose information is obtained using sections 17, 17B, and 17C would not have information disclosed to another agency. This would create the wrong incentive and is inconsistent with the current treatment under existing AISAs and sharing arrangements. Instead, the Bill provides that information obtained under sections 17I and 17J (taxpayer can be summonsed to appear before the Commissioner or a District Court Judge and examined under oath) is withheld from other agencies and would not be disclosed under Ministerial agreements.

Consultation with Office of the Privacy Commissioner

The feedback from the Office of the Privacy Commissioner and a summary of the Commissioner of Inland Revenue's powers to obtain information will be provided to the Committee in a separate document.

Recommendation

That the submission be noted.

Issue: Effect on fair trial rights

Submission

(Office of the Clerk of the House of Representatives)

The statutory civil disputes process in the Tax Administration Act 1994 (TAA) involves taxpayers being compelled to provide information (statements of tax position) to the Commissioner of Inland Revenue. This may affect the right to silence if this information is subsequently used in criminal prosecutions, conducted by the Commissioner or other bodies. The Bill would allow for information in the Commissioner's possession to be shared with different agencies, as noted above in Issue: Collection and use of information disclosed to other agencies. This includes for the purposes of law enforcement as in proposed new section 18HB(1) of the TAA. The Committee may wish to ask advisers about this issue and assure itself that fair trial rights are not going to be affected by the Bill.

Comment

Inland Revenue notifies taxpayers of the information sharing that it undertakes on the Inland Revenue website, where the purpose of the disclosure, what classes of information are shared, the use the information is put to, and copies of the agreement can be accessed. This enables taxpayers to judge whether the information they disclose will affect their fair trial rights.

Recommendation

That the submission be noted.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Other policy items

Repeal of section 17GB of Tax Administration Act 1994

Clause 141

Issue: Submissions opposing repeal of section 17GB

Submission

There were 202 submissions opposed to the repeal of section 17GB:

Abigail Kirby-Neill
AJ Cho
Alan Barker
Alan Jenks
Alexander Mitcalfe Wilson
Alexia Woodroffe
Alice Peng
Alison Winks
Andrea Morgan
Andrea Ward
Andrew Elzenaar
Andrew Gladman
Andrew Lyons
Andrew Riddell
Angela McAllister
Ani Mitcalfe
Anjana Iyer
Anna Scorey
Anne Megan Evans
Annette Penman
Anni Watkins
Antonio Lima
Argenia Parkinson
Arthur Renquist
Ash Jones
Ash McCrone
Barbara Gilchrist
Barbara Langton
Basil Rangi
Baucher Consulting
Brendan Jefferis
Bruce Gilkison
Bruce Martin
Caitlin Buchanan
Carina Price
Di Boss
Donna Peacock
Eileen Wright
Elaine Hampton
Elaine Marshall
Elizabeth Matich
Elliott Ramsden
Emma Teutenberg
Fiona Maclean
Florence Micoud
Frances Bell
Frey Livingston
Gail Powell
Gail Thomson
Gemma Nash
Geoff Rashbrooke
George Laxon
George Reedy
Glenys Wynn
Graham Townsend
Haley Purdum
Heather Benwood
Heather Denny
Helen Moore
Helena Hutchinson
Helena Thomson
Holly Wilson
Hye Jeon
Indigo Paul
Innes Asher
Isabella Francis
J McCarthy
Jacob Lilley
Jade Tihema
James Latter
Jane Vanderpyl
Jordan Wise
Judith Atken
Julianne Leggott
Julie Park
Kara Shortland
Kate Mora
Kathleen Ryan
Katia De Lu
Kerry Lianne
Kumara Republic
Kushlan Sugathapala
Kylie Stewart
Lara Zoeller
Laura Jones
Leonie Shorter
Lesley Anderson
Lin Roberts
Lindsay Megan Graeme
Llana Keil
Logan McKnight
Lu Tyree
Maire Leadbeater
Margaret Galvin
Margaret Grace
Maria Eugenia Devoto
Marilyn Head
Mark Stephenson
Mary McDonald
Mary-Anne Poa
Matthew O'Hagan
Megan Brady-Clark
Melody Baird
Mia Andrews
Michael Davis
Mike Nelson
Miriam Odlin
Peter Carey
Philippa Briant
RAM Onderwater
Renee Sturch
Richard Baldwin
Richard Hill
Richard Northey
Robert Lawton
Roberta Bush
Robin Stevenson
Robyn Gandell
Robyn Jones
Rod Sandle
Roger May
St Peter's on Willis Social Justice Group
Sally Liggins
Sandy Holden
Sarah Coup
Sarah Hoefhamer
Sarah Newman
Sarah Yates
Sharon Lark
Sheryl Tapp
Simon Hall
Simon Tate
Sita Venkateswar
Sonya Cameron
Stacey Taylor
Stefanie Sykutera
Steffen Wohlleben
Stephan Shoen
Stephen Boulton
Steve Grant
Steven Judge
Sue Engels

CA ANZ	Janet Greig	Mishael Coulter	Susan Hutchinson
Christiaan Day	Jason Burgess	Mollie Bremner	Tania Anderson
Christine Kiddey	Jaya Mangalam Gibson	Mynhard Rudolph	Tania Hellier
Christopher Smellie	Jeanie Su'a	Neil Williman	Tara D'Sousa
Claire Graeme	Jeannette Volykhina	Nicholas Carman	Tatianna Shoen
Claire Thornton	Jeff Hickman	Nicola Rankin	Tax Justice Aotearoa
Clare Sheehan	Jeffrey Parke	Nicole Brouwer	Tjarda Wierdsma
Clarice Shoen	Jemima Tichborne	Nikita Begbie	Venetia King
Cliff Gibson	Jennifer Sheat	Olivia Goodman	Vicky Ngawaka
Clio Reid	Joan Isaac	Pamela Henson	Victoria Quade
Colin Campbell-Hunt	Joanne Davidson	Pamela Stinton-Whetnall	Virginia de Joux
Cornelia Baumgartner	Joanne McFadyen	Patsy Pearson	Yearly Meeting of
Daimon Pitiroi	John McCall	Paul Elwell-Sutton	Aotearoa NZ (Quakers)
Daniel Martin	John Rhodes	Pauline Leverton	Yvonne Sealey
Daniel Oosthuizen	John Stevenson	Peta Joyce	Zoe Drayton
Dawn Logan			

Recommendation

That the submission be noted.

Issue: Submissions supporting repeal of section 17GB

Submission

There were eight submissions supporting the repeal of section 17GB:

BusinessNZ	Mayne Wetherell
Corporate Taxpayers Group	New Zealand Law Society
Deloitte	OliverShaw
EY	New Zealand Taxpayers' Union

Recommendation

That the submission be noted.

Issue: Retain – supports good policy development

Submission

(Baucher Consulting, St Peter's on Willis Social Justice Group, Tax Justice Aotearoa, 56 individual submitters)

Section 17GB facilitates addressing key information gaps about New Zealand's tax system. Retaining the provision would continue to support evidence-based policy development.

Recommendation

That the submission be noted.

Issue: Retain – repeal reduces transparency of tax system

Submission

(Tax Justice Aotearoa, 102 individual submitters)

The repeal of section 17GB reduces the amount of information the Commissioner of Inland Revenue can collect on the tax system. This limits the ability of officials to provide evidence-based advice and can reduce the transparency of the tax system.

Recommendation

That the submission be noted.

Issue: Retain – important when addressing fairness within tax system

Submission

(Tax Justice Aotearoa, 78 individual submitters)

Section 17GB is crucial for understanding and addressing wealth inequality in New Zealand. For example, the high-wealth individuals research project, which obtained information under section 17GB, showed that the wealthiest New Zealanders pay a lower effective tax rate than average earners.

Recommendation

That the submission be noted.

Retain – no evidence section has been used inappropriately

Submission

(Tax Justice Aotearoa, 4 individual submitters)

There have been no formal complaints or privacy breaches under section 17GB.

Recommendation

That the submission be noted.

Issue: Retain – current provision provides sufficient privacy safeguards

Submission

(Tax Justice Aotearoa, 4 individual submitters)

The current provision was considered consistent with the New Zealand Bill of Rights Act 1990. The Commissioner of Inland Revenue exercised sufficient care when previously exercising section 17GB and has released a draft operational statement setting out how care will be taken when exercising the power in the future.

Recommendation

That the submission be noted.

Issue: Repeal – process of enactment undermines case for retaining power

Submission

(Corporate Taxpayers Group, EY, New Zealand Law Society, OliverShaw)

The power was enacted under urgency without the opportunity for public discussion on whether the power was necessary. Therefore, the previous state of the law should be restored.

Recommendation

That the submission be noted.

Issue: Repeal – compliance cost concerns

Submission

(BusinessNZ, Corporate Taxpayers Group, Deloitte, EY, OliverShaw, New Zealand Taxpayers' Union)

Section 17GB is burdensome from a compliance perspective for those subject to a request.

Recommendation

That the submission be noted.

Issue: Repeal – information collection power inappropriate

Submission

(EY, New Zealand Law Society, New Zealand Taxpayers' Union)

It is not appropriate for Inland Revenue to have the power to require information for policy development purposes that is backed by criminal sanctions for failure to comply.

Recommendation

That the submission be noted.

Issue: Repeal – undermines perceptions of political neutrality

Submission

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

Section 17GB risks linking Inland Revenue's coercive powers to the Government of the day's agenda. This could undermine the political neutrality of Inland Revenue. For example, information collected for the high-wealth individuals research project was used by the Minister of Revenue at the time to advance a political view. The options analysed by officials that fall short of repeal do not address this concern.

Recommendation

That the submission be noted.

Issue: Repeal – information could be used for compliance

Submission

(New Zealand Taxpayers' Union)

Inland Revenue could use the power under section 17GB, and subsequent information collected, to conduct fishing expeditions to monitor non-compliance. Investigative powers should only be used when there are reasonable grounds to suspect non-compliance with tax laws. Section 17GB and information collected under it should not warrant this.

Comment

Officials consider the Tax Administration Act 1994 constrains Inland Revenue's ability to use the power in this manner.

Recommendation

That the submission be noted.

Issue: Repeal – voluntary provision of information preferable

Submission

(Corporate Taxpayers Group, EY)

Collecting information for policy development through voluntary requests rather than compulsion is often the best way to maintain public confidence in the tax system and minimise imposing an undue burden on taxpayers.

Recommendation

That the submission be noted.

Issue: Repeal – other information collection powers sufficient

Submission

(Deloitte, EY)

Inland Revenue already has broad information collection powers contained in section 17B of the Tax Administration Act 1994. These powers are generally sufficient to collect information for policy development.

Comment

The precise scope of section 17B is largely untested.

Recommendation

That the submission be noted.

Issue: Other information collection powers insufficient

Submission

(Chartered Accountants Australia and New Zealand)

The submitter is not convinced that the Commissioner of Inland Revenue's general powers would allow Inland Revenue to obtain the detailed and specific data needed for effective policy development. Section 17GB plays an important role in ensuring tax policy decisions are informed by accurate, reliable and relevant data.

Recommendation

That the submission be noted.

Issue: Changes should be considered under GTPP

Submission

(Chartered Accountants Australia and New Zealand)

A range of questions need to be explored under the generic tax policy process (GTPP) relating to gaps in administrative tax data and the appropriate level of constraints on information collection exercises. Any amendments to section 17GB should be considered only after a full GTPP process is undertaken.

Recommendation

That the submission be noted.

Issue: Breaching contractual obligations

Submission

(Corporate Taxpayers Group, Deloitte, OliverShaw)

Consideration should be given to introducing statutory protections from liability for intermediaries and other parties who are compelled to provide Inland Revenue with information about their customers, employees, or other third parties, whether under a future power to collect information for policy development or any existing information-gathering authority.

Comment

Officials understand that this concern relates to the possibility that intermediaries may breach contractual confidentiality obligations to their clients by providing their personal information to Inland Revenue. We do not think that a court would find against an intermediary for providing information to Inland Revenue required under a lawful power.

Recommendation

That the submission be noted.

Issue: Further safeguards preferable to repeal

Submission

(Baucher Consulting, Chartered Accountants Australia and New Zealand, Tax Justice Aotearoa, 3 individual submitters)

A more balanced way to address privacy concerns is to amend section 17GB to provide greater safeguards around the collection and use of information.

Recommendation

That the submission be noted.

Issue: Additional safeguards necessary if power retained

Submission

(Corporate Taxpayers Group, Deloitte)

If the power to collect information for policy purposes is retained, the use of information obtained under such a power should be more clearly and effectively restricted to policy development purposes than is currently provided for under section 17GB(2) and (3).

Recommendation

That the submission be noted.

Issue: Compensation necessary if power retained

Submission

(Corporate Taxpayers Group, Deloitte, OliverShaw)

If the power to collect information for policy purposes is retained, taxpayers should be entitled to a deduction for the costs of complying with such requests.

Recommendation

That the submission be noted.

Repeal of section 17GB – further information

The Committee has asked for more information on the kinds of information collection exercises that will no longer be permitted if section 17GB of the Tax Administration Act 1994 were to be repealed. In particular, the type of information the Commissioner of Inland Revenue will continue to be able to collect under the general information gathering powers.

Before the enactment of section 17GB, which empowers the Commissioner to require information for a purpose relating to the development of policy for the improvement or reform of the tax system, it was uncertain whether the Commissioner had the power under section 17B to require information solely for the purpose of policy development.

The Commissioner considers that the enactment and repeal of section 17GB, and the reason for its repeal, would most likely be viewed as indicating that the uncertainty is resolved and that the Commissioner has no power under section 17B to require information solely for a purpose relating to the development of policy for the improvement or reform of the tax system. And "policy development" is likely to be viewed broadly as encompassing anything that might foreseeably lead to a change in primary legislation (in distinction to the administration or enforcement of the primary legislation as enacted).

Repeal of legislative provisions for trust disclosures

Clauses 95(27), 136(3), 152, 153, 156, 157, 167, 188, 189, 190, and 191

Issue: Submissions opposing repeal of trust disclosure provisions

Submission

There were 35 submissions opposed to the repeal of the legislative provisions for trust disclosures:

Abigail Kirby-Neill	Christiaan Day	John Rhodes	Neil Williman
Alexia Woodroffe	Eileen Wright	Julianne Leggott	Sam Spekreijse
Andrea Morgan	Elaine Marshall	Julie Park	Sita Venkateswar
Andrew Riddell	Florence Micoud	Kathleen Ryan	Sonya Cameron
Angela McAllister	Geoff Rashbrooke	Lara Zoeller	St Peter's on Willis
Ani Mitcalfe	J McCarthy	Lin Roberts	Tax Justice Aotearoa
Annette Penman	Jane Vanderpyl	Lu Tyree	Ukes Baha
Barbara Gilchrist	Jaya Mangalam Gibson	Miriam Odlin	Victoria Quade
Caitlin Buchanan	Joanne Davidson	Mishael Coulter	

Recommendation

That the submission be noted.

Issue: Submissions supporting repeal of trust disclosure provisions

Submission

There were nine submissions supporting the repeal of the legislative provisions for trust disclosures:

Chartered Accountants Australia and New Zealand	EY	OliverShaw
Corporate Taxpayers Group	John Shand (a), (d)	Tax Advisory Limited
Deloitte	New Zealand Law Society	The Law Association of New Zealand

Recommendation

That the submission be noted.

Issue: Strengthen existing requirements

Submission

(Tax Justice Aotearoa, 6 individual submitters)

The existing disclosure requirements for trusts should be strengthened and/or the Commissioner of Inland Revenue should be allowed to add to these requirements.

Comment

The Commissioner would continue to administer the information requirements for trusts under broader Commissioner powers if the specific legislative provisions are repealed. This would enable the Commissioner to add or remove from the requirements as deemed necessary without requiring legislative changes.

Recommendation

That the submission be noted.

Issue: Repeal reduces transparency of tax system

Submission

(13 individual submitters)

The proposal reduces the transparency of the tax system, including of wealth held in trusts.

Comment

The Commissioner of Inland Revenue would continue to collect information on trusts under broader Commissioner powers.

Recommendation

That the submission be noted.

Issue: Repeal undermines collection of information

Submission

(9 individual submitters)

The proposal undermines the collection of information about wealth held in trusts.

Comment

The Commissioner of Inland Revenue would continue to collect information on trusts under broader Commissioner powers.

Recommendation

That the submission be noted.

Issue: Lack of other disclosure requirements for trusts

Submission

(Tax Justice Aotearoa, 10 individual submitters)

The legislative provisions for trust disclosures are necessary because of the lack of a trusts register and other disclosure requirements. There is little information publicly available about who controls or benefits from trusts.

Comment

Disclosure requirements would remain generally because the Commissioner of Inland Revenue would continue to collect information on trusts under broader Commissioner powers.

Recommendation

That the submission be noted.

Issue: Tax minimisation

Submission

(Tax Justice Aotearoa, 9 individual submitters)

Trusts have the potential, or are used, to hide activities and/or wealth. They can also be used for tax minimisation purposes.

Recommendation

That the submission be noted.

Issue: Provisions have added compliance costs

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, New Zealand Law Society, OliverShaw, Tax Advisory Limited, The Law Association of New Zealand)

The legislative provisions for trust disclosures have added significant compliance costs and complexity for trustees, advisors, and other stakeholders.

Comment

Officials acknowledge that the trust disclosure requirements have compliance cost implications. This is consistent with feedback received since the requirements were introduced, and was reflected in the conclusions of the post-implementation review.

Recommendation

That the submission be noted.

Issue: Information can be collected without provisions

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, John Shand (a), (d), OliverShaw, The Law Association of New Zealand)

The legislative provisions for trust disclosures are unnecessary because the Commissioner of Inland Revenue is already able to collect information from trustees under broader Commissioner powers.

Recommendation

That the submission be noted.

Issue: Amend information to be requested in future

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, John Shand (a), (d), The Law Association of New Zealand)

Collection of information (including for complying with the Tax Administration (Financial Statements—Domestic Trusts) Order 2022) should be amended:

- To ensure compliance costs are carefully considered and are not disproportionate relative to the size and nature of different trusts. *(Chartered Accountants Australia and New Zealand, The Law Association of New Zealand)*
- To ensure that only necessary and relevant information is collected. *(Corporate Taxpayers Group, Deloitte, The Law Association of New Zealand)*
- So that information collection is targeted at higher-risk taxpayers. *(John Shand (a), (d))*

Comment

In determining the extent of information to be collected from trustees, the Commissioner of Inland Revenue trades off the compliance costs imposed on taxpayers with the compliance benefits that Inland Revenue realises from collecting information. The Commissioner will not request information deemed outside the scope of the Commissioner's powers.

Trusts exist for a range of purposes and have a broad range of characteristics. The disclosure requirements exempt certain types of trusts from being required to comply. Other transfers that do not need to be included in filing include nil value settlements and non-cash distributions. These rules seek a balance between mitigating compliance costs while maintaining consistency in information collected from different types of trusts.

Recommendation

That the submission be noted.

Issue: Maintain consistency of information collected

Submission

(Corporate Taxpayers Group, Deloitte)

Inland Revenue should not continuously change the information requested each year. Reducing the certainty of what data needs to be supplied is not necessarily a compliance simplification.

Comment

Officials generally agree that consistency of information requested is important, both for taxpayers and their advisors as well as for Inland Revenue's administration. Several changes have been made since the introduction of the rules in response to feedback and, recently, to address recommendations from the post-implementation review. These changes have generally reduced some disclosure requirements and therefore mitigated compliance costs.

The requirements have bedded in and understanding has increased, so we expect a reduction in the number of changes in information requested.

Recommendation

That the submission be noted.

Issue: Determining future information to be collected

Submission

(Corporate Taxpayers Group, Deloitte, EY, The Law Association of New Zealand)

Inland Revenue should make it known as soon as possible what data would need to be provided so there is clarity on the requirements for taxpayers. *(Corporate Taxpayers Group, Deloitte)*

Consultation should be undertaken for future changes to the disclosure requirements for trusts. *(EY, The Law Association of New Zealand)*

Comment

Inland Revenue began communicating with stakeholders earlier this year on the proposed information to be collected after the repeal of the legislative provisions for trust disclosures. Guidance will be published shortly outlining the new requirements.

Recommendation

That the submission be noted.

Updated information sharing for proceeds of crime

Clauses 136(4) and (7), 169(1), and 182

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, John Shand (d))

Submitters supported the proposed amendments to enable Inland Revenue to disclose updated information about a person to the New Zealand Police to maintain the accuracy of Inland Revenue information already held by the Police.

The amendment directly addresses the operational risk that stale data could undermine restraining or forfeiture applications in protracted civil recovery proceedings. The proposal strengthens the integrity of proceeds of crime recovery without expanding Inland Revenue's disclosure footprint beyond the original purpose. *(Chartered Accountants Australia and New Zealand)*

One submitter expressed cautious support subject to safeguards. *(John Shand (d))*

Recommendation

That the submission be noted.

Issue: Limit disclosures to established matters

Submission

(John Shand (d))

The submitter recommends limiting the disclosure of updated information to established matters, as an additional safeguard.

Comment

The policy intent of the proposed changes is to disclosure the most-up-to-date information to the Police, to ensure Inland Revenue information previously disclosed to the Police under the existing rules remains accurate.

Since the updated information about a person would only be requested by Police during an ongoing civil recovery proceeding, any disclosure would be to support matters that were established as part of the investigation.

Recommendation

That the submission be noted.

Issue: Auditing, document retention and destruction rules

Submission

(John Shand (a), (d))

Ensure auditing, and the retention and destruction rules mirror sections 98 and 99 of the Criminal Proceeds (Recovery) Act 2009. All disclosures need to be logged and audited.

Comment

Information disclosed under section 98(2), including the proposed rules to disclose updated information, would remain subject to the security precautions, document retention and destruction requirements outlined in the existing Memorandum of Understanding between Inland Revenue and the New Zealand Police. This is in accordance with section 98(4), and the destruction requirements set out in section 99.

Consistent with the approach for existing information disclosures, the disclosure of updated information would be subject to existing monitoring processes and, consequently, the disclosure of updated information would not be subject to a separate audit process.

Recommendation

That the submission be noted.

Issue: Independent authorisation or oversight of information disclosures

Submission

(John Shand (b))

The submitter recommends independent oversight of information refreshes and independent judicial authorisation for disclosures beyond the initial case establishment.

Comment

The current procedures for disclosing Inland Revenue information for proceeds of crime do not include a requirement for independent authorisation or oversight. This approach is consistent with other forms of information disclosure to the New Zealand Police such as an Approved Information Sharing Agreement.

Given the information disclosed is sensitive revenue information about a person, who may be subject to an ongoing investigation or proceedings, it is important the information remains confidential to the extent the disclosure is reasonably necessary to support the Police undertaking civil recovery action (these requirements are set out in section 98(3) of the Criminal Proceeds (Recovery) Act 2009).

If the information disclosed forms part of documents supporting an application to the High Court for a restraint or forfeiture order, that information would be subject to review by the courts.

Recommendation

That the submission be declined.

Issue: Annual public reporting and publication of annual statistics on administration of rules

Submission

(John Shand (d))

The submitter recommends annual public reporting on accuracy checks, and annual reporting on auditing, retention and destruction rules.

Comment

Current procedures for information disclosed for proceeds of crime do not include a requirement for annual public reporting on accuracy checks, auditing, or retention and destruction rules.

The intention is the proposed amendments would follow existing procedures and therefore additional public reporting requirements would not be required.

Recommendation

That the submission be declined.

Issue: Oversight by Office of the Privacy Commissioner

Submission

(John Shand (d))

The submitter recommends that the Office of the Privacy Commissioner should have oversight of the proposed information sharing.

Comment

The current approach for information disclosed for proceeds of crime does not include increased oversight by the Privacy Commissioner, over and above the usual processes available. The proposed amendments would be subject to the same approach, therefore the proposed changes would not require additional oversight by the Privacy Commissioner.

Officials from the Office of the Privacy Commissioner were consulted on the proposed changes as part of the policy development process. They noted that they are generally comfortable with the proposed changes and raised no concerns about increased oversight of the proposed rules.

Following enactment, the operational Memorandum of Understanding will be updated. This updated Memorandum of Understanding will be provided to the Office of the Privacy Commissioner.

Recommendation

That the submission be declined.

Power to change FamilyBoost settings by Order in Council

Clause 80

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, John Shand (a), John Shand (c), John Shand (d))

Submitters support the proposal to allow FamilyBoost settings to be changed by Order in Council. Submitters considered the proposal:

- pragmatic with bounded flexibility that can improve responsiveness and reduce legislative lag
- reduced the need for legislative amendments, saving parliamentary time and enabling more responsive policy adjustments
- ensured the policy remained effective over time, and was adaptable to emerging issues
- limited the changes to increasing eligibility or payment amounts and was favourable for taxpayers
- contained safeguards providing clarity and certainty
- had adequate lead-in time for implementation.

Submitters also supported the commencement date being the day after Royal assent.

Recommendation

That the submission be noted.

Issue: Additional requirements

Submission

(John Shand (a), John Shand (c), John Shand (d))

Submitters raised additional requirements and safeguards to be added to the Order in Council power. Recommended requirements include fiscal disclosure, statements of compliance with the Legalisation Act 2019 publication requirements, publishing the reasons for the change and a post-implementation review of the Order in Council within 12 months.

Recommendation

That the submission be declined.

Issue: Require changes to be made through primary legislation

Submission

(John Shand (b), Ukes Baha)

Submitters expressed that changes to the FamilyBoost policy settings should only be able to be made through primary legislation, to preserve parliamentary control. Submitters note the change delegates fiscal authority away from Parliament.

Recommendation

That the submission be noted.

Power for Commissioner to set certain rates

Clauses 55, 82(2), 83, 84, 94, 95(16), 158, 159, 160, 162, 163, 164, 168, and 192

Issue: General support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, John Shand (a), John Shand (c), John Shand (d))

Submitters broadly support the principle of delegating to the Commissioner of Inland Revenue the power to determine rates for use of money interest, fringe benefit tax prescribed rate of interest, and deemed rate of return for foreign investment funds.

Submitters also raised several additional refinements that are addressed below.

Recommendation

That the submission be noted.

Issue: Opposition to proposal

Submission

(John Shand (b), Ukes Baha)

The submitters oppose the proposal on the grounds of constitutional overreach.

Recommendation

That the submission be noted.

Issue: Accountability and transparency

(Chartered Accountants Australia and New Zealand, Deloitte, John Shand (a))

Submission

Submitters emphasised the need for explicit parliamentary presentation and review of determinations, publication of methodology, spreadsheets, and worked examples alongside each determination.

Recommendations include publishing formulae, datasets, and ensuring determinations are tabled and subject to Regulations Review Committee scrutiny.

Comment

The determinations are secondary legislation and subject to various safeguards under the Legislation Act 2019, so we believe accountability concerns are adequately addressed. For instance, determinations must be presented to Parliament via the Minister of Revenue's office and are subject to review by Parliament's Regulations Review Committee.

Determinations would be published on the Inland Revenue website.

The legislation would contain the rate-setting formulae to be used (these are the same as those used in the past, where they have been matters of administrative practice or contained in earlier regulations (but not primary legislation)).

Recommendation

That the submission be noted.

Issue: Constitutional concerns with determinations

(John Shand (b), Ukes Baha)

Submission

Submitters raised constitutional concerns, arguing that transferring these powers to the Commissioner of Inland Revenue via secondary legislation may undermine the principle that taxation powers should remain with Parliament, as expressed in the Bill of Rights 1688 and relevant case law. Submitters recommend retaining the current Order in Council mechanism or requiring parliamentary ratification of determinations.

Comment

The determinations are secondary legislation and are subject to a range of safeguards under the Legislation Act 2019, including presentation to Parliament via the Minister of Revenue and review by the Regulations Review Committee. Because these powers involve routine and mechanical calculations that must follow prescribed formulae and legislation, and do not fundamentally change the underlying tax liabilities of taxpayers, we do not agree that democratic accountability has been removed.

The efficiency gains are considered to outweigh the relatively small risks to accountability. Furthermore, should there be any material concern about the delegation of such a mechanical and well-understood rule, we would expect the Legislation Design and Advisory Committee to comment adversely.

Recommendation

That the submission be declined.

Issue: Legislating threshold triggers for rate changes

(Corporate Taxpayers Group, Deloitte, John Shand (a), John Shand (d))

Submission

Submitters recommend legislating the threshold triggers for rate changes. They suggest the Commissioner's power should be triggered by definable circumstances and not left to the wider discretion of the Commissioner once thresholds are met.

Comment

Officials note that the triggers in each case are published in publicly released reports relevant to each exercise of the current powers but have never been a formal part of the underlying regulations or legislation, this is to preserve some flexibility around too-frequent compliance and administrative costs. The Bill's purpose is simply to enact the current processes.

Recommendation

That the submission be declined.

Issue: Additional powers could be transferred to Commissioner

Submission

(EY)

The submitter recommended considering whether other aspects of the tax legislation would benefit from a similar process. Specifically, they noted changes to the list of donee organisations in schedule 32 of the Income Tax Act 2007 currently require legislative amendment, as seen by the proposed additions and removals from the list contained in the current Bill.

Comment

Schedule 32 does not share the same features as setting mechanical rates and requires a different level of judgement. Therefore, it is not appropriate to devolve this decision making to the Commissioner of Inland Revenue. (*EY)*

Recommendation

That the submission be declined.

Issue: Reviewing current formulae

(Chartered Accountants Australia and New Zealand)

Submission

The submitter recommended reviewing the deemed rate of return formula (especially the fixed +4% margin) and publishing a short methodology note each year was also raised

The submitter also recommended reviewing the use of money interest formula or including an alternative formula to ensure the rates remain fair and appropriate as interest rates move

Comment

The purpose of the Bill is to capture and legislate the current and longstanding formulae approved by cabinet over a number of years.

Officials do not believe that now is the appropriate time to amend those formulae.

Recommendation

That the submission be declined.

Issue: Application date

(Deloitte)

Submission

The submitter could not find any legislation clearly specifying when use of money interest (UOMI) rate changes take effect. They recommend that these dates be explicitly legislated to ensure transparency and fairness. Currently, changes usually align with provisional tax payment dates as an

administrative practice, but this is not a statutory requirement and may lead to inconsistency. Legislating the timing would provide clarity, reduce the risk of retrospective changes, and build trust in the system, with no apparent downside to codifying this practice.

Comment

Officials understand the submission and support the principle that UOMI rate changes should only come into effect after a certain minimum period from the making of the determination, as is the current position for fringe benefit tax prescribed rates (and administrative practice).

Point of difference

We propose that all changes would relate forward to the next standard provisional tax date or in any event not less than one month from the making of the determination.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 44)

Overseas donee status

Clause 104

Issue: Support for proposed changes

Submission

(Chartered Accountants Australia New Zealand, Deloitte, John Shand (c))

The submitters support the changes to schedule 32 of the Income Tax Act 2007.

Comment

The Bill proposes to add Days for Girls NZ, EduTech Nepal Foundation, Revive Afghanistan NZ to schedule 32 from 1 April 2024. The Bill also proposes to remove Greater Mekong Subregion Tertiary Consortium Trust and Register of Engineers for Disaster Relief of New Zealand from the date of enactment. Maintenance changes are also included that provide for the restructure of Engineers Without Borders New Zealand Incorporated and UN Women Aotearoa New Zealand Incorporated from incorporated societies to trusts, and renames New Zealand for UNHCR to "Aotearoa New Zealand for UNHCR".

Recommendation

That the submission be noted.

Issue: Add Atmabhav Charitable Trust to schedule 32

Submission

(Atmabhav Charitable Trust)

The submitter requests that Atmabhav Charitable Trust be granted overseas donee status under this Bill.

Comment

Additions to the list of donee organisations (schedule 32 of the Income Tax Act 2007) go through a vetting process with Inland Revenue and require Cabinet approval. As the submission notes, officials have been in talks with the Chair of the Trust since September 2024. Officials are continuing to work with the Trust to ensure that it is of a standard that can be referred to Cabinet

for consideration as per the expectations that charities referred for consideration for overseas donee status are robust, transparent, and accountable.[6]

Recommendation

That the submission be declined.

Issue: Maintenance changes to schedule 32

Submission

(Matter raised by officials)

The two tables below set out a number of recommended changes to the list of donee organisations in schedule 32 of the Income Tax Act 2007. The purpose of these changes is to ensure the list is up to date. These changes involve removing an additional ten charities that have ceased operating and updating references to seven other charities that have changed their name.

Table 2: Charities to be removed from schedule 32

Recommended change	Reason for change	Recommended application date
Four Sherpa Trust	Ceased operation in 2023	From enactment
Fund for Timor	Ceased operation in April 2025	From enactment
New Zealand Disaster Assistance Response Team Trust	Ceased operation in 2010	From enactment
NPH New Zealand Charitable Trust	Ceased operation in 2023	From enactment
NZ-Iraqi Relief Charitable Trust	Ceased operation in 2018	From enactment
Sir Ray Avery Foundation	Ceased operation in 2023	From enactment
Solomon Outreach Society	Ceased operation in 2017	From enactment
Toraja Rural Development Charitable Trust	Ceased operation in May 2025	From enactment
Tender Trust	Ceased operation in 2024	From enactment
Valehead Community Health Centre Trust	Ceased operation in 2002	From enactment

[6] Dunne: Guidance for charitable bodies seeking overseas donee status | Beehive.govt.nz

Table 3: Charities to be renamed in schedule 32

Recommended change	Recommended application date
Rename "International Christian Aid (ICA)" to "International Christian Aid Relief Enterprises".	1 April 2008
Rename "The New Zealand Society for the Intellectually Handicapped (Incorporated)" to "IHC New Zealand Incorporated".	1 April 2008
Rename "Hope Foundation Development" to "Building for Education".	21 June 2010
Rename "Hope International Charitable Trust" to "HOPENZ Charitable Trust".	13 August 2013
Rename "Te Tūao Tāwāhi: Volunteer Service Abroad Incorporated" to "Volunteer Service Abroad: Te Tūao Tāwāhi Incorporated".	18 April 2017
Rename "Revive Afghanistan NZ" to "Revive All NZ".	16 July 2025
Rename "EduTech Nepal Foundation" to "EduTech Foundation".	30 July 2025

Recommendation

That the submission be accepted. (Rec 45)

Issue: Heilala Vanilla Foundation – removal of sunset clause

Submission

(Matter raised by officials)

Remove the sunset clause that applies to Heilala Vanilla Foundation's overseas donee status.

Comment

Heilala Vanilla Foundation (the Foundation) was added to the list of donee organisations by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023. The Foundation was granted overseas donee status because of its relief efforts in response to the 2022 Hunga Tonga–Hunga Ha'apai eruption and tsunami. However, its status was time limited, ending 31 March 2026, because it was unclear at the time whether the Foundation had plans to continue

further economic development activities in Tonga beyond the immediate emergency response to the eruption and tsunami.

The Foundation's work has transitioned from supporting Tonga's recovery to supporting economic development in the form of creating a self-sustaining agricultural sector in Tonga with a particular focus on vanilla production and improving education and health outcomes in rural communities.

The purposes of the Foundation, and the projects currently underway in Tonga, remain consistent with Cabinet's approval criteria and its decision to grant the Foundation overseas donee status in 2022. To provide permanent overseas donee status for the Foundation, the sunset clause relating to its inclusion on schedule 32 of the Income Tax Act 2007 should be removed.

Recommendation

That the submission be accepted. (Rec 46)

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

GST remedials

Secondhand goods clarification

Clause 122

Issue: Support for proposal

Submission

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

The submitters generally supported the proposal to clarify, for the purposes of determining the amount of input tax for a supply of secondhand goods, that the person would be treated as if they had been a registered person at the time the goods were acquired.

Recommendation

That the submission be noted.

Issue: Amendment not technically required

Submission

(Deloitte)

Although the submitter generally supports this remedial, they consider the clarification is not technically required.

Recommendation

That the submission be noted.

Secondhand goods interaction with adjustment rule

Clause 186

Issue: Clarify application date

Submission

(PwC)

The submitter recommends clarifying whether the application date allows GST adjustments to claim secondhand goods input tax credits only when the goods are used to make taxable supplies after 30 March 2022 for the first time, or whether it applies to any secondhand goods when an input tax credit has not previously been claimed (provided the GST adjustment is made in a period after 30 March 2022). The submitter supports the latter approach to the application date.

Comment

The policy intention of the proposed amendment is to allow the new input tax definition to be used for any adjustment provided this adjustment is made in a taxable period starting on or after 30 March 2022. This could include situations when the registered person acquired and used the secondhand goods to make taxable supplies prior to 30 March 2022 but is making an adjustment for taxable use that occurs after 30 March 2022. The current drafting of the amendment achieves this. We will clarify this point in an Act commentary published on the Tax Policy website shortly after enactment of the Bill.

Recommendation

That the submission be noted.

Effective date for change from filing frequency selected in error

Clause 117

Issue: Support for proposal

Submission

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

The submitters support the proposal to provide that a change in a newly registered person's filing frequency will take effect on the start date of their GST registration in certain circumstances.

Recommendation

That the submission be noted.

Issue: Rule should be simplified

Submission

(Corporate Taxpayers Group, Deloitte)

The provision should be simplified, and the Commissioner of Inland Revenue should correct such errors without a complicated "earlier of" test.

Comment

Sometimes, when businesses and organisations register for GST using the online registration process, they may accidentally select a filing frequency that they did not intend (for example, monthly instead of two-monthly). When this occurs, the current GST legislation does not permit the Commissioner to backdate a change in the person's filing frequency to the start date of their registration so that the change is effective for their very first taxable period. Instead, the earliest taxable period that the change will be effective for is the one following the taxable period in which the person applied for the change.

The proposal in the Bill would provide that a change in filing frequency for a registered person takes effect on the start date of their registration if they apply to the Commissioner for the change before the earlier of:

- seven days after the due date of the GST return that corresponds with their first taxable period (being their current taxable period that they are applying to change from), or
- the due date of the first GST return that corresponds with their intended taxable period (being the taxable period they are applying to change to).

The proposed "earlier of" deadline for making the application is intended to provide newly registered persons with sufficient time to apply for the change, while at the same time ensuring that they make the application in a sufficiently timely manner so that they do not miss filing deadlines that could have been met if reasonable efforts were made.

An alternative approach that would be simpler could instead be to require the person to apply for the change within 35 days from the end of the month in which they registered for GST. However, officials note that if the person registered for GST in November, this alternative rule would provide less time than the current proposal in the Bill (because the filing due date for taxable periods ending on 30 November is 15 January). This might not provide sufficient time for affected taxpayers to apply to change their filing frequency.

Therefore, when the person registered for GST in November, we recommend that they should have until 20 January to apply to change their filing frequency under the proposed rule. In all other circumstances, we recommend they should have until 35 days from the end of the month in which they registered to apply for the change.

Recommendation

That the submission be accepted. (Rec 47)

Business-to-business zero-rating of financial services election process

Clause 121

Issue: Support for proposal

Submission

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

The submitters support the proposal that the election to zero-rate GST on qualifying financial services could be exercised by either taking the relevant position in a GST return, or by notifying the Commissioner of Inland Revenue.

Recommendation

That the submission be noted.

Issue: Make application date retrospective to 1 April 2025

Submission

(Deloitte, PwC)

The proposed amendment should come into effect for taxable periods from 1 April 2025. This would ensure that positions taken by taxpayers who have either notified the Commissioner of Inland Revenue or taken the relevant position in a GST return are protected. *(Deloitte)*

The amendment should have effect from 1 April 2025. In the interim period, some entities (for example, newly incorporated companies) that could not take a position in a return, were as a practical matter notifying Inland Revenue that they intend to elect into the regime. If the change is not made with retrospective effect covering this period, these entities may need to make fresh elections. This creates complexity and compliance costs for affected taxpayers and Inland Revenue, and potential exposure if these taxpayers are unaware of the issue. *(PwC)*

Comment

Officials agree that making the proposed amendment apply from 1 April 2025 would provide more certainty for taxpayers who would prefer to notify Inland Revenue to exercise the election.

Recommendation

That the submission be accepted. (Rec 48)

Issue: Replace election with opt out

Submission

(Deloitte)

All business-to-business supplies of financial services should be treated as zero-rated, unless the taxpayer specifically chooses to opt out of the regime. In Deloitte's experience, there is no practical reason why a taxpayer would choose not to make the election to zero-rate business-to-business supplies.

Comment

Officials note that changing the election to require taxpayers to opt out of zero-rating their business-to-business supplies of financial services would impact a wider group of taxpayers to those that use the current election, so it would need wider consultation with the affected groups so the potential impacts could be properly considered.

An opt-out mechanism would require more suppliers to register for GST and more businesses to implement systems for measuring their taxable and exempt supplies and apportioning input tax deductions. This could increase compliance costs for some of the affected taxpayers.

Recommendation

That the submission be declined.

Sale of land as separate supply

Clause 111(1)

Issue: Support for proposal

Submission

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

The submitters support the proposed amendment to treat the sale of land as a separate supply to the extent to which the land has been used to make exempt supplies.

Recommendation

That the submission be noted.

Issue: Remove proposed amendment from Bill

Submission

(KPMG, PwC)

The submitters consider the proposed amendment needs further work and consultation. They consider its current design would lead to unintended GST outcomes in some cases and the amendment should be removed from the Bill so further analysis and consultation can occur.

The scope and use of proposed new section 5(15)(e) of the Goods and Services Tax Act 1985 (GST Act) remain ambiguous. The submitter recommends not proceeding with the proposed change and reassessing its practical impact across various situations. *(KPMG)*

Proposed section 5(15)(e) refers to "a supply of land, to the extent to which the land has been used to make exempt supplies". It is unclear whether the new rule would apply to bare land if at the time of acquisition there was an intention to use the land for making exempt supplies, and although some work has been done on the land, a change of circumstances means the bare land was never actually subject to any exempt use before disposal. *(KPMG)*

The GST treatment on disposal of mixed-use land should take into account the total taxable use of the land over the entire ownership period. This provides a more equitable outcome for land that has been predominantly used for private/exempt purposes, but was only "caught" in the GST net for a short period of time. *(KPMG)*

The section 21F calculation in the GST Act differs from the calculation made under section 5(15). If proposed new section 5(15)(e) is introduced, the reference to "exempt use" should be amended to align with the concept of "non-taxable use", to be consistent with the current section 21F formula ("1 – previous use"). *(KPMG)*

This proposal should not proceed and should be removed from the Bill so that it can considered in more detail with further consultation, including a full discussion of its potential application with considered examples. *(PwC)*

Comment

Officials agree that further analysis and consultation is required to consider the appropriate GST outcome in the scenarios raised by the submitter and other scenarios. We recommend the proposed amendment be removed from the Bill to allow this consultation to occur.

Recommendation

That the submission be accepted. (Rec 49)

Record-keeping requirements for supplies to unregistered persons

Clause 118

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, DLA Piper New Zealand, New Zealand Law Society, Retail NZ)

The submitters support the proposed amendment clarifying that suppliers are not required to retain recipient details for unregistered purchasers, even when the supply exceeds the $1,000 threshold.

Recommendation

That the submission be noted.

Clause 118

Issue: Recipient of supply to provide details

Submission

(DLA Piper New Zealand, New Zealand Law Society, Retail NZ)

The Bill should be amended to make it clear that the recipient of a supply that exceeds $1,000 is responsible for confirming they are a registered person and providing the requisite "recipient details" that make up part of the taxable supply information for the supply.

This is a logical and commercially practical change because stores should not be obliged to ask for personal information from customers if they spend over $1,000 for a supply. It makes more sense for recipients to have the duty to notify the supplier of their GST registration and details. This is because a recipient should be incentivised to provide sufficient information to claim tax and GST with valid taxable supply information.

Comment

Officials agree that, from a commercial perspective, it is more practical for the recipient of a supply to notify the supplier of their GST registration status and provide the necessary recipient details.

This approach would clarify that the responsibility for supplying this information rests with the recipient, not the supplier.

Recommendation

That the submission be accepted. (Rec 50)

Clause 118

Issue: Recipient of supply to obtain taxable supply information

Submission

(DLA Piper New Zealand)

Section 19E of the Goods and Services Tax Act 1985 could be further amended to make it explicit that a registered person who receives a supply of goods or services for an amount exceeding $1,000 will need to have obtained taxable supply information from the supplier that contains their own details as recipient of the supply.

Comment

Officials do not consider that such a change is necessary. As part of the change away from tax invoices to taxable supply information, there is no longer a requirement for all information to be consolidated in one document as a "tax invoice". The taxable supply information can be held across a range of sources for additional flexibility. In these circumstances, the recipient of the supply has knowledge of their own details and will be able to substantiate taxable supply information for the supply from existing documentation, such as their receipt and bank statements. Requiring the supplier to record the details of the recipient and provide a record of this back to the recipient would only add compliance costs and is contrary to the policy intent of the rules, which aim to provide flexibility to GST record keeping.

Recommendation

That the submission be declined.

Clause 118

Issue: Guidance required on record-keeping requirements

Submission

(Retail NZ)

The submitter recommends that Inland Revenue provides clear operational guidance on:

- what constitutes sufficient or "reasonable" steps for a retailer to ascertain if a customer is registered for GST purposes (for example, a point-of-sale system prompt, signage or invoice note), and
- how such actions should be recorded to demonstrate compliance with the ongoing duty in section 19E of the Goods and Services Tax Act 1985 to retain taxable supply information.

Comment

As suggested by other submitters, officials are recommending that the Bill be amended to make it clear that the recipient of a supply that exceeds $1,000 is responsible for confirming they are a registered person and providing their details to the supplier for including in the taxable supply information for the supply. There will not be any obligation on the supplier to retain this information unless the recipient of the supply volunteers it (and the recipient will be incentivised to do so to have sufficient records to support their input tax deductions).

Recommendation

That the submission be declined.

Clause 118

Issue: Necessity of "recipient details" for record-keeping requirement

Submission

(PwC)

Further consideration should be given to whether the requirement to hold "recipient details" is necessary, and if it is, whether the threshold should be raised higher than $1,000.

Comment

The policy rationale for this record-keeping requirement is that it supports the integrity of the GST system by ensuring GST input tax deductions claimed on high value items can be cross-referenced against a legitimate sale. This gives Inland Revenue access to records, if needed, to ensure these claims are legitimate sales and not fraudulent invoices.

Recommendation

That the submission be declined.

Customs concessions

Clause 116

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand)

The submitters support the proposed amendment to align GST exemptions with updated tariff concessions by allowing inherited goods to enter New Zealand GST-free and by removing an outdated concession for gifts.

Recommendation

That the submission be noted.

Issue: Commencement date

Submission

(Matter raised by officials)

Clause 116 of the Bill (which modifies GST relief in relation to imported inherited goods and gifts under New Zealand's Tariff concessions) should come into force on 1 April 2026, not the day after Royal assent of the Bill. This would align the entry into force date of the proposed amendment with the Tariff (Inherited Goods and Gift Concessions) Amendment Order 2025, which is planned to come into effect on 1 April 2026. This ensures both pieces of legislation, which give effect to the insertion of concession reference number 71 (inherited goods) and the removal of concession 75 (gifts), come into effect on the same date.

Recommendation

That the submission be accepted. (Rec 51)

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Investment Boost remedials

Low value asset threshold

Clause 42

Issue: Support for proposal

Submission

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

Submitters supported the proposed amendment to restore the $1,000 threshold under which taxpayers can deduct the full cost of a low-value asset. This threshold had inadvertently been raised to $1,250 for assets eligible for Investment Boost.

Recommendation

That the submission be noted.

Asset transfers in certain circumstances

Clauses 34 and 35

Issue: Support for proposal

Submission

(Corporate Taxpayers Group, Deloitte, EY, KPMG)

Submitters supported the proposed amendment to ensure the transferee of an asset only inherits the Investment Boost deduction when they are otherwise deemed to inherit the transferor's depreciation loss under another provision of the Income Tax Act 2007.

Recommendation

That the submission be noted.

Issue: Transfers to deceased estates

Submission

(Chartered Accountants Australia and New Zealand)

Proposed section DI 3 of the Income Tax Act 2007 (ITA) should include transfers to estate transferees when they step into the shoes of the deceased under the circumstances described in sections FC 3 and FC 4 of the ITA.

Comment

Proposed section DI 3 already applies to all situations in which the person receiving the asset is deemed to have claimed the transferor's depreciation loss under other provisions of the ITA. The section has an inclusive but not necessarily exhaustive list that identifies specific provisions that may be relevant. Any provisions not specifically identified that treat the transferee as having claimed the pre-transfer depreciation loss would also be captured.

Recommendation

That the submission be declined.

Issue: Transfers between associated parties

Submission

(KPMG)

The "claw back" of the Investment Boost deduction when an asset is transferred between associated parties (for example, companies within a wholly-owned group) seems overly restrictive because the asset is still owned within the same "economic group". This is particularly concerning in the context of buildings, when the tax deduction may be permanently forfeited (given buildings are not otherwise depreciable for tax).

A broader set of "rollover relief" rules should be introduced for circumstances when there is no change in the ultimate economic ownership of the asset for which Investment Boost has been claimed.

Comment

The Investment Boost rules allow the Investment Boost deduction to be transferred when the person receiving the asset is deemed to have claimed the transferor's depreciation loss under other provisions of the Income Tax Act 2007. There is already the ability to roll over the Investment Boost deduction within an economic group when that is provided for in the depreciation rules.

Recommendation

That the submission be declined.

Asset transfers between associates

Clause 43

Issue: Support for proposal

Submission

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

Submitters supported the proposal to confirm that, when depreciable assets are sold between associated persons, the purchaser's depreciation loss is limited to the vendor's original cost and that cost is calculated before any Investment Boost deduction claimed by the vendor.

Recommendation

That the submission be noted.

Secondhand exclusion

Clauses 33 and 95(26)

Issue: Support for proposal

Submission

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

Submitters supported the proposed amendment to clarify when an asset is considered to be secondhand and therefore ineligible for Investment Boost.

Recommendation

That the submission be noted.

Clauses 33 and 95(26)

Issue: Drafting improvement

Submission

(Corporate Taxpayers Group, Deloitte)

Paragraphs (a) and (b) of proposed section DI 2(1B) of the Income Tax Act 2007 should be separated with a colon rather than the word "or".

Comment

Separating paragraphs (a) and (b) with a colon would ensure a purchaser of an asset could still claim an Investment Boost deduction if the vendor had both held the asset as trading stock and used it in a manner necessary to prepare it for sale.

Recommendation

That the submission be accepted. (Rec 52)

Clauses 33 and 95(26)

Issue: Clarifying when buildings considered new

Submission

(Corporate Taxpayers Group, Deloitte, EY)

Submitters requested further clarity on when a commercial building developed for sale is considered new and therefore eligible for Investment Boost.

Refinements should be made to ensure that, when a developer tenants a property before sale to enhance marketability and value, this interim use does not disqualify the purchaser from claiming Investment Boost. *(EY)*

Two submitters requested further guidance and examples to provide greater certainty for taxpayers. In particular, situations when a commercial property developer does either of the following:

- The developer leases out a building (either partially or fully) before sale. This could be done to help cover costs during the sale period or to make the building more attractive to prospective buyers.
- The developer takes a long time to sell the building. Sale periods for commercial buildings can often stretch over a number of years owing to local or wider market conditions. Marketing campaigns for a building may also not be continuous. When a building fails to sell quickly, marketing campaigns may be paused and restarted at a later date. *(Corporate Taxpayers Group, Deloitte)*

Provided there remains a genuine intention to sell a developed building, Investment Boost should be available to the first purchaser. *(Deloitte)*

Comment

A purchaser of a commercial building would be able to claim an Investment Boost deduction if the building had only previously been held as trading stock by the developer. Provided the developer at all times retains a genuine intention to sell the building, it should be considered trading stock, and the purchaser should be able to claim an Investment Boost deduction. This includes if the developer leases the building to make it more attractive to prospective buyers or takes a long time to sell the building.

The current drafting of proposed section DI 2 may already achieve this intended outcome; however, we recommend a minor drafting change to the section to reduce ambiguity.

The examples below illustrate situations when a commercial building is still trading stock of the developer despite being leased before sale and taking a long time to sell.

Example 1: Office block

BOB Properties Ltd (BOB) develops an office tower for sale. A sales campaign runs during construction, but market conditions turn, and no buyer is found. Before completion, BOB leases the entire building. After completion, the sales campaign continues briefly, then pauses. BOB remains open to offers and runs further campaigns intermittently every 12 to 15 months. In year four, the property is sold. No depreciation was claimed because the building was held as trading stock.

The facility has been held as trading stock and is therefore not considered to have been used or available for use by BOB. It may be a new investment asset for the purchaser.

Example 2: Logistics facility

WNDY Projects (WNDY) constructs a logistics facility to sell. After an initial campaign, the sale process pauses for market reasons. Over three years, WNDY leases 70% of the facility, and runs two further marketing campaigns while continuing to treat the property as trading stock in its own income tax returns. The facility is sold in year four.

The facility has been held as trading stock and is therefore not considered to have been used or available for use by WNDY. It may be a new investment asset for the purchaser.

Recommendation

That the submission be accepted. (Rec 53)

Clauses 33 and 95(26)

Issue: Revenue account land

Submission

(EY, PwC)

A purchaser of newly developed assets may not qualify for the Investment Boost deduction if the vendor did not hold the asset as trading stock but rather as revenue account property that was always intended for sale.

This could inadvertently exclude genuine development-to-sale transactions (for example, from a developer to an operator) from eligibility, despite being consistent with the policy intent of encouraging productive investment. *(PwC)*

The Bill commentary refers to an asset being held as trading stock if the "dominant purpose" is to sell or exchange the asset as trading stock. This is inconsistent with section CB 6 of the Income Tax Act 2007, which treats land as revenue account property if acquired with "1 or more" purposes or intentions that included disposal. Land held with one or more purposes of sale or exchange should be treated as being held as trading stock. *(EY)*

Comment

There may be situations in which a newly developed asset is not held as trading stock but rather as revenue account property by the vendor. Trading stock is property that a "business has for the purpose of selling or exchanging in the ordinary course of the business". However, a person not carrying on a business can still hold property on revenue account. This is particularly the case for land because a number of provisions deem land to be revenue account property even when the owner is not carrying on a business of selling or developing land.

When an asset is revenue account property for the vendor but not trading stock, the purchaser of the asset could claim an Investment Boost deduction if they acquired it as soon as it is available for use. However, an Investment Boost deduction would not be available to the purchaser if the asset was available for use by the vendor before its sale. For example, if a person develops a commercial building for sale as part of an undertaking or scheme that is not in the nature of a business, and the building takes a month to sell after it was first available for use.

Ensuring that assets held on revenue account that are newly developed for sale remain eligible for Investment Boost when sold would be consistent with the policy intent of encouraging productive investment. However, ensuring Investment Boost is available in these situations is complex and there is a risk of allowing Investment Boost deductions for secondhand property. Officials propose addressing this issue in a future taxation Bill to enable the time needed to work through this complexity.

Recommendation

That the submission be declined.

Clauses 33 and 95(26)

Issue: Assets when no depreciation has been claimed

Submission

(EY)

When no other party has claimed depreciation on the asset, the purchaser should be eligible to claim Investment Boost on the asset (provided all other requirements for claiming Investment Boost are satisfied). This approach would avoid confusion when the asset is technically new but had some previous use of an incidental nature such that it was not treated as depreciable property by the vendor.

Comment

There are a number of situations in which no party has previously claimed depreciation on an asset but it would be inappropriate for the purchaser to claim an Investment Boost deduction. For example, if there has only been private use of an asset before sale it is no longer a new asset and should not be eligible for Investment Boost. Likewise, the fact depreciation has not been claimed on a commercial building does not indicate that it is a new asset.

Recommendation

That the submission be declined.

Clauses 33 and 95(26)

Issue: Purchasers relying on vendor disclosure

Submission

(EY)

Vendors should be able to indicate within the sale and purchase agreement that they have not claimed the Investment Boost or that they are ineligible to claim it. In such cases, the legislation should allow for the contractual disclosure by the vendor to be relied upon by the purchaser. This approach would provide certainty and ensure symmetry in treatment.

Comment

In practice, we expect purchasers will be relying on disclosures from vendors to determine whether an Investment Boost deduction can be claimed when purchasing an asset. Purchasers can rely on contractual remedies should a vendor's disclosure prove incorrect.

Recommendation

That the submission be declined.

Clauses 33 and 95(26)

Issue: Guidance on "available for use"

Submission

(EY)

The definition of "available for use" should be practical and reflect commercial realities. To help reduce uncertainty, the submitter recommends Inland Revenue provide further guidance of the meaning of "available for use" in the context of whether a taxpayer qualifies to claim Investment Boost.

Comment

Inland Revenue has provided guidance on Investment Boost and will continue to do so, including in an Act commentary published on the Tax Policy website after enactment of the Bill.

Recommendation

That the submission be noted.

Additional measures

Issue: Mining exploration expenditure

Submission

(Oceana Gold (New Zealand) Limited)

The definition of new investment asset includes an asset acquired with mining development expenditure. However, it does not include mining exploration expenditure that has been clawed back once commercial production of minerals has begun.

Mining development expenditure is capitalised and then deducted over the life of the mine. Mining exploration expenditure that has been clawed back is also capitalised and then deducted over the life of the mine.

Investment Boost should be able to be claimed on the full cost base of an asset. The full cost base of a mining asset includes clawed-back mining exploration expenditure. Accordingly, the definition of new investment asset should be expanded to include clawed-back mining exploration expenditure.

Comment

Mining exploration expenditure is immediately deductible. However, it is clawed back if, in hindsight, those deductions should not have been taken immediately but spread over the life of the mine. For this clawback to apply, the expenditure must result in, produce, or generate an asset for the miner that they then use for, or in relation to, the commercial production of minerals.

While clawed-back exploration expenditure does form part of the cost base of a mining asset, it is not new expenditure for which Investment Boost is intended to apply. Furthermore, mineral miners already receive a timing advantage by being able to immediately deduct mining exploration expenditure initially. As such, Investment Boost should not be extended to clawed-back exploration expenditure.

Recommendation

That the submission be declined.

Issue: Sustainability of Investment Boost

Submission

(KPMG)

There is uncertainty around the long-term sustainability of policies like Investment Boost. For longer-term capital investments (such as the construction of commercial buildings), there is uncertainty about whether the deduction will still be available, and/or in its present form, when the asset becomes available for use.

Given this uncertainty, some taxpayers may be reluctant to factor in the value of the Investment Boost deduction when making decisions on longer-term capital investments. Decisions of various Governments to remove, reinstate and then remove again depreciation deductions for buildings also contributes to this uncertainty.

Consideration should be given to mechanisms to provide more certainty upfront around the availability of the Investment Boost deduction. For example, establishing the right to the deduction at the time construction of an asset commences or the project is "definitively committed to" but deferring its timing until the asset is available for use. While a future Government could still deny the deduction at the time, this is likely to provide more comfort around sustainability of the policy at the time investment decisions are being made.

Comment

Officials acknowledge that uncertainty around the sustainability of Investment Boost may limit its effectiveness at encouraging longer-term capital investments. However, legislative options to increase certainty around the eventual availability of the deduction are unlikely to be effective because a future Government could still change the law to deny the deduction.

Cross-party support for Investment Boost is the best way to signal to taxpayers that it will be an enduring feature of the tax system.

Recommendation

That the submission be declined.

Issue: Assets acquired for use by partnership

Submission

(KPMG)

The Investment Boost deduction could be potentially lost in specific circumstances, such as when the asset is acquired for use by a partnership (or limited partnership) and new partners (or limited partners) are subsequently introduced. This is because the new partners will be deemed to have acquired a "used asset". The partnership will need to reflect this as part of the different partner allocations at year-end. It will also result in different partners having different cost bases for tax and depreciation deductions going forward.

Comment

Officials acknowledge the matter raised by the submitter. Consideration of this matter should be done alongside broader policy work on the tax treatment of partnerships and limited partnerships. This would require prioritising and resourcing as part of the Government's Tax and Social Policy Work Programme.

Recommendation

That the submission be declined.

Issue: Accelerated depreciation

Submission

(EY)

The rules should be reformed to allow for genuine acceleration of depreciation deductions rather than merely an upfront deduction as currently allowed.

Investment Boost has limited uptake because, when a taxpayer claims Investment Boost on an asset, depreciation is calculated on the cost of the asset less the 20% Investment Boost amount. This approach results in significant practical difficulties for many taxpayers in terms of adapting their systems for Investment Boost. To help alleviate these difficulties, consideration should be given to providing taxpayers with the option of calculating depreciation based on the original cost of the asset.

Comment

Officials acknowledge that some taxpayers have faced difficulty in adapting their systems to Investment Boost. However, we are aware that accounting software is already being updated to accommodate the requirements of the Investment Boost policy. As such, the practical difficulties raised in the submission are likely to reduce.

Enabling taxpayers to calculate depreciation based on the original cost of an asset would also have a significant fiscal cost.

Recommendation

That the submission be declined.

Issue: Importance of consultation in policy development

Submission

(KPMG)

The requirement for remedial amendments in the Bill highlights the importance of ensuring that, for major tax policy measures like Investment Boost, the generic tax policy process (GTPP) and full legislative process (including Select Committee) is followed. The GTPP, in particular, is designed to ensure that key design issues can be addressed before legislation is enacted.

Comment

Officials acknowledge the importance of consultation in developing policy and legislation. Ideally, the GTPP would have been followed in developing Investment Boost. However, Budget secrecy requirements prevented consultation before Investment Boost was announced and enacted.

Recommendation

That the submission be noted.

Issue: Data and disclosure requirements

Submission

(EY)

Inland Revenue should communicate any new data or disclosure requirements in relation to Investment Boost well ahead of the annual tax return preparation process. This would allow businesses to adjust their recordkeeping practices accordingly.

Comment

Inland Revenue has published guidance to assist interpretation of Investment Boost legislation. We have also provided some more practical guidance around how to claim Investment Boost deductions. Further guidance will continue to be provided.

Recommendation

That the submission be noted.

Issue: Applying Investment Boost to improvements to existing assets

Submission

(PwC)

The legislation should be clarified to expressly confirm that expenditure on improvements to existing property qualifies for Investment Boost, even when the improvement does not constitute a separate asset in its own right. This should be clarified for both non-depreciable and depreciable property.

Investment Boost applies to new investment assets as defined in section DI 4 of the Income Tax Act 2007 (ITA). The use of the term "asset" in this context has created uncertainty around how the rules apply to improvements.

Improvements to a non-depreciable asset may often not constitute a new asset in its own right and therefore not be eligible for Investment Boost. This is particularly problematic in the farming, petroleum mining, and mining sectors, where improvements, such as land development or infrastructure works, typically enhance an existing non-depreciable asset (that is, land) rather than create a new identifiable one.

Improvements to depreciable property can be interpreted as a separate depreciable asset and therefore eligible for Investment Boost. However, this interpretation requires taxpayers to reference section EE 37 of the ITA, which undermines the accessibility and clarity of the Investment Boost provisions.

Comment

Officials agree that the legislation should be clarified to ensure that all improvements to existing assets are eligible for Investment Boost (so long as all other criteria are met). It was always intended that improvements to existing assets should be eligible for Investment Boost.

Provided all other criteria are met, Investment Boost should be available for all:

- depreciable property and improvements to depreciable property
- primary sector land improvements that are allowed deductions in sections DO 4, DO 5, DO 12 and DP 3 of the ITA respectively and improvements to these improvements, and
- petroleum development expenditure and mining development expenditure.

Recommendation

That the submission be accepted. (Rec 54)

Issue: Clawback of deduction following change of use

Submission

(Matter raised by officials)

Apportionment of an Investment Boost deduction is required:

- to the extent a new investment asset is used privately, and
- for commercial buildings, the extent to which the building is configured as a residential building.

Section CC 15 of the Income Tax Act 2007 requires that if the private use of an asset increases by 25% or more, the Investment Boost deduction previously claimed is clawed back to reflect the new private use. However, if a commercial building is reconfigured as a residential building but still used entirely for deriving income (for example, providing rental accommodation), there is no clawback of the Investment Boost deduction. This creates an integrity risk because some types of commercial buildings (for example, serviced apartments) can be easily converted to dwellings.

The clawback of the Investment Boost deduction following a change of use should therefore be amended to also apply when the proportion of a building configured as a residential building increases by 25% or more.

Recommendation

That the submission be accepted. (Rec 55)

Issue: Apportionment of Investment Boost deductions and relationship to cost in other provisions

Submission

(Matter raised by officials)

Section DI 6 of the Income Tax Act 2007 (ITA) requires that the cost of an asset for calculating a depreciation deduction (or similar deduction for non-depreciable assets) is reduced by the Investment Boost deduction for the asset. This section works as intended for assets with 100% business use.

For assets with only partial business use, the cost of the asset for calculating depreciation (or similar deductions for non-depreciable assets) should be reduced by the full Investment Boost deduction that would have been allowed if the asset was used entirely for business. However, section DI 6 currently requires the cost of an asset to be reduced by the actual Investment Boost deduction claimed, rather than the full deduction that would have been available if the asset was used entirely for business.

Example 3: Investment Boost relationship to cost for partial business use assets

Thomas buys a new yacht for $100,000 that he begins using in the 2025–26 income year. He determines that the yacht will be used 90% of the time for business use and chooses to claim a new investment asset deduction on this basis. He therefore claims $18,000 as a new investment asset deduction, which is 90% of the full $20,000 deduction that was available to Thomas under section DI 5.

It is intended that the cost or adjusted tax value used for determining depreciation of the yacht should be reduced by the full $20,000 Investment Boost deduction to $80,000. However, section DI 6 currently requires the cost or adjusted tax value to be reduced by $18,000 to $82,000.

Section DI 6 should be amended to ensure the cost of an asset for calculating depreciation deductions (or similar deductions for non-depreciable assets) is always reduced by the full Investment Boost deduction available if the asset was used entirely for business. This would be consistent with how depreciation deductions flow through to adjusted tax value for assets with only partial business use. The example currently included in section CC 15 of the ITA also reflects this intended outcome.

Recommendation

That the submission be accepted. (Rec 56)

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Fringe benefit tax remedials

Replace FBT threshold reference

Clause 89

Issue: Support for proposal

Submission

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

The submitters support the proposal to replace a reference to a previous fringe benefit tax (FBT) threshold with the new threshold to ensure the consistency of legislation and prevent affected taxpayers having to apply two different FBT thresholds in an income year.

Recommendation

That the submission be noted.

Gift cards

Clauses 8, 20, 21, 23, 85, 87, 88, and 95(3) and (12)

Issue: Support for proposal

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand, iGoGroup (NZ) Ltd, KPMG, PwC)

The submitters support the proposal to allow employers to treat gift cards (sometimes referred to as "open loop cards") provided to employees as subject to fringe benefit tax rather than PAYE.

Recommendation

That the submission be noted.

Issue: Amend terminology

Submission

(iGoGroup (NZ) Ltd)

The use of the phrase "redeemable for goods and services" is terminology more associated with closed loop cards (which are redeemable at a particular merchant) rather than open loop cards (cards that function as e-money and can be used broadly, in a manner similar to cash). The word "redeemable" should be deleted.

Comment

Officials agree that the word "redeemable" could suggest that a person "redeems" a card for goods and services rather than "using" the card to "purchase" goods and services.

Point of difference

However, the definition of "gift card" is intended to capture both open and closed loop cards. Therefore, we propose a modification to the submitter's suggestion that the definition be changed by leaving the current wording but amending it to also include cards that are "used to purchase goods and services" as suggested to ensure both open and close loop cards are included in the definition.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 57)

Issue: Substitution for remuneration

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, iGoGroup (NZ) Ltd, KPMG)

The requirement that gift cards are not "in substitution for remuneration" is unclear and/or unnecessary. Submitters consider there is no evidence that gift cards are being substituted for remuneration, and even if this occurred Inland Revenue has other powers that will enable it to unwind these situations.

In addition, the provision of a gift card that was part of a genuine salary sacrifice arrangement would be brought back into the PAYE regime because this is "a substitution for remuneration" albeit a genuine one.

Comment

The intention of this anti-avoidance measure was to ensure that employers (usually with some association) did not substitute cash remuneration for the provision of gift cards to avoid social policy obligations such as child support, which does not take into account fringe benefits provided to liable parents.

However, officials acknowledge the wording for this provision could be more targeted.

Point of difference

Although officials agree the occasion when the provision of gift cards should fall within the PAYE rules should be closer defined, we believe there should still be some anti-avoidance provision included to target the above concern. We propose to change the wording "in substitution of remuneration" to "the provision of the card has the purpose or effect of defeating the application of the Child Support Act 1991".

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 58)

Issue: Unclassified benefit

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, iGoGroup (NZ) Ltd, PwC)

Submitters raised several concerns around the treatment of gift cards not being classed as an unclassified benefit in the Bill:

- By making gift cards a classified benefit, employers could no longer take advantage of the unclassified benefits de minimis rule.
- The new category would require taxpayers to update their processes and software, etc, to account for the new category and the timing of the Bill would not leave sufficient time to do this.
- The proposed amendment to treat gift cards as a classified benefit should not be retrospective because taxpayers may have to potentially amend their previous treatment, it should be prospective only.

Comment

Officials had always intended to treat gift cards essentially as unclassified benefits and, as such, any exemptions or de minimis rules would apply to them as if they were unclassified benefits. Unfortunately, this was omitted in the drafting and was not picked up before finalisation of the Bill.

The draft provisions would be amended to ensure the policy intent is reflected in the final Bill. We consider these would deal with all the issues raised by submitters:

- Gift cards would be treated the same as other unclassified benefits.
- The reporting of gift cards should be grouped with unclassified benefits.
- The retrospectivity of the provisions remains the same to provide employers with assurance that these benefits can be treated as subject to fringe benefit tax despite the Commissioner of Inland Revenue's published view that open loop cards are subject to PAYE.

Recommendation

That the submission be accepted. (Rec 59)

Accounting for Investment Boost on motor vehicles

Clause 102

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, KPMG)

The submitters support the proposal to alter the calculation of the value of a motor vehicle for fringe benefit tax purposes when the employer has claimed an Investment Boost deduction.

Recommendation

That the submission be noted.

Issue: Tax book value

Submission

(Corporate Taxpayers Group, Deloitte)

As drafted, the proposal would increase taxpayer compliance costs because taxpayers will need to calculate a tax book value for depreciation purposes that includes any deduction for Investment Boost. Whereas for fringe benefit tax (FBT) purposes, taxpayers would be required to add back any deductions for Investment Boost.

Comment

The reason for this change was to ensure the equalisation point of using the tax book value and the cost base FBT valuation methods did not change due to the introduction of Investment Boost. In addition, Investment Boost should not change the value of a fringe benefit because the value to the employee of receiving the benefit is the same pre- and post-Investment Boost.

Officials considered either removing the effect of Investment Boost or altering the percentage value to calculate the benefit of the vehicle. On balance it was decided to remove the effect of Investment Boost.

Point of difference

However, officials recognise using two different cost bases could incur additional compliance costs for taxpayers. Given this, we recommend that the mechanism be changed and that the tax book

value of the vehicle for depreciation purposes be used, but when Investment Boost has been claimed in respect of the vehicle the percentage to calculate the taxable benefit be increased to 41.4% from 36%. This has the same equalising effect as removing Investment Boost from the depreciated value.

Vehicles on which no Investment Boost has been claimed will remain at a taxable value of 36%.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 60)

Issue: Ignore Investment Boost for FBT

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters do not support the proposed amendment and consider that the application of Investment Boost should be ignored for fringe benefit tax (FBT) purposes.

Comment

For FBT purposes, the value of the provision of a motor vehicle to an employee should not change. The benefit received by the employee both pre- and post-Investment Boost is the same.

Investment Boost does not affect the cost of a motor vehicle, it only affects the tax book value of the asset. Allowing Investment Boost to reduce the value of the benefit for FBT purposes would not be consistent with allowing this for the "cost base" option nor would it then truly reflect the benefit being derived by the employee through the provision of the vehicle.

Recommendation

That the submission be declined.

Equalisation of FBT and PAYE

Clause 9

Issue: Support for proposal

Submission

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

The submitters support the proposal to ensure that if an employer accounts for either fringe benefit tax or PAYE on a benefit, they are not liable for the other.

Recommendation

That the submission be noted.

Issue: Unclassified benefits

Submission

(Corporate Taxpayers Group)

Although the proposal seeks to equate the treatment of the provision of an unclassified benefit, whether the benefit is provided directly or through reimbursement, it makes no allowance for any exemption in the fringe benefit tax (FBT) rules relating to unclassified benefits.

This would mean that an unclassified benefit provided by an employer that is under the unclassified benefit de minimis, which is provided by way of reimbursement to the employee, will continue to be subject to PAYE notwithstanding it would not be subject to FBT.

Comment

Officials agree that if the provision of an unclassified benefit is not subject to FBT because of the de minimis exemption it should not be subject to PAYE just because the employer has reimbursed the employee rather than provided the benefit directly.

Recommendation

That the submission be accepted. (Rec 61)

Issue: Extend proposal

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed amendments only apply to things that would be "unclassified benefits". The definition of "unclassified benefits" excludes benefits that are excluded from fringe benefit tax (FBT), such as benefits provided as "business tools" or "on premises" among others. The proposed change should extend to those other benefits listed in sections CX 19 to CX 33 of the Income Tax Act 2007.

Comment

The proposed amendment aims to align the tax treatment when an employer provides a minor benefit to an employee, whether this is provided or reimbursed to the employee who has purchased the benefit directly.

It was not intended to give wholesale choice to employers to choose whether to pay PAYE or FBT in relation to any benefit. In particular, there are certain benefits when that treatment is not appropriate, such as the provision of accommodation. It is also difficult to see how some benefits such as business tools or benefits provided "on premises" would be reimbursed rather than being provided directly.

Recommendation

That the submission be declined.

Issue: Widen definition of "unclassified benefits"

Submission

(EY)

The definition of "unclassified benefits" within the Income Tax Act 2007 should be widened to include PAYE funded by employers following a voluntary disclosure of underreported historical employment earnings. The submitter notes that under current rules there is no effective mechanism to correct historical errors.

Comment

Officials acknowledge that the rectification of historical underreporting of employment earnings can be a complicated process but consider the issue is wider than the current changes in the Bill. Further work would be required to determine the most appropriate way of dealing with these.

Recommendation

That the submission be declined.

Global insurance policies

Clauses 88 and 90

Issue: Support for proposal

Submission

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

The submitters support the proposal to provide options for accounting for fringe benefit tax on global insurance policies.

Recommendation

That the submission be noted.

Issue: Further guidance required

Submission

(Corporate Taxpayers Group)

Global insurance policies may be pooled "if all their employees have the same entitlement to the benefit". The submitter notes this criterion is not mentioned in the Bill commentary. Further guidance on this would be welcome.

Comment

This change is designed to capture global insurance policies when all employees are covered by one policy and there is no ringfencing of certain employee groups who have differing entitlements under the policy. For example, a company may have a global insurance policy that provide all employees with cover for funeral expenses up to $5,000 on the death of an employee. The benefit derived does not differ between employees.

Although we consider this point is reflected in the wording, officials will ensure the Act commentary published on the Tax Policy website after enactment of the Bill contains some examples to confirm this.

Recommendation

That the submission be noted.

Issue: Attributing benefits

Submission

(Corporate Taxpayers Group, KPMG)

The submitters note that although the benefit in respect of global insurance policies can be pooled, there is no mechanism in the legislation that outlines how the benefit should be attributed if the employer elects that treatment. Should it be divided evenly by the number of employees and, if so, when should that number be determined (for example, the beginning, end or an average during the year)?

Comment

The proposed amendment is designed to provide a compliance friendly option for taxpayers to treat these benefits for fringe benefit purposes by pooling the benefit, so no apportionment is required.

However, there may be times when the employer wants to attribute these to employees rather than pool them. Currently, we understand there are various apportionment methods made by taxpayers in connection with these benefits and, provided the apportionment is reasonable, Inland Revenue is likely to accept the taxpayer's method.

One of those methods may be as outlined by the submitters, but there may be other methods used by employers. We understand that the current process is working and are not aware of any issues. We consider that encoding a particular method in legislation would limit employers' flexibility for something that we understand is not currently an issue.

Given this, we prefer to retain a more flexible approach for employers who attribute these benefits and will not prescribe a particular method in the legislation.

Recommendation

That the submission be declined.

Unclassified benefits provided to employees of associates

Clause 86

Issue: Support for proposal

Submission

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

The submitters support the proposal to clarify the wording in section RD 45 of the Income Tax Act 2007 to ensure that unclassified fringe benefits provided to employees of associates are correctly accounted for in the calculation of de minimis thresholds for unclassified benefits.

Recommendation

That the submission be noted.

Issue: Application of de minimis

Submission

(Corporate Taxpayers Group, Deloitte)

The submitters note that as a point of principle they do not consider the de minimis rule should be aggregating benefits provided by all associates when determining whether the de minimis rule should apply.

Submitters note that this rule has inadvertently caught out many employers (particularly when they have acquired other businesses).

Comment

This rule has been a feature of the fringe benefit tax regime for some time and by this stage should be well understood by taxpayers. In addition, it has an integrity function within the regime. Officials consider the association rule is still fit for purpose.

Recommendation

That the submission be declined.

FBT and life and health insurance

Issue: Provision of life and health insurance benefits

Submission

(Financial Services Council of New Zealand)

The submitter recommends that the provision of life and health insurance benefits to employer schemes should be exempt from fringe benefit tax.

Comment

This submission is outside the scope of the Bill.

Recommendation

That the submission be declined.

Further FBT reforms

Issue: Proposals not included in Bill

Submission

(BusinessNZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Drive Electric, EY, KPMG)

The submitters are disappointed that the proposals outlined in officials' issues paper Fringe benefit tax – options for change were not included in the Bill.

Comment

This submission is outside the scope of the Bill.

Recommendation

That the submission be noted.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Other remedials

KiwiSaver remedials

Clauses 103 and 187(2)

Issue: Budget 2025 changes applying to complying superannuation funds

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand, New Zealand Law Society)

Submitters support the proposal to apply the KiwiSaver-related changes made in Budget 2025 to complying superannuation funds (CSFs). These changes include increasing the default employee contribution rate to 3.5% from 1 April 2026 and then to 4% from 1 April 2028, and allowing employees to choose a temporary contribution rate reduction and for employers to match the temporary contribution rate reduction.

One submitter had advocated for the default minimum rates for CSFs to remain at 3%. However, the submitter supports the proposed changes as they stand because they allow for employers and employees using CSFs to opt for a rate reduction to a 3% contribution. *(Financial Services Council of New Zealand)*

Recommendation

That the submission be noted.

Research and Development Tax Incentive

Clause 151

Issue: Requirement for partnerships with non-standard balance dates to apportion income should not proceed

Submission

(Corporate Taxpayers Group, Deloitte)

The proposed amendment would mean that partnerships with non-standard balance dates that apply for the Research and Development Tax Incentive (RDTI) must use the same method for returning partnership income as applying for the RDTI. That is, partnerships with an RDTI credit for a given income year would be required to apportion income according to the partners' balance date when returning partnership income for that year.

a. Submitters are opposed to the proposed change on the basis that it would increase compliance costs.

b. Submitters recommend a policy change to allow an RDTI claim arising from a partnership to be made based on the partnership's balance date.

Comment

Officials consider that aligning the rules for how partnerships with non-standard balance dates return income and apply for the RDTI would reduce complexity and therefore offer compliance cost reductions. Submitters have suggested alternative approaches.

a. We agree that the proposed amendment should not proceed to allow further consideration of the issue.

b. Officials consider that the alternative option raised by submitters merits further consideration and could offer further compliance cost reductions. However, further work is required to understand the trade-offs, and any integrity issues, so this option should not proceed at this time.

Recommendation

a. That the submission be accepted. (Rec 62)

b. That the submission be noted.

Exclude payments to trustee of deceased estate from definition of pension

Clause 11

Issue: Support for proposal

Submission

(Chartered Accountants Australia and New Zealand, Deloitte)

The submitters generally support the proposed amendment to exclude payments to a trustee of a deceased estate from the definition of pension.

Recommendation

That the submission be noted.

Issue: Further guidance recommended

Submission

(Deloitte)

The submitter suggests the rules be revisited more generally because they have become complex, resulting in unintuitive outcomes. They also recommend Inland Revenue publish further guidance in this area.

Recommendation

That the submission be noted.

Cryptoasset staking income and PIE eligibility

Clauses 73 and 74

Issue: Support for proposal

Submission

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

The submitters support the proposed amendment to clarify that portfolio investment entities (PIEs) generating staking income from cryptoassets they hold can retain their PIE status.

Recommendation

That the submission be noted.

Clauses 73 and 74

Issue: Opposition to retrospectivity

Submission

(Ukes Baha)

Retrospective taxation offends the rule of law unless clearly justified in the public interest and accompanied by taxpayer protection. No such justification is given. Taxpayers who filed under the law as it stood will have their positions altered without warning

Comment

As outlined in the Bill commentary, the proposed amendment clarifies that a portfolio investment entity (PIE) fund that holds cryptoassets is able to generate staking income and retain its status as a PIE. The proposed amendment would apply retrospectively from 1 January 2009, being the date that the first cryptoasset, Bitcoin, was created. This retrospectivity is taxpayer friendly and clarifies that any staking income that a PIE may have generated in prior years is a permissible income source. Put simply, if the amendment applies only prospectively, any past staking income earned by a PIE could arguably mean it failed to meet the income-type requirements, potentially making it ineligible for PIE status.

Recommendation

That the submission be declined.

Clauses 73 and 74

Issue: Amounts derived through "proof-of-work mechanism"

Submission

(Deloitte)

The submitter recommends that officials consider whether the proposed amendments should also cover amounts derived through a "proof-of-work mechanism".

Comment

The PIE regime was introduced to encourage long-term savings through collective investment vehicles, not to allow active businesses to access concessional tax rates. In line with this, the types of income that are permissible for a PIE to generate are focused on the provision of investment and savings services.

A "proof-of-stake" consensus mechanism is consistent with this rationale because validators generally earn rewards by locking up tokens as collateral. This resembles earning interest on a deposit and is largely passive in nature.

By contrast, miners that validate via a proof-of-work consensus mechanism must run energy-intensive hardware, solve cryptographic equations and maintain computer equipment. This involves continuous effort, operational costs, and resembles an active business.

Officials consider income generated by way of a proof-of-work consensus mechanism to be outside the policy intent of the PIE rules.

Recommendation

That the submission be declined.

Clause 74

Issue: Drafting amendment

Submission

(Deloitte)

The submitter suggests a drafting amendment deleting the words "in the form of new or additional cryptoassets" from proposed new section HM 12(1)(b)(ixb) of the Income Tax Act 2007.

Comment

The PIE regime was introduced to encourage long-term savings through collective investment vehicles, not to allow active businesses to access concessional tax rates. In line with this, the types of income that are permissible for a PIE to generate are focused on the provision of passive investment and savings services.

The provision has been drafted with this in mind and is focused on targeting income that can be generated through the use of cryptoassets that is passive in nature. Officials understand that all income generated by way of a proof of stake consensus mechanism is paid in newly minted cryptoassets or transaction fees that are also paid in the form of cryptoassets. The current wording was therefore chosen to align with existing staking mechanics.

That said, officials acknowledge that it is possible for a reward to be paid in other forms, and it could be desirable to amend the provision as suggested by the submitter to futureproof the provision. Because the provision retains the phrase "using cryptoassets to generate a reward", officials consider this wording sufficiently narrow to exclude activities that involve operating an active business, which would require more than simply using cryptoassets to earn income.

Recommendation

That the submission be accepted. (Rec 63)

Non-resident contractors' tax: Shipping and aircraft operators

Clause 95(6)

Issue: Support for proposal

Submission

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

The submitters support the proposal to codify an exclusion for non-resident aircraft operators and shipping operators carrying international cargo from non-resident contractors' tax.

Codifying this approach reduces ambiguity, ensures consistency in application, and minimises compliance risk for affected businesses. *(Chartered Accountants Australia and New Zealand)*

Recommendation

That the submission be noted.

Non-resident contractors' tax: Software as a service

Clause 95(6)

Issue: Support for proposal

Submission

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

The submitters support the proposal to clarify that contracts for software as a service (SaaS), platform as a service (PaaS), and infrastructure as a service (IaaS) are not subject to non-resident contractors' tax, except when the service involves infrastructure or personnel located in New Zealand.

This proposed amendment reflects the nature of cloud-based services, reduces uncertainty for businesses and ensures the rules more accurately target the intended activities that occur in New Zealand without imposing unnecessary compliance obligations. *(Chartered Accountants Australia and New Zealand)*

The proposed amendment strikes the appropriate balance between reducing compliance costs and protecting the integrity of the tax base. *(New Zealand Law Society)*

Recommendation

That the submission be noted.

Issue: In principle support for excluding SaaS from NRCT

Submission

(Bell Gully, Corporate Taxpayers Group, Mayne Wetherell, PwC)

The submitters support, in principle, clarifying that software as a service (SaaS) and other similar business models are not subject to non-resident contractors' tax (NRCT) but do not believe that the proposed amendment is the best way to make that clarification.

Recommendation

That the submission be noted.

Issue: Support for further policy consideration or reform

Submission

(Corporate Taxpayers Group, Deloitte, EY)

The submitters support further policy consideration or reform regarding non-resident contractors' tax (NRCT), particularly around the application of NRCT to software and other issues.

In time, further work may be required to ensure New Zealand's tax settings keep pace with global developments in this space. *(EY)*

Recommendation

That the submission be noted.

Issue: Scope of exemption for SaaS and similar services

Submission

(Corporate Taxpayers Group, Mayne Wetherell)

The submitters state that the proposed amendment is narrow and prescriptive, only referencing software as a service (SaaS), platform as a service (PaaS) and infrastructure as a service (IaaS) but not defining these terms. This creates uncertainty about whether other cloud services (such as online content subscriptions) come within the exclusion. This uncertainty is likely to increase as technology progresses.

The submitters suggest that rather than expressly excluding SaaS and other similar services, a more principled approach would be to further clarify through legislation or guidance that non-resident contractors' tax (NRCT) only applies when:

- the service is performed in New Zealand, or
- the use of personal property physically takes place in New Zealand.

Therefore, NRCT does not extend to SaaS and other similar services. *(Corporate Taxpayers Group)*

If the proposal progresses, it should be made clear through guidance that the change is only clarificatory, and that other types of online subscriptions do not attract NRCT because they do not involve services being physically performed or personal property being physically used in New Zealand. *(Corporate Taxpayers Group)*

Comment

The proposed amendment is intended to address a specific issue raised by stakeholders concerning SaaS, PaaS and IaaS. We acknowledge that some forms of digital, cloud-based services may not come within the scope of these terms, and that these terms may become redundant as technology progresses. However, we consider that moving to a broader term to encompass online content subscriptions and other cloud-based services is out of scope of the proposed amendment, which addresses a discrete issue. We have not explored the impact of the use of a broader term in depth, particularly on other existing policies. However, we are open to doing so in the future, subject to prioritisation and resources.

We will note in guidance that this amendment is clarificatory and not intended to imply that other types of online services should be subject to NRCT.

Recommendation

That the submission be declined.

Issue: Exceptions for infrastructure or personnel located in New Zealand create uncertainty

Submission

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

The proposed new rule exempts software as a service (SaaS), platform as a service (PaaS) and infrastructure as a service (IaaS) from non-resident contractors' tax (NRCT), subject to exceptions for personnel and infrastructure in New Zealand. The submitters raise concerns that the proposed exceptions, particularly the exception for a service that "involves" infrastructure located in New Zealand, create uncertainty. The result is that the scope of the proposed exemption is unclear.

Two submitters noted the proposed exceptions would be difficult for New Zealand payers for SaaS, PaaS and IaaS to ascertain because they have little or no visibility over the provider's activity and presence in New Zealand. *(Bell Gully, Corporate Taxpayers Group)*

Further, SaaS users would not typically have the bargaining power necessary to obtain a contractual assurance that New Zealand-based infrastructure or personnel would not be used for the provision of their SaaS or to otherwise renegotiate the price if NRCT did apply. *(Corporate Taxpayers Group)*

A further submitter noted the term "infrastructure" is not defined, so it not clear what infrastructure-related arrangements would trigger a sufficient physical connection with New

Zealand and ultimately attract NRCT. The amendment should be refined to define "infrastructure" for the purposes of the NRCT rules and to clarify that when the use of infrastructure in New Zealand is only a minor component of the provision of SaaS, the relevant contracts would not attract NRCT. *(PwC)*

One submitter suggested all SaaS payments should be excluded from NRCT. *(Bell Gully)*

Another submitter thought that, although they preferred another approach, if the broader amendment is progressed, the proposed exception for infrastructure should be omitted because it is so broad as to be unworkable in practice. *(Mayne Wetherell)*

Two submitters sought guidance about what types of arrangements would qualify for the exemption, or what would be considered infrastructure for NRCT purposes. *(Deloitte, PwC)*

Comment

The proposed amendment is only intended to clarify that SaaS and similar services are not considered to attract NRCT liability unless they would ordinarily do so under current rules. This is consistent with existing NRCT policy, whereby contractual activities or services that are performed in New Zealand, or that use personal property in New Zealand, attract NRCT.

Excluding all payments for SaaS and similar services, regardless of whether the provision of SaaS would ordinarily attract NRCT liability by having a physical presence in New Zealand, would be a significant departure from the current policy and is therefore out of scope of these changes.

However, the use of infrastructure such as data centres in the provision of SaaS and other similar services is, by its nature, complicated to determine due to the continuous flow of data associated with cloud-based services.

We accept that the term "involves infrastructure" could undermine the proposed clarification that SaaS, PaaS and IaaS arrangements are outside the scope of NRCT. The term could be read as implying that payers of non-resident contractors need to analyse how and where data is transmitted and the consequent New Zealand tax implications, even when the use of New Zealand infrastructure is minor, incidental or unknown to the payer. This would not align with the policy intent. On the other hand, we understand that personnel located in New Zealand connected to the provision of SaaS, PaaS and IaaS are relatively ascertainable.

The proposed amendment is intended to have a narrow clarificatory effect. Given the nature of SaaS and other similar services, we see merit in omitting the proposed exception for infrastructure.

Point of difference

For these reasons, we are inclined to partially accept these submissions, omitting the infrastructure exception but retaining the personnel exception subject to the clarifications described in our comments in Issue: Clarify how 92-day exemption applies below.

The lack of visibility over the non-resident contractor's other activity is a long-standing issue in the NRCT regime. NRCT is currently on the Tax and Social Policy Work Programme and this issue may be addressed as part of that project.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 64)

Issue: Clarify application of 92-day exemption

Submission

(Bell Gully)

The legislation should be clarified to indicate whether the 92-day exemption under section RD 8(1)(b)(v) of the Income Tax Act 2007 applies to software as a service (SaaS) and similar services. It is not clear that if the non-resident contractor is present in New Zealand for 92 days or fewer in a 12-month period, and has full relief under a double taxation agreement, they would not be subject to non-resident contractors' tax (NRCT).

Comment

In relation to the proposed amendments, officials are only seeking to clarify whether SaaS and other similar services are within scope of NRCT. However, we do acknowledge that the exception for personnel located in New Zealand in the proposed new rule creates some uncertainty in relation to the application of the existing 92-day exemption for non-resident contractors present in New Zealand.

The personnel exception should be clarified to ensure that the 92-day threshold exemption is available for personnel located in New Zealand for the provision of SaaS and other similar services.

Recommendation

That the submission be accepted. (Rec 65)

Short selling and foreign shares

Clauses 12, 37, 41, 47, 48, 53, 64, and 95(2)

Issue: General support for proposal

Submission

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

The submitters support the proposed amendments to the short selling of foreign shares.

The proposed amendments would provide clarity and certainty to what has historically been a difficult issue. *(Chartered Accountants Australia and New Zealand)*

The proposed amendments would better align the treatment of short selling arrangements with current market practice. *(Corporate Taxpayers Group, Deloitte)*

The proposed amendments would clarify that the short selling of foreign shares will generally be subject to revenue account taxation treatment. The submitter agrees that clarification is necessary to prevent both potential over-taxation and potential under-taxation. It seems reasonable to align the taxation treatment for short selling of foreign shares with that of New Zealand shares. *(KPMG)*

Recommendation

That the submission be noted.

Clause 41

Issue: Extend ability to match income and deduction from short selling

Submission

(Corporate Taxpayers Group, Deloitte, Tax Advisory Limited)

The submitters recommend extending the ability to match income from the sale of borrowed shares with the deduction for the purchase of identical shares beyond the immediately following income year.

This would accommodate the possibility of long-term short selling arrangements and promote consistency in tax treatment. *(Corporate Taxpayers Group)*

Comment

Officials understand that short selling arrangements are typically short-term arrangements, which means that most arrangements will be closed out within the same income year or the subsequent income year. This is in part because of the borrowing fees and collateral and margin requirements for short selling. However, it is possible that a short selling arrangement may extend beyond the subsequent income year.

Consider a taxpayer that has short sold some shares in the 2027 income year and has not purchased identical shares to close out the position as the end of the 2028 income year approaches. If this submission is not accepted, the taxpayer could be taxable on the gross proceeds from the short sell in the 2027 income year, unless they close out the position before the end of the 2028 income year. Further, we understand that short selling typically involves significant collateral and margin requirements, which also means that the taxpayer may not have access to the gross proceeds from the short sell until the short sell is closed out.

Therefore, on balance, it seems reasonable to allow the income from the short sell to be matched with the deduction for the purchase of identical shares whenever that occurs (even if that is beyond the immediately following year).

Recommendation

That the submission be accepted. (Rec 66)

Clause 48

Issue: Optional retrospectivity

Submission

(Tax Advisory Limited)

Some taxpayers may have taken tax positions in prior years consistent with the proposed amendments for short selling arrangements with foreign shares so the amendments should apply on an optional retrospective basis.

Comment

Officials appreciate that some taxpayers may have taken positions consistent with the proposed amendments for short selling arrangements with foreign shares. Other taxpayers may have taken positions that are not consistent with the proposed amendments.

The focus of the proposed amendments is to clarify the law so that taxpayers take the same position going forward.

If the proposed amendments could be applied by taxpayers on an optional retrospective basis, then taxpayers that have made losses on their short selling arrangements with foreign shares but not taken tax positions consistent with the proposed amendments, may seek refunds. Conversely, taxpayers that have made gains on their short selling arrangements with foreign shares but not taken tax positions consistent with the proposed amendments, may not take any action.

Recommendation

That the submission be declined.

Issue: Potential issues with share-lending rules

Submission

(KPMG)

There are two potential issues with the share-lending rules:

- When a replacement dividend payment is made by a share user that is a New Zealand resident (or operating in New Zealand through a fixed establishment), under a share-lending arrangement, in respect of foreign shares that are subject to the foreign investment fund (FIF) rules, there is a technical risk that a resident withholding tax obligation may arise in relation to that payment. The withholding tax is converted to a non-refundable imputation credit. While the imputation credit may be available to the lender to offset their tax liability, this appears inconsistent with the scheme and purpose of the share-lending rules, given the lender should be treated as continuing to hold the "borrowed" foreign shares for the purposes of the FIF rules. Further, resident withholding tax withheld on the replacement payment is unlikely to accurately reflect the share lender's tax liability calculated under the FIF rules.
- The share-lending rules do not fully consider the tax treatment of income receipts (eg, interest, dividends) to a share lender on the collateral received (and returned) under a "returning share transfer" or "share-lending arrangement". The submitter considers that share lenders should not be subject to tax on income generated on collateral provided by a borrower to secure the lending transaction. This reflects what the submitter understands to be the economic position for the lender. The submitter considers this would mirror that of the share borrower in respect of the lent securities. However, there appear to be no provisions in the share-lending rules to give effect to that economic position for the lender in respect of income generated on collateral.

Comment

These matters are beyond the scope of the proposed amendments, which are limited to clarifying the tax implications of short selling with foreign shares. Further work would be required to consider these submissions.

Recommendation

That the submission be declined.

Issue: Potential impact on PIE tax rules

Submission

(Deloitte)

The portfolio investment entity (PIE) tax rules in sections HM 35(8) and HM 35B of the Income Tax Act 2007 may need amending to ensure that multi-rate PIEs can include short sale losses on an accruals basis, to the extent they are reflected in the PIE's unit pricing/financial statements. Currently section HM 35(8) could be read as requiring income deferred under section EA 5 to be "brought forward" by the PIE if this is needed to be aligned with unit pricing. Conversely, section HM 35B(2)(b) may preclude a deduction for the repurchase obligation being treated in the same way, until that deduction is likely to be incurred within the relevant year or within 93 days after the end of that tax year.

Comment

Officials acknowledge the matter raised by the submitter. While our understanding is that PIEs do not generally engage in short selling activity, we agree that the PIE tax rules should be clarified to ensure that multi-rate PIEs can include short sale gains and losses on an accruals basis, to the extent they are reflected in the PIE's unit pricing/financial statements.

Recommendation

That the submission be accepted. (Rec 67)

Increase cash basis person thresholds

Clauses 44 and 45

Issue: Support for increasing cash basis person thresholds

Submission

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

Submitters support the proposal to increase the cash basis person thresholds.

Recommendation

That the submission be noted.

Issue: Support for increasing variable principal debt instrument threshold

Submission

(Baucher Consulting, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, EY, Findex, Mayne Wetherell)

Submitters support the proposal to increase the variable principal debt instrument threshold.

Recommendation

That the submission be noted.

Issue: Repeal deferral threshold

Submission

(Baucher Consulting, Bell Gully, Corporate Taxpayers Group, Deloitte, KPMG, Mayne Wetherell, PwC)

Submitters recommend repealing the deferral threshold in section EW 57(3) of the Income Tax Act 2007.

Comment

Officials agree with the submissions.

The deferral threshold was intended to prevent excessive deferral of income recognition. Importantly, it imposes a high compliance burden, requiring taxpayers to calculate income and expenditure on an accrual basis to compare it with a cash basis result and ensure that the difference is below a threshold. This is the same compliance burden that being a cash basis person is intended to avoid.

Anecdotally, stakeholders note that many individuals and small businesses are not aware of the test or find the test too confusing and either ignore it (risking non-compliance), or default to accrual accounting even when not required.

All deferred income gets taxed eventually via the base price adjustment at the end of the arrangement, and given the other thresholds, the deferral is likely to be small.

Officials will make it clear that a person can be a cash basis person if they are below one or both remaining thresholds in section EW 57(1) and (2).

Recommendation

That the submission be accepted. (Rec 68)

Issue: Make deferral threshold optional

Submission

(Mayne Wetherell)

The deferral threshold should be made an alternative to the income and expenditure and absolute value thresholds.

Comment

The complexity involved with calculating the deferral threshold indicates that repealing the deferral threshold altogether is preferable.

Recommendation

That the submission be declined.

Issue: Exclude certain taxpayers from deferral threshold

Submission

(Baucher Consulting)

As an alternative to repealing the deferral threshold altogether, an amendment could be introduced for section EW 57(3) of the Income Tax Act 2007 to exclude all individual or trust taxpayers with gross income (excluding income determined under the financial arrangements regime) of under $250,000.

Comment

Officials agree with submitters that the deferral threshold be repealed altogether, therefore officials recommend that this submission be declined.

Recommendation

That the submission be declined.

Issue: Cash basis person threshold increases to take effect from start of 2025–26 income year

Submission

(Baucher Consulting)

The proposed increased cash basis person thresholds and variable principal debt instrument threshold should be introduced with effect from the start of the 2025–26 income year to reduce compliance costs for taxpayers.

Comment

Officials agree with the submission.

Recommendation

That the submission be accepted. (Rec 69)

Issue: Review financial arrangements thresholds regularly

Submission

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

Submitters support reviewing thresholds within the financial arrangements rules more regularly. Some submitters recommended legislatively mandating threshold reviews.

- Reviews should be every three to five years. *(Chartered Accountants Australia and New Zealand)*
- The power to adjust thresholds should be by Order in Council, provided that the power can only be exercised in a taxpayer friendly manner. *(PwC)*
- All thresholds within the Income Tax Act 2007 should be collated in a single table for clarity and regular updates. *(EY)*

Comment

Thresholds throughout the Inland Revenue Acts are reviewed from time to time when necessary and when fiscal constraints allow. Officials do not believe legislating regular reviews of these would add anything to that process. Officials also consider that thresholds like these should be adjusted by primary legislation and note that given the frequency of tax legislation, adjustments when required should not be an issue.

Recommendation

That the submission be noted.

Issue: Broad review of financial arrangements rules

Submission

(Baucher Consulting, Deloitte, EY)

Submitters recommended a full review of the financial arrangements rules with a view to simplification.

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. The refreshed Tax and Social Policy Work Programme released in October 2025 includes reviewing the impact of the financial arrangements rules on new migrants.

Recommendation

That the submission be noted.

Issue: Further increase variable principal debt instrument threshold

Submission

(Corporate Taxpayers Group, Deloitte)

Submitters recommended further increasing the variable principal debt instrument threshold to better reflect commercial reality.

Comment

Further changes to the variable principal debt instrument threshold may be explored in the upcoming review of the impact of financial arrangements rules on new migrants.

Recommendation

That the submission be declined.

Issue: Qualification to be cash basis person

Submission

(KPMG)

The submitter recommended that for natural persons, at least, whether someone qualifies to be a cash basis person should be based solely on the absolute market value of all financial arrangements held by that person.

Comment

Officials consider removing the deferral threshold and retaining the choice between using the income and expenditure or absolute value threshold sufficient to reduce compliance costs related to determining whether someone can be a cash basis person.

Recommendation

That the submission be declined.

Issue: Remove foreign currency loans used as mortgages over property

Submission

(KPMG)

Foreign currency loans being used as a mortgage over a property should be removed from the financial arrangements rules or cash basis person threshold calculations.

Comment

Officials note it can be easy for foreign exchange fluctuations (even just for one day in an income year) alone to push someone over the absolute value threshold for determining whether someone can be a cash basis person. If they are also over the income and expenditure threshold, they cannot be a cash basis person and must account on an accrual basis.

Point of difference

Officials do not consider these arrangements should be removed from the financial arrangement rules entirely at this time, however, this could be considered as part of reviewing the impact of the financial arrangements rules on new migrants. Currently, officials propose limiting the effect of foreign exchange fluctuations for the absolute value threshold only because it is an "every day of the income year" test and particularly vulnerable to foreign exchange fluctuations.

It is proposed that, for foreign currency denominated financial arrangements, the absolute value threshold is tested using the principal amount converted at a set date (for example, the first day of the financial arrangement), ignoring subsequent foreign exchange fluctuations. If the principal amount changes (for non-foreign exchange rate reasons), the financial arrangement should be reassessed for the threshold alongside any other financial arrangements held by the person. This would remove those who are pushed over the threshold arbitrarily by foreign exchange fluctuations alone.

Recommendation

That the submission be accepted, subject to officials' comments. (Rec 70)

Issue: Increase section EW 17 threshold

Submission

(Findex)

The threshold for the straight-line method in section EW 17 of the Income Tax Act 2007 should be increased to approximately NZ$5 million.

Comment

Officials will note this submission. A wider piece of work is required to determine the fiscal effect of this proposed change, and it could be addressed as the Tax and Social Policy Work Programme and Government priorities permit.

Recommendation

That the submission be noted.

Issue: Repeal section EW 18(1)(a)

Submission

(Findex)

Section EW 18(1)(a) of the Income Tax Act 2007 should be repealed. Section EW 18 (Market valuation method) allows income and expenditure for a financial arrangement to be spread calculated on its market value at relevant dates. The market valuation method is currently limited to:

- those who are in the business of dealing in financial arrangements of the class to which the financial arrangement belongs, or
- if the financial arrangement is an exchange-traded option, a forward contract for foreign exchange, or a futures contract.

Repealing section EW 18(1)(a) would allow the market valuation method to be more widely available instead of limiting it. This would potentially have compliance cost savings for non-dealer investors, allowing them access to a simpler method than the yield-to-maturity method.

Comment

Officials consider this submission is a wider piece of work than the proposals in the Bill and could be addressed as the Tax and Social Policy Work Programme and Government priorities permit.

Recommendation

That the submission be declined.

Issue: Repeal section EW 60

Submission

(Findex)

Section EW 60 (Trustee of deceased's estate) of the Income Tax Act 2007 should be repealed.

Comment

Officials consider this submission is a wider piece of work than the proposals in the Bill and could be addressed as the Tax and Social Policy Work Programme and Government priorities permit.

Recommendation

That the submission be declined.

Clarify Commissioner's ability to publish information on internet

Clauses 95(18), 108(11), 134, 136(5), 137, 138, 171, and schedule 2

Issue: Support conditional on improved archiving practices

Submission

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

Submitters support the proposed amendment to clarify that when the Commissioner of Inland Revenue is required to publish information under the Tax Administration Act 1994, the Income Tax Act 2007, or the Goods and Services Tax Act 1985, this requirement can be satisfied when the information is made accessible and available on an internet site maintained by or on behalf of Inland Revenue.

However, this support is conditional on Inland Revenue improving its information archiving practices. Submitters seek access to both current and historical information, including dated and archived versions, in a permanent and accessible format.

Comment

The proposed amendments would not alter Inland Revenue's current practice. Instead, they clarify that when the Commissioner is required to publish information under the Tax Administration Act 1994, the Income Tax Act 2007, or the Goods and Services Tax Act 1985, this obligation is fulfilled when the information is made accessible and available to the public, including on an internet site maintained by or on behalf of Inland Revenue.

Since 2015, the *Tax Information Bulletin* has been available in online-only format. Inland Revenue will continue its current practice for determinations, rulings, and tax technical guidance of retaining permanent records online in an accessible format, including clear signposting of version history. Inland Revenue's websites comply with the requirements in the Public Records Act 2005, and all pages retain a "last updated" function alongside regular harvesting from the National Library and the Internet Archive. If a taxpayer cannot find an outdated version of an Inland Revenue webpage, they can contact Inland Revenue.

For clarification of changes to requirements to notify new determinations or rulings, the proposed amendments would not alter current practice. Currently, provisions in the Tax Administration Act 1994 state that the Commissioner must publish a notice that a determination or ruling has been published and where copies of the determination or ruling can be obtained. Inland Revenue

currently publishes determinations and rulings in full online. The provision has been modernised because the separate requirements to publish the determination or ruling and then publish a notification were considered redundant, but the practice will remain the same. Inland Revenue uses multiple channels to communicate updates and remains committed to accessibility. A tailored email subscription service remains available for important updates, changes, or newsletters about certain tax subjects.

Recommendation

That the submission be noted.

Clause 134 and schedule 2, part A

Issue: Remove redundant words

Submission

(Matter raised by officials)

An amendment is required to remove redundant words. In the consequential amendment to section 20(3CG)(c) of the Goods and Services Tax Act 1985 by schedule 2, part A of the Bill, "available to them in a publication by the Commissioner" is replaced with "published by the Commissioner and is available to them". The words "and is available to them" should be removed, because the proposed definition of "publish" in clause 138 of the Bill includes that the Commissioner of Inland Revenue must make the information accessible and available to the public.

Recommendation

That the submission be accepted. (Rec 71)

Fine defaulter email address sharing

Clause 169(2) and (3)

Issue: Support for proposal

Submission

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

Submitters support the proposed amendment that would enable Inland Revenue to share the last known contact details, including email addresses, of fine defaulters with the Ministry of Justice, therefore supporting the collection and enforcement of monetary penalties.

Comment

Some submitters requested clarity on what "any other information that may be used to contact the fines defaulter" could include.

The contact information proposed to be shared under the modernised authorising provision is currently limited to the defaulter's last known postal address, email address, and telephone number.

The provision has been future-proofed so if any other mainstream form of communication is used for correspondence by the Ministry of Justice and the Ministry requests an update to the Information Matching Agreement, further legislative amendments to the Tax Administration Act 1994 would not be required to make those changes. The Office of the Privacy Commissioner would be consulted on any additional form of contact information shared under the proposed provision.

Recommendation

That the submission be noted.

Unclaimed money remedials

Clause 179

Issue: Support for reduction in time thresholds

Submission

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

The submitters support reducing the time threshold for when an owner of unclaimed money can claim their money from 25 to 20 years.

One submitter supports this reduction provided Inland Revenue allocates additional resources to actively locate and contact owners of unclaimed money. *(Chartered Accountants Australia and New Zealand)*

Comment

Inland Revenue makes its best endeavours to reunite unclaimed money with its owner. Altering the time period will not change this, and Inland Revenue will continuously look to improve this process as part of normal business operations.

Recommendation

That the submission be noted.

Clause 179

Issue: Reduction in timeframe

Submission

(John Shand (b))

The submitter does not support the proposed reduction in the timeframe for an owner to collect unclaimed money from 25 years to 20 years. The submitter recommends the timeframe remains at 25 years.

Comment

Unclaimed money is transferred to Inland Revenue when it has been held for five years with no interaction from the owner and without any successful attempts by the holder to contact the

owner. The holder of the money also provides any information they hold relating to the owner of the unclaimed money.

For the 2025 year, most unclaimed money transferred to Inland Revenue was claimed by the owner within five years of Inland Revenue receiving the money. Very little unclaimed money was claimed after 20 years of it being held by Inland Revenue.

Recommendation

That the submission be declined.

Issue: Definition of "readily available"

Submission

(Chartered Accountants Australia and New Zealand, CTG, Deloitte, Financial Services Council of New Zealand, New Zealand Banking Association)

The submitters have requested Inland Revenue provide clarification around what is meant by "readily available".

Comment

The definition of "readily available" can be interpreted slightly differently depending on who is interpreting it and in what context the term is used. Officials recognise that this could create uncertainty for holders of unclaimed money when determining what information they are required to provide Inland Revenue when transferring unclaimed money.

In the context of unclaimed money, "readily available" is interpreted in a similar way to how it is for the foreign investment fund rules.[7] This means that the information that is to be supplied to Inland Revenue only needs to be supplied if it can be easily obtained, that is, without difficulty or with little time or expense involved. The examples below illustrate how "readily available" should be interpreted by a holder of unclaimed money in practice.

Example 4: Limited information available relating to unclaimed money – retrieval of some information would require complex IT systems build

Seamus had an account with Spritz Electric that he stopped using when he moved to a new house over five years ago. Some of his electricity bills had been overcharged and were only

[7] Income tax – Using the cost method to determine foreign investment fund (FIF) income

corrected after Seamus had moved. The money was credited onto Seamus's Spritz Electric account. Spritz Electric attempted to contact Seamus multiple times over the five years to get the money back to him and had no luck.

Spritz Electric transferred the unclaimed money in the account to Inland Revenue and provided Seamus's full name, the date he opened the account, his last known physical address, and his email address. Spritz had no need to collect Seamus's IRD number or date of birth, so they could not provide this information to Inland Revenue.

Spritz Electric did not know the exact date Seamus last accessed his account. This information was held in a separate computer system and would require a special, complex IT systems build to access the information and to then incorporate it into the information that would be provided to Inland Revenue. This information is not considered readily available to Spritz Electric, so it did not need to be retrieved and provided to Inland Revenue unless later specifically requested.

Example 5: Limited information available relating to unclaimed money – retrieval of some information would require manual search, or costly systems build to access historic system

Glenn opened an account with Money Bags Bank (MBB) early in his career but later switched to a joint account with another bank when he got married. A few years went by, Glenn had moved to a new house, and forgot about his MBB account, which still had about $500 in it. During a regular review of accounts, MBB identified that there were no transactions into or out of Glenn's account for four years. MBB tried to contact Glenn by phone and mail but could not reach him.

With no further contact information, and after five total years of inactivity, MBB transferred the funds to Inland Revenue as unclaimed money. MBB provided Glenn's full name, IRD number, and last interaction date with the account. The bank determined that the date the account was opened, the landline phone number, and the physical address were not readily available and were not provided to Inland Revenue. The date the account was opened was contained in a spreadsheet that would require someone to manually search and extract the date to then provide it to Inland Revenue. The landline phone number and the physical address were stored in an historic system that was being decommissioned. The cost of the systems build required to access and extract this information was considered excessive compared to the size of the system.

Example 6: Limited information available relating to unclaimed money

Ally was overcharged $200 at Bridge City Motel, which the motel only discovered after she checked out. The motel tried unsuccessfully to contact her using the details she provided, but the phone number was invalid.

After holding the money for five years, the motel transferred it to Inland Revenue as unclaimed money, supplying the details Ally provided when she checked in – her name, the region she resided in, mobile number (adding a note it was likely incorrect), and the check-in/check-out dates from their records (as the date the account was established and the date of the last interaction with the account, respectively). This information was all held within a single system and was determined to be readily available.

Recommendation

That the submission be noted.

Clause 2(23)

Issue: Delay implementation date

Submission

(ASB Bank Limited, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand, New Zealand Banking Association)

The submitters note unclaimed money holders may need to make some IT systems changes so they can provide the new data points to Inland Revenue. This could take some time, so it has been requested that the implementation date of the proposed changes be delayed.

Some submitters have recommended the implementation date be delayed from 1 April 2026 to 1 April 2027.

Comment

If the unclaimed money holder determines the data points are readily available to them but will require an IT systems build that may take some time, the holder can apply to Inland Revenue for an extension from having to provide some of the information (in accordance with section 9 of the Unclaimed Money Act 1971).

Recommendation

That the submission be declined.

Clause 178(3)

Issue: Definition of "last interaction"

Submission

(Chartered Accountants Australia and New Zealand)

The submitter recommends the "last interaction with the account" is defined within the legislation or the accompanying regulations. Some banks apply different interpretations to interactions made with an account. Clarification would be useful to help holders of unclaimed money determine what information they may hold that would meet the definition of "last interaction".

Comment

The "last interaction" with an account can include the last time someone logged in to view or interact with the account or when an interaction was made in person or over the phone and an interaction was made with the account.

Whether the holder of unclaimed money needs to provide the "last interaction with the account" will depend on if this data point is readily available to the holder. To codify this in legislation would not allow the flexibility there is now and we believe that allowing flexibility here is warranted, rather than mandating a particular requirement.

Example 7: Last interaction with an account

Josh opened a $2,000 renewing term deposit with Really Big Bank (RBB), which automatically reinvested every two years. RBB's standard practice was to send confirmation emails at each reinvestment that did not require a response. After six years and three reinvestments, RBB noticed Josh had not interacted with his account since opening it. RBB emailed, this time requesting him to confirm the next reinvestment, but received no reply. Despite further attempts to contact Josh by email and phone, RBB was unable to reach him. RBB's standard practice when determining the "last interaction" with an account was to treat interactions made by owners of RBB bank accounts as the last physical interaction. Automatic reinvestments and emails sent by RBB requesting a response from the account holder are not considered to be interactions with the account.

The account continued to reinvest automatically for two more investment periods, totalling twelve years. After five years without any contact, RBB classified the funds as unclaimed money and transferred them to Inland Revenue at the end of the final investment period. RBB provided Inland Revenue with Josh's full name, last known address, landline number, account number, date the account was opened, and the last interaction date (which matched the opening date). Notably, the last interaction date was not five years before the transfer of the unclaimed money, but twelve years prior. RBB did not supply Josh's IRD number because it was not held by the bank. All information provided was readily available in RBB's client management system.

Recommendation

That the submission be noted.

Issue: Lost money

Submission

(ASB Bank Limited, New Zealand Banking Association)

The submitters note there is uncertainty in some cases if money meets the definition of being unclaimed money. For example, cash found at bank branches and receipts of payments from third parties with no readily traceable owner. In these instances, there is no way for the banks to identify the customer, the sender, or account information. The submitters request clarification on whether the money should be treated as unclaimed money in these situations when a bank may not have any information regarding the purpose of the nature of the cash.

Comment

If the cash is left at a bank branch or is a payment receipt from an untraceable third party and is more than $100, it meets the definition of being unclaimed money and needs to be treated as such. The lack of information a bank holds for this type of unclaimed money does not make it exempt from the rules.

In cases like this, the holder of the unclaimed money is expected to provide Inland Revenue with as much readily available information as they hold relating to the unclaimed money. This can include the date that the money was left at the branch. Under the new proposed information reporting requirements, the date money was left at a branch would be entered under the "last interaction date" column.

Example 8: Money without an identifiable owner – cash left at bank branch

A person went to a bank to deposit $300 but, after receiving an urgent call about a family member, left the bank in a hurry and forgot the envelope of cash. Another customer handed the envelope to a teller, but there was no identifying information on or in the envelope. The bank kept the money and recorded the date it was left behind. After five years with no one attempting to claim the money, the bank transferred it to Inland Revenue as unclaimed money, providing only the date that it was left at the branch and the location of the branch it was left at.

Recommendation

That the submission be noted.

Clause 178(3)

Issue: Remove two new proposed data points

Submission

(Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand, New Zealand Banking Association)

The submitters request that the two new data points proposed for unclaimed money holders to provide to Inland Revenue be removed. These include "date an account was opened" and "date of an owner's last interaction with the account".

Submitters consider the reasoning behind the addition of these two data points is unclear. Specifically:

- in relation to the date the account was opened, it is unclear how this data point will support the identification and locating of the unclaimed money owner or the source of the entitlement, and
- the date of the owner's last interaction with the account should be implicitly known and may be a redundant data point.

Comment

These two new proposed data points would help Inland Revenue staff determine if the person claiming to be the owner of the unclaimed money is the correct person.

In cases when some of the other key information, such as the IRD number is not available, the date that the account was opened and the date of the last interaction with the account can be useful data points for Inland Revenue staff to use when attempting to verify the identity of the claimant.

These two data points, like the other data points being requested in relation to unclaimed money, only need to be provided to Inland Revenue if they are "readily available". The response from officials on the definition of "readily available", alongside the examples, should help the holders of unclaimed money determine if these data points are readily available to them.

Officials think that, in some cases, these two new data points could be very useful in helping staff identify if it is the correct person trying to claim the unclaimed money.

Example 9: Using the new data points

Sixteen years after opening a term deposit with Really Big Bank (RBB), Josh remembered his term deposit and contacted RBB. The bank told Josh there was no record of his account, and it was likely the funds had been transferred to Inland Revenue as unclaimed money if he had not interacted with the account since he opened it.

The customer service representative at RBB did not have immediate access to the bank's unclaimed money information because it was stored in another computer system. The representative suggested that Josh could get in touch with Inland Revenue or search the register to see if there was anything that matched. Josh searched the unclaimed money register held by Inland Revenue and saw an amount larger than his original term deposit that matched his first and last name on the register. He worked out that the larger amount was approximately the original amount invested, plus interest.

Josh applied for the unclaimed money through MyIR. A few days later, he received a phone call from the unclaimed money team at Inland Revenue. He was able to tell them the region he was living in and the month and year when he had opened the term deposit. Inland Revenue used this information to verify that Josh was the owner of the unclaimed money because his IRD number was not provided, and he was reunited with his investment soon after.

Recommendation

That the submission be declined.

Clause 178(1)

Issue: Identifying data points

Submission

(Corporate Taxpayers Group, Deloitte, Financial Services Council of New Zealand, New Zealand Banking Association)

The submitters support the proposed addition and clarification of the identifying data points of unclaimed money owners.

Recommendation

That the submission be noted.

Issue: Manual confirmation of data provided

Submission

(ASB Bank Limited)

The submitter supports the proposed unclaimed money changes if it will eliminate the need for manual follow ups on some of the unclaimed money cases. Eliminating the manual follow ups will allow efficiency gains for unclaimed money holders.

Comment

Over time, there will be less need for Inland Revenue to manually follow up with holders of unclaimed money about certain cases. This may eventually stop, but will still be necessary when information, such as the IRD number, is not provided.

If Inland Revenue believes the holder of the unclaimed money may have a certain data point that was not originally provided and that the data point will better help identify the owner of the unclaimed money, Inland Revenue will manually follow up.

Section 10 of the Unclaimed Money Act 1971 allows for the examination of records of the money that is unclaimed money. The unclaimed money team will sometimes use this power to manually follow up and request that a holder of unclaimed money provide further information about unclaimed money, such as if the account was a joint account. This manual follow up will only occur if the team believes that the additional information will help reunite the owner of the unclaimed money with their money. This is an existing power, and no changes are proposed to be made to it.

Recommendation

That the submission be noted.

Exclude tax pooling from disputes process

Clause 165

Issue: Support for proposal

Submission

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

The submitters generally support the proposal to exclude tax pooling from the disputes process.

Recommendation

That the submission be noted.

Clause 165

Issue: Provide guidance for escalation process

Submission

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

The submitters note it is important that taxpayers denied access to pooling relief are aware of their rights, especially in cases when they consider that the Commissioner of Inland Revenue's discretion is manifestly incorrect or is inconsistent with other cases. They recommend Inland Revenue should publish this escalation process.

Comment

Inland Revenue operates a dedicated area dealing with tax pooling issues and tax pooling entities on a day-to-day basis. For taxpayers denied the ability to use tax pooling under this section, tax pooling entities are aware of the ability to have decisions reviewed. These entities are generally part of these conversations, so we do not see the need to provide general guidance.

Recommendation

That the submission be declined.

Issue: Limitation on right to dispute

Submission

(EY)

The submitter does not support the proposal to limit a taxpayer's right to dispute the Commissioner of Inland Revenue's decision to disallow the use of tax pooling in the context of a voluntary disclosure. They submit that the proposed limitation on the right to dispute should be limited only to cases when the taxpayer has actual knowledge of a matter that has not been disclosed to Inland Revenue.

Recommendation

That the submission be noted.

Issue: Transfer provisional tax to tax pooling account

Submission

(Taxi Limited)

The submitter proposes an amendment that would allow taxpayers who have paid provisional tax directly to Inland Revenue to transfer that tax to a tax pooling account while retaining the original payment date.

Comment

The issue is considered out of scope of the Bill.

Recommendation

That the submission be declined.

Securitisations

Clause 184

Issue: Further remedial issues arising out of Emergency Response Act

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

Clause 184 of the Bill contains an amendment to correct the commencement date of amendments to the definition of "securitisation trust" contained in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 (the Emergency Response Act). Further remedial amendments are required to address other errors arising out of changes made to the debt funding special purpose vehicle regime in the Emergency Response Act. Specifically, in:

a. Section YB 16(3) of the Income Tax Act 2007 (ITA), which was added by the Emergency Response Act to provide an exclusion from the association rules for securitisation trusts and security trusts. However, it does not achieve its purpose because it does not address all possible scenarios in which association could arise because of the establishment of a security trust. For example, a person who is a beneficiary of a security trust may also be associated with the securitisation trust under the tripartite rule in section YB 14 (where the securitisation trust is associated with the security trust by virtue of having the same settlor). Association could also arise for security trusts that are used in other contexts such as corporate bond issuances.

b. Certain provisions in the debt funding special purpose vehicle regime in sections HR 9 to HR 10B, HZ 9 and HZ 10 of the ITA.

Comment

a. Officials agree with the matters raised by submitters. Overreach of the association rules can be a barrier to entering into securitisation arrangements. The exclusion from the association rules should be amended to ensure that association does not arise in the ordinary course of a securitisation arrangement. This would ensure that:

    - A person is not 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 should apply generally (for any borrower that is a trust) rather than merely for a borrower that is a securitisation trust.

- A person is not 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 a settlor of the securitisation trust or has the power to appoint or remove the trustee.

b. The drafting of the debt funding special purpose vehicle regime could also be improved as suggested by submitters.

Recommendation

a. That the submission be accepted. (Rec 72)

b. That the submission be accepted. (Rec 73)

Issue: Overreach of anti-avoidance rules

Submission

(Australian Securitisation Forum, Bell Gully, Corporate Taxpayers Group, Mayne Wetherell)

The restricted transfer pricing rules and thin capitalisation rules were not designed with securitisations in mind. These provisions can affect the availability of deductions for interest paid by securitisation entities (and therefore tax neutrality) and the withholding tax treatment of interest payments. The application of these anti-avoidance rules to securitisation entities is a case of overreach.

Comment

Officials acknowledge the matter raised by the submitters. 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.

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Miscellaneous and out-of-scope submissions

Māori Fisheries Amendment Act 2024

Issue: Shareholder continuity relief

(Te Ohu Kaimoana Trustee Limited)

A technical change is needed to the tax transitional rules in the Māori Fisheries Amendment Act 2024 (MFAA). The current construction of the rules in schedule 2, clause 7 fails to prevent a breach of shareholder continuity during Aotearoa Fisheries Limited's (AFL) restructure as mandated by the MFAA. This therefore risks the loss of Māori authority credits. Te Ohu Kai Moana Trustee Limited (TOKM) proposes a legislative amendment to broaden the scope of clause 7 to include cancelled ordinary shares and converted income shares so that any Māori authority credits are maintained.

Comment

The MFAA reformed ownership interests in fisheries assets for iwi. To facilitate the reform, the MFAA contained tax transitional provisions to ensure the restructure did not trigger tax liabilities or affect existing tax balances, such as Māori authority credits.

The submitter has identified that the transitional rules do not appear to cover the cancellation of ordinary shares as required by the MFAA.

The tax policy approach to Government mandated restructures that achieve wider Government policy objectives has been to provide transitional tax relief in legislation. A key policy objective of this approach is to ensure that the reform is carried out in a tax-neutral manner without any tax costs arising solely because of the restructuring. General tax rules are expected to apply going forward.

TOKM is an intermediary body whose goal is to implement the final fisheries settlement with iwi for the benefit of all Māori. TOKM has always held the shares in AFL for the benefit of iwi with the purpose of distributing the settlement assets to iwi. That is, iwi have always been the economic owners of the assets and the MFAA facilitates the distribution of assets by transfer of legal ownership and control. The cancellation of AFL's ordinary shares by the MFAA should not in principle create a breach of shareholder continuity.

We agree with the submitter that a correction to schedule 2, clause 7 of the MFAA should be made to ensure that it includes the cancellation of ordinary shares as required by the MFAA. We recommend that clause 7(1) be amended so its scope includes the cancellation of shares set out in schedule 2, clause 2(1) and that the restructure of the ownership interests does not give rise to a breach of shareholder continuity.

Recommendation

That the submission be accepted. (Rec 74)

Online casino licenses

Issue: Add online casino licenses to list of depreciable intangible property

Submission

(SkyCity Entertainment Group Ltd)

The list of depreciable intangible property in schedule 14 of the Income Tax Act 2007 should be amended with effect from the start of the 2025–26 income year to include: "a licence granted under the Online Casino Gambling [Act 2026]".

Comment

The submission is a new issue that is not part of this Bill. It relates to proposed new online casino licences that would be enabled through upcoming secondary regulations under the Online Casino Gambling Bill**,** which is yet to be enacted.

The process and regulations for applying for and awarding the new licences are yet to be developed by the Department of Internal Affairs and Ministers. This will include developing the details on how and when licence holders may pay for the proposed licences, which will be relevant for determining the appropriate tax treatment of the new online casino licences.

We understand the relevant regulations will be developed in early 2026 and the first licences could be awarded in late 2026.

We therefore recommend this issue be considered further in 2026 alongside the design of the regulations for online casino licences. If an amendment is ultimately required, it could be considered for inclusion as part of the next taxation Bill in 2026.

Recommendation

That the submission be declined.

Miscellaneous submissions table

The Committee 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.

The Committee has received the following submissions that officials recommend be noted.

Table 4: General submissions to be noted

Submission description	Submitter
Support for maintenance amendments.	Corporate Taxpayers Group
General disapproval of the Bill.	Brendon Tangiora, Gladys Manuel, Julia James, Manawanui Tuhoro, Mary Buford, Rawiri Le Comt, Sharon Campbell
More consultation is required.	Mary Buford, Matekiteara Toeke
Support for FBT amendments outside the scope of the Bill.	Drive Electric, Corporate Taxpayers Group, BusinessNZ, Financial Services Council New Zealand, KPMG
Proposed legislation should use clearer terminology.	Andrew Lyons
Serious consideration should be given to the Tax Working Group's 2017–2019 findings and proposals advocating for tax justice and a te Tiriti-based constitution.	Fiona Maclean
The findings of Inland Revenue's high-wealth individuals research project should be used to improve equity.	Katia De Lu
The absence of an independent quality review by the Ministry for Regulation, incomplete assessment of te Tiriti o Waitangi implications, and only partial adherence to Regulatory Impact Analysis requirements raises significant concerns.	Ukes Baha
Tax burdens should be distributed equitably and not concentrated on a smaller portion of New Zealand citizens.	Ani Mitcalfe
Differences between Inland Revenue's interpretation of tax law and common practice are causing unnecessary distress for taxpayers	Deloitte (GST)

Submission description	Submitter
especially when policy intends for subsequent law changes. To prevent this Tax Counsel Office, operations, and Policy teams should work in parallel to align common practice with the legislation.	
The tax system should be used promote equity and fairness within the tax system.	Marilyn Head
Opposition to this Bill and support for the submission of the Māori Law Society. There should be no referendum.	Victor Kaukau
Tax debt in New Zealand is an urgent issue that needs continued focus within Inland Revenue.	Deloitte (GST)
Key opportunities were missed, such as easing the portfolio investment entity and thin capitalisation rules.	BusinessNZ
Raised concerns about the use of internal models for setting credit risk capital requirement for banks operating in New Zealand.	Max Marshall
Confirm PAYE/withholding mechanics at liquidity events, prevent double taxing when dividends are both liquidity events and income, require clear employer reporting and employee information statements.	John Shand (a)
Implementation requests: ▪ Provide PAYE/withholding pathway at liquidity events to manage employee cashflow and avoid provisional tax surprises. ▪ Offer administrative relief when dividend triggered event occurs shortly before actual cash payment or when proceeds are escrowed. ▪ Clarify employer/employee notification obligations and record keeping, and publish anti-avoidance guidance.	John Shand (c)
Publish detailed GST guidance on apportionment, error corrections, and non-integral deductions.	John Shand (c)
Backstop taxing point at seven years if no liquidity event, treat extraordinary dividends as a liquidity event, and require annual employee disclosure statements.	John Shand (d)
Targeted anti-avoidance for restructures aimed at avoiding liquidity events.	John Shand (d)

Out of scope submissions

Issue: GST Act rewrite

Submission

(Corporate Taxpayers Group)

As illustrated by the GST proposals in the Bill for joint ventures (which are numerous and complex, and spread throughout the Goods and Services Tax Act 1985 (GST Act)), the GST Act needs to be rewritten. Reorganisation of the existing Act, similar to what occurred with the Income Tax Act when it went from the 1976 version to the 1994 version, is recommended as an initial step.

Comment

Officials agree there could be some merit in modernising the GST Act. However, a reorganisation or rewrite of the GST Act is not part of the Government's current Tax and Social Policy Work Programme. Any modernisation would require prioritising and resourcing as part of this work programme.

Recommendation

That the submission be declined.

Issue: Mandate Māori consultation

Submission

(Nga Uri O Wharetakahia Waaka Whanau Trust)

Consultation with Māori should be mandated to protect the rights of future generations.

Comment

Officials note this submission is out of scope of the Bill.

Officials typically recommend full public consultation on tax policy proposals in accordance with the generic tax policy process, and Ministers and Cabinet decide whether (and how) proposals may proceed. In accordance with the Tax and Social Policy Engagement Framework, officials may advise Ministers on the need for targeted consultation with Māori organisations, depending on the relevant rights and interests at issue. This approach enables officials to tailor consultation to be fit-

for-purpose for each context, and the needs that Māori organisations may have. Officials consider this sufficiently responds to the submission.

If this matter was to be looked at further, then it would require prioritising and resourcing as part of the Government's Tax and Social Policy Work Programme.

Recommendation

That the submission be noted.

Issue: Tax debt

Submission

(Deloitte)

The submitter is concerned by the growing levels of tax debt in New Zealand, particularly GST and PAYE. They make the following suggestions for reducing this debt:

- Make greater use of the Commissioner of Inland Revenue's existing statutory power to disclose information about unpaid tax to approved credit reporting agencies.
- Focus on expanding the number of approved credit reporting agencies.
- Consider limiting the period that Inland Revenue can exercise its rights as a preferential creditor, unless Inland Revenue has publicly shared the information about the taxpayer having significant tax debts.

Comment

This submission is out of scope of the Bill. However, the Government's current Tax and Social Policy Work Programme includes an item on progressing wider Inland Revenue compliance work and options to reduce tax debt. The suggestions made by the submitter are being considered as part of that work.

As the submitter notes, the Commissioner is currently reviewing Inland Revenue's approach to the credit reporting legislation to give full effect to Parliament's purpose for those rules.

Recommendation

That the submission be declined.

Out-of-scope submissions table

The Committee received the following submissions that officials recommend be declined because they are out of scope and would require resourcing and prioritising as part of the Government's Tax and Social Policy Work Programme.

Table 5: Out-of-scope submissions

Submission description	Submitter
An elective 39% RWT rate on dividends should be introduced as an option for individuals and trustees whose income is subject to the 39% tax rate.	Aman Chand
Support for, a transaction tax (on all purchases via banks), tax on shares and a land tax.	Donna Peacock
Various pieces of legislation should be repealed.	Greg Scobie
Tax rebates for people who invest in low carbon energy, transport, green technology should be introduced.	Florence Micoud
Consideration should be given to a tax on the banks on bank transactions, the buying and selling of shares, overseas travel, land sales and purchases, the purchase of houses, inheritance. There should also be a review on the usage of family trusts.	Jennifer Sheat
Subpart CD of the Income Tax Act 2007 should be amended to exclude from a dividend a transfer of value resulting from the transfer of property from a company on a settlement of relationship property.	Tax Advisory Limited
An amendment should be made to the dividend exclusion rules to exclude transfers of value to the individuals or their associated entities as a result of application of subpart FB of the Income Tax Act 2007.	Tax Advisory Limited
Support for a capital gains tax.	Donna Peacock, Florence Micoud, Katia De Lu, Melody Baird, Miriam Odlin
Deductibility on rental property expenses should be removed.	Megan Evans
A Commissioner discretion to apply to late filings or other administrative errors should be allowed for instances of genuine error, along the lines of the recent change to the AIL regime.	Deloitte, Corporate Taxpayers Group

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Matters raised by officials

Earnings-related compensation remedial

Issue: Recovering PAYE on overpayments of earnings-related accident compensation

Submission

(Matter raised by officials)

An amendment is needed to clarify that the Accident Compensation Corporation (ACC) can recover pay-as-you-earn (PAYE) from Inland Revenue when an earnings-related accident compensation payment is overpaid and legally recoverable, but ACC decides not to collect that debt for other reasons.

Earnings-related compensation overpayments that are recoverable by law, but ACC decides to not collect for other reasons, are not taxable income of the person under the Income Tax Act 2007. These overpayments remain legally enforceable debt even if ACC decides not to recover the debt. Because these overpayments are not taxable income of the person, PAYE is not legally owed and should be recoverable by ACC.

The intention was for ACC to recover the PAYE on overpayments when the Tax Administration (Correction of Errors in Employment Income Information) Regulations 2019 were introduced. However, the regulations were not drafted to cover this situation.

Recommendation

That the submission be accepted. (Rec 75)

Multi-year support payments

Issue: Clarify period required to qualify for alternative tax treatment

Submission

(Matter raised by officials)

Section RD 20B of the Income Tax Act 2007 provides alternative tax treatment for certain backdated lump sum support payments (for example, ACC earnings-related compensation) that relate to a period of more than one income year.

Section RD 20B reduces the potential for an unfair tax liability arising from a lump sum being paid in one income year (after the payment was subject to dispute and delay) rather than if it had been spread across the multiple income years it relates to. This is because the receipt of the lump sum may artificially push a recipient into higher tax rates in the year it is derived.

The phrase "a period of more than one income year" has been interpreted inconsistently, creating uncertainty for taxpayers. The policy intent for section RD 20B was to provide alternative tax treatment for payment periods over multiple previous income years. Consequently, officials recommend that section RD 20B treatment is clarified to apply to backdated lump sum payments relating to a period of at least 366 days.

Recommendation

That the submission be accepted. (Rec 76)

Partnerships

Issue: Advance election for limited partnerships – extend section RF 3(1E)

Submission

(Matter raised by officials)

An amendment is required to allow a limited partnership to elect to account for non-resident withholding tax (NRWT) prior to payment when a limited partner makes a payment of non-resident passive income.

The Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025 amended section RF 3 of the Income Tax Act 2007 to allow limited partnerships to elect to account for NRWT on non-resident passive income as part of a broader tidy-up of partnership taxation.

Currently, a limited partnership can only elect to account for NRWT prior to payment (under section RF 3(1E)) when passive income is derived by a non-resident limited partner (under section RF 3(1B)), but not when a limited partner makes a payment of non-resident passive income (under section RF 3(1C)).

The recent amendments to section RF 3 intended to allow limited partnerships to elect accounting for NRWT, including before making a payment, so that borrowers entering lending arrangements will know in advance of the payment if a partnership plans to make an election. Advance notification for both inbound section RF 3(1B) and outbound section RF 3(1C) situations should be enabled.

Recommendation

That the submission be accepted. (Rec 77)

Issue: Partnership transparency for voting and market value interests

Submission

(Matter raised by officials)

Amendments are required to explicitly provide for partnership transparency when applying company ownership-based tests.

The Income Tax Act 2007 has several ownership-based tests that must be applied for companies to qualify for certain tax benefits (for example, carrying-forward a loss or imputation credits) or to prevent tax avoidance through artificial restructuring.

Currently, if a partnership owns shares in a company, the Income Tax Act does not explicitly look through to the partners for these ownership-based tests. Therefore, the current law does not align with the policy intent that partnerships be treated as transparent for ownership continuity purposes.

The current law could lead to some absurd results. For example, when individuals sell shares in a company to a limited partnership they are partners in, continuity of ownership for the company may be breached even if their partnership share aligned with their shareholding proportions. Also, when a limited partnership owns a company, even a complete change in the partners of the partnership may not breach continuity.

Recommendation

That the submission be accepted. (Rec 78)

Financial arrangements remedial

Issue: Exclude companies from treating variable principal debt instruments as excepted financial arrangements

Submission

(Matter raised by officials)

The financial arrangements rules do not apply to excepted financial arrangements (EFA). Therefore, income and expenses would not need to be spread over the term of the arrangement, reducing compliance costs for some taxpayers.

Section EW 5(25) of the Income Tax Act 2007 provides that a variable principal debt instrument (VPDI) (for example, a credit card or overdraft) is an EFA, except for a party who makes an election under section EW 8, if the total value on every day in an income year of all VPDIs to which a person is a party is NZ$50,000 or less. The threshold is proposed to be changed to NZ$100,000 in the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill.

Officials recommend that companies be barred from treating VPDIs as EFAs. Companies are able to deduct most expenditure under a financial arrangement, including capital amounts, because there is no capital/revenue distinction in the financial arrangements rules. If a VPDI is an EFA then a company cannot deduct everything, therefore, generally, this means companies elect to treat VPDIs as a financial arrangement even if it might fall below the threshold to be an EFA.

Additionally, barring companies from treating VPDIs as EFAs may reduce opportunities for timing mismatches between associated persons.

Recommendation

That the submission be accepted. (Rec 79)

Multi-rate PIEs

Issue: Unintended overreach of section HM 27

Submission

(Matter raised by officials)

Section HM 27 of the Income Tax Act 2007 provides that a multi-rate portfolio investment entity (PIE) loses its PIE status if it breaches a requirement of section HM 48. Section HM 48 contains prescriptive and inflexible rules for how a multi-rate PIE should correct errors. Those rules can be difficult for large PIEs to comply with, which means that their PIE status can be put at risk for a minor breach of the rules. This outcome is unnecessarily harsh and was not intended for a PIE that makes a reasonable attempt to comply with the rules.

A remedial amendment is required to provide the Commissioner of Inland Revenue with a discretion to allow a multi-rate PIE to retain PIE status if the Commissioner is satisfied that the breach of section HM 48:

- occurred despite the PIE taking reasonable care
- did not have a material impact on any investor in the PIE, and
- is not part of a pattern of non-compliance.

To ensure that no multi-rate PIE inappropriately loses PIE status, this change would apply from 1 April 2020, the date section HM 48 was last amended.

Recommendation

That the submission be accepted. (Rec 80)

FBT on protective clothing

Issue: Personal protective clothing

Submission

(Matter raised by officials)

The Tax Counsel Office has recently issued a draft question we've been asked (QWBA) in relation to the scope of the exclusion from fringe benefit tax (FBT) for benefits relating to health or safety. One of the requirements of the health and safety exemption is that if the benefit was provided by the employer "on premises" then the "on-premises" exemption would apply.

The "on-premises" FBT exemption does not apply to benefits that are free, discounted or subsidised travel, accommodation or **clothing**. The draft QWBA concludes that, given this, certain personal protective clothing may not be exempt from FBT.

Clothing that is "distinctive work clothing" is subject to another exemption. However, the QWBA concludes that personal protective clothing that is not "distinctive" does not technically meet the definition and is arguably subject to FBT.

This is clearly not the policy intension.

Comment

The proposed amendment would clarify that clothing meeting the definition of personal protective equipment in the Health and Safety at Work Act 2015 would come within the health and safety exemption for FBT purposes.

Recommendation

That the submission be accepted. (Rec 81)

Science sector reform

Issue: Amalgamation of Crown Research Institutes

Submission

(Matter raised by officials)

The Government is currently making changes to New Zealand's public science, innovation and technology organisations. To date, this has involved amalgamating various Crown Research Institutes (CRIs) and will soon involve the establishment of the New Zealand Institute for Advanced Technology.

These CRIs were previously subject to income tax, and remedial amendments are required to preserve their tax status post-amalgamation. Specific amendments are proposed to:

a. Retrospectively deem the continuation of the amalgamated CRIs for tax purposes to the date of amalgamation (1 July 2025).

b. Introduce new specific provisions to ensure that the soon-to-be established New Zealand Institute for Advanced Technology is subject to tax from the date of its establishment (assumed for the purposes of legislation as 1 January 2026).

Recommendation

a. That the submission be accepted. (Rec 82)

b. That the submission be accepted. (Rec 83)

Issue: Access to tax information by Callaghan Innovation

Submission

(Matter raised by officials)

Callaghan Innovation will be disestablished from June 2026, with its research and development function transferred to the Ministry of Business, Innovation and Employment. Remedial amendments to the Tax Administration Act 1994 would be required to ensure that information sharing provisions remain operational after the date of disestablishment.

Recommendation

That the submission be accepted. (Rec 84)

Replace references to previous personal income tax rate and threshold

Issue: Update references

Submission

(Matter raised by officials)

The new personal income tax (PIT) rate of 39% and the corresponding threshold of $180,000 were introduced in 2020, and new PIT thresholds for lower rates were introduced last year.

The top 39% rate came into effect from 1 April 2021 for the 2021–22 and later income years, and the new thresholds applied from 31 July 2024. However, there is a missing reference to the top PIT rate and threshold, and one reference to the previous PIT threshold of $48,000 remaining in the Tax Administration Act 1994.

Comment

Officials recommend amending these to align with the current PIT rate and threshold to ensure the consistency of the legislation. We also recommend the retrospective application of these changes to align with the respective application dates of the introduction of the top rate and new PIT thresholds, 1 April 2021 and 31 July 2024.

Recommendations

That the submission be accepted. (Rec 85)

Maintenance items raised by officials

Summary of proposed amendments

The proposed amendments in Table 6 reflect minor technical maintenance items raised by officials.

Effective date

Effective dates for the proposed amendments are outlined in the table.

Table 6: Maintenance items

Act	Section	Amendment	Effective Date
Income Tax Act 2007	DI 5, DI 6	Correcting terminology (Rec 86)	22 May 2025
	YA 1 (market value interest, voting interest)	Inserting missing words (Rec 87)	1 April 2010 26 August 2024
Goods and Services Tax Act 1985	11(1)(k)	Updating a cross-reference (Rec 88)	30 March 2025

Retrospective effective dates

Table 7: Retrospective policy items

Clauses	Proposed effective date	Comment
Foreign investment fund – revenue account method		
6, 12(2), 13, 24, 36, 37(2), 38, 46, 49, 50(1)(b), (2), (3), 51, 52, 56 to 63, 64(2), (4), (5), 65, 66, 71, 76, 78, 79, 92, 95(4), (9), (10), (19), (20), (21), (22), (23)	1 April 2025	Ensures the proposed new method is available for taxpayers to adopt in their returns for the current year.
Overseas donee status		
Additions to schedule		
104(5)	1 April 2025	Enables persons donating to these charities to access donation tax concessions for the current income year.
Name changes		
104(1B) "International Christian Aid (ICA)" to "International Christian Aid Relief Enterprises"	1 April 2008	Aligns with the commencement of the Income Tax Act 2007.
104(1C) "The New Zealand Society for the Intellectually Handicapped (Incorporated)" with "IHC New Zealand Incorporated"	1 April 2008	Aligns with the commencement of the Income Tax Act 2007.
104(1D) "Hope Foundation Development" with "Building for Education"	21 June 2010	Date name officially changed.
104(1E)	13 August 2013	Date name officially changed.

Clauses	Proposed effective date	Comment
"Hope International Charitable Trust" with "HOPENZ Charitable Trust"		
104(1F) "Te Tuao Tawahi: Volunteer Service Abroad Incorporated" with "Volunteer Service Abroad: Te Tūao Tāwāhi Incorporated"	18 April 2017	Date name officially changed.
104(2) "New Zealand for UNHCR" to "Aotearoa New Zealand for UNHCR"	7 December 2022	Date name officially changed.
104(4) "Engineers Without Borders New Zealand Incorporated" to "Engineers Without Borders New Zealand"	5 March 2025	Date name officially changed (although old name remains in place until 1 April 2026 to ensure no disruption to existing fundraising arrangements).
104(5) "UN Women Aotearoa New Zealand Incorporated" to "UN Women Aotearoa New Zealand"	1 April 2025	Date name officially changed (although old name remains in place until 1 April 2026 to ensure no disruption to existing fundraising arrangements).
104(5B) "Revive Afghanistan NZ" with "Revive All NZ"	16 July 2025	Date name officially changed.
104(5C) "EduTech Nepal Foundation" with "EduTech Foundation"	30 July 2025	Date name officially changed.

Table 8: Retrospective remedial items

Clauses	Proposed effective date	Comment
GST – Supplier groups clarification		
126	1 April 2023	Aligns the effective date of the remedial amendments, which are clarificatory only, with the effective date of earlier amendments to ensure they operate as intended.
GST – Secondhand goods interaction with adjustment rule		
186	30 March 2022	Aligns the effective date of the remedial amendment, which removes an unintended consequence, with the effective date of earlier amendments to ensure they operate as intended.
GST – Business-to-business zero-rating of financial services election process		
121	1 April 2025	Ensures a taxpayer's ability to notify the Commissioner is reinstated with effect from the date it was originally removed.
GST – Clarify GST rules for certain goods sold as non-taxable supplies		
108(6), (13), 112(1), (3)	1 April 2011	Aligns the effective date of the remedial amendment, which is clarificatory only, with the effective date of the original provision.
111(2), 132(1)	1 April 2023	Aligns the effective date of the remedial amendments, which are clarificatory only, with the effective date of the original provisions.
Investment Boost remedials		
32B, 33, 34, 34B, 34C, 35(1A), (1AC), 42, 43, 95(26)	22 May 2025	Aligns the remedial amendments with the date Investment Boost came into effect.
Available capital distribution amount		
7, 70	1 April 2008	Aligns with the commencement of the Income Tax Act 2007. These amendments are a consequence of the 2007 rewrite of the Act and are required to

Clauses	Proposed effective date	Comment
		ensure the intended effect of the provisions is correctly reflected in the legislation.
FBT – Replace FBT threshold reference		
89	1 April 2025	Aligns with the date the tax rates were changed.
FBT – Gift cards		
8(1), (3), 20, 21, 23, 85, 87, 88(1), 95(3), (12)	16 April 2025	Aligns with the date the Commissioner issued a statement changing the long-standing tax treatment of these types of cards to ensure taxpayers do not have to change systems to treat the provision of these cards differently.
FBT – Unclassified benefits provided to employees of associates		
86	1 April 2022	Aligns the effective date of the remedial amendment, which is clarificatory only, with the effective date of the original provision.
RDTI: Partnerships with non-standard balance dates		
151	1 April 2019	Aligns the effective date of the remedial amendment, which removes an unintended consequence arising from another recent amendment, with the effective date of the Research and Development Tax Incentive when originally introduced.
Cryptoasset staking income and PIE eligibility		
73	1 January 2009	Aligns with the date the first cryptoasset, Bitcoin, was created and clarifies that any staking income a PIE may have generated since that date was a permissible income source.
74	1 April 2010	Ensures the clarification amendment made in clause 73 is retained when the relevant provisions were replaced in 2010.

Clauses	Proposed effective date	Comment
Increase cash basis person thresholds		
44(1), (2), 44B, 45(1A), (1), (1B), (2), (2C), (2D), (2E), (2F), 45B, 45C	1 April 2025	Ensures the proposed increases to thresholds apply for the current year.
Donation tax credit clawback for refunded donations		
150(3), (4)	26 August 2025	Discourages taxpayers from adjusting their behaviour or making opportunistic claims in anticipation of the legislative change by setting the effective date to the date of introduction of the Bill.
Earnings-related compensation remedial		
191C	1 April 2019	Aligns the effective date of the remedial amendment with the commencement of the Tax Administration (Correction of Errors in Employment Income Information) Regulations 2019 to ensure the regulations operate as intended.
Multi-year support payments		
84A	1 April 2024	Aligns the effective date of the remedial amendment, which is clarificatory only, with the effective date of the earlier amendments to ensure they operate as intended.
Partnerships – Advance election for limited partnerships – extend section RF 3(1E)		
92B	1 April 2008	Aligns the effective date of the remedial amendment with the effective date of earlier amendments to ensure they operate as intended.
Partnerships – Partnership transparency for voting and market value interests		
95(5B), (14B)(b), (27B)(c), 96B, 96C	26 August 2024	Aligns the effective date of the remedial amendments with the effective date of earlier amendments.

Clauses	Proposed effective date	Comment
Multi-rate PIEs – unintended overreach of section HM 27		
74B	1 April 2020	Aligns the effective date of the remedial amendment with the effective date of the earlier amendment to ensure no multi-rate PIE inappropriately loses its PIE status.
FBT on protective clothing		
21B	1 April 2008	Aligns the effective date of the remedial amendment, which is clarificatory only, with the commencement of the Income Tax Act 2007.
Science sector reform – Amalgamation of Crown Research Institutes		
75C	1 July 2025	Ensures the tax status of certain Crown Research Institutes is preserved post their amalgamation.
16(2), 95(24B)	1 January 2026	Ensures the provisions apply from the date of establishment of the New Zealand Institute for Advanced Technology.
Replace references to previous personal income tax rate and threshold		
169B(2), (3)	1 April 2021	Aligns the effective date of the remedial amendment with the effective date of the previous change to the personal income tax rate and threshold.
169B(1)	31 July 2024	Aligns the effective date of the remedial amendment with the effective date of the previous change to the personal income tax rate and threshold.
Securitisation: Further remedial issues arising out of Emergency Response Act		
184	30 March 2025	Aligns the effective date of the remedial amendments with the commencement date of the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Act 2025.

Table 9: Retrospective maintenance items

Maintenance changes clarify existing provisions and generally establish the position in law that has been followed in practice. The proposed effective dates for the items set out in the following table align the amendments made with the original effective dates of the relevant provisions. Taxpayers are not adversely affected by these items.

Amendment	Sections	Clauses	Proposed effective date
Income Tax Act 2007			
Correcting terminology	CC 15	5B	22 May 2025
Replacing undefined terms with defined terms	DE 1, DE 5, DE 7, DE 9, DE 10, DE 11, DE 12(2)	25, 27–31, 32(1), (3)	1 April 2008
Replacing undefined terms with defined terms	DE 2B, DE 12(3)(b)	26, 32(2), (4)	1 April 2017
Correcting terminology	DI 5, DI 6	34D, 35(1AB), (1), (2)	22 May 2025
Inserting cross-reference	EX 46(1)(b)	50(1)(a)	1 July 2018
Correcting terminology	EX 53(16C)	54	1 July 2018
Removing redundant provisions	EX 62(9), (10)	61(4)	1 April 2025
Correcting cross-references	FC 9, RL 1	69, 93	1 July 2024
Correcting terminology	YA 1 "market value interest", "voting interest"	95(14B)(a), (27B)(a), (27C)	1 April 2010
Correcting terminology	YA 1 "voting interest"	95(27B)(b)	26 August 2024
Removing redundant reference	YA 1 "schedular income"	95(24)	1 April 2010
Updating Crown-controlled company names	sch 35	105	21 February 2025

Amendment	Sections	Clauses	Proposed effective date
Goods and Services Tax Act 1985			
Inserting cross-reference	11(1)(k), 11A(1)(k)	114(1A), 115	30 March 2025
Correcting cross-reference	90	131	30 March 2025
Tax Administration Act 1994			
Correcting wording	32M(1B)	149(1)	1 April 2008
Correcting wording	32M(1B), (2)	149(2), (3)	1 April 2010

Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill

Summary of recommendations

Summary of recommendations

Tax treatment of New Zealand visitors

Rec #	Recommendation description	Submitter	Page #
1	Amend commencement date to reflect policy intent that proposed non-resident visitor rules would apply to persons who arrive in New Zealand on or after 1 April 2026.	Officials	35
2	Expand requirement for income to be taxed in residence jurisdiction to other situations.	2 submitters	38
3	Disregard backdated cessation of person's tax residence in another jurisdiction when assessing if person tax resident in another jurisdiction.	Deloitte	39
4	Clarify interaction between transitional residence rules and non-resident visitor rules.	Deloitte	44
5	Simplify requirement for substantially similar income tax system for individual non-resident visitor tests.	4 submitters	44
6	Clarify that income subject to the proposed income tax exemptions is not treated as exempt income for student loan purposes.	Officials	48
7	Disregard non-resident visitor activities from the head office corporate residence test.	PwC	49
8	Omit requirement for substantially similar income tax system for corporate residence tests.	KPMG	50
9	Make the treatment of an associated entity of a non-resident visitor, on cessation of non-resident visitor status, prospective from the date the person's non-resident visitor status ceased.	KPMG	50
10	Amend source rules to mitigate permanent establishment risks within the non-resident visitor rules.	3 submitters	51

Foreign investment fund – revenue account method

Rec #	Recommendation description	Submitter	Page #
11	Make rollover relief for corporation reorganisations available to extended RAM taxpayers when there is no liquidity event or change to the taxpayer's overall interest.	2 submitters	62
12	Tax income derived from an extended RAM interest in line with its tax treatment in the other jurisdiction where the extended RAM taxpayer is also subject to tax.	KPMG	63
13	Allow RAM losses to offset dividend income derived from RAM interests.	3 submitters	68
14	Clarify that taxpayers would not fail the proposed test if they had to use another FIF calculation method before RAM becomes available in the 2026 income year.	Tax Advisory Limited	69
15	Allow taxpayers to apply the attributable FIF income method on eligible RAM interests without losing their eligibility to apply the RAM to other RAM interests.	PwC	70
16	Narrow the redemption facility criteria drafting so that only the availability of an effective redemption facility that provides access to arm's-length market value within a reasonable timeframe and volume would preclude a FIF interest that meets all other criteria from being an eligible RAM interest.	Chartered Accountants Australia and New Zealand	79
17	Allow treaty non-residents (New Zealand tax residents treated as non-residents under a double tax agreement) who tie-break to New Zealand on or after 1 April 2024 to be eligible to apply the RAM.	5 submitters	85
18	Allow FIF interests acquired by a treaty non-resident before they tie-broke to New Zealand to be eligible RAM interests if they meet all other criteria.	Officials	85
19	Clarify and amend the proposed calculation of taxable FIF income to also preclude gains and losses accrued during a taxpayer's transitional residence, non-residence under a double tax agreement, and while they were applying a different FIF calculation method.	2 submitters	88
20	Clarify that interest would not be charged if the deferred realisation tax is deemed to arise in the year of departure.	Tax Advisory Limited	91

Rec #	Recommendation description	Submitter	Page #
21	Amend the proposal so the RAM would continue to apply to a RAM interest that no longer meets the eligibility criteria, unless the taxpayer decides to apply an alternative method.	Deloitte	95
22	Remove proposal to add RAM to section EX 64 and insert a deemed disposal provision similar to section EX 64(2) into the new provisions as section EX 56B(11B).	Findex	95
23	Clarify drafting to align treatment of electing out of RAM with existing legislation.	Officials	106
24	Amend drafting so deemed reacquisition occurs on the same day immediately after deemed disposal.	Officials	107
25	Delay application of time bar for deferred realisation tax.	Officials	107
26	Align proposal with existing share lending arrangements policy.	Officials	108

GST and unincorporated joint ventures

Rec #	Recommendation description	Submitter	Page #
27	Remove the concept of an "output-sharing joint venture" so that the same rules apply to all joint ventures.	2 submitters	113
28	Make it so that the current GST rules for unincorporated bodies apply to all joint ventures by default, with the ability for joint venturers to elect flow-through treatment.	2 submitters	114
29	Provide the Commissioner with discretion to accept late flow-through joint venture elections and backdate them as appropriate.	EY	120
30	Provide that a nominated member of a joint venture notifies the Commissioner of a flow-through joint venture election, as well as any subsequent membership changes.	Officials	122
31	Amend legislative drafting of the total supplies rule to be more technically precise.	2 submitters	125

Rec #	Recommendation description	Submitter	Page #
32	Require the members of a flow-through joint venture to agree and record in writing the basis for which they are apportioning input tax and output tax on joint venture acquisitions and supplies.	John Shand (a)	129
33	Allow flexibility for the transitional rules.	2 submitters	135
34	Change the effective date of the deemed supply rule that would apply when an unincorporated body's registration is cancelled to the day after Royal assent.	Mayne Wetherell	138
35	Clarify the agency rules so that when a member of a flow-through joint venture acquires goods and services for the joint venture, the acquiring member is deemed to have acquired the other members' share of the supply as their agent.	KPMG	143

Employee share schemes

Rec #	Recommendation description	Submitter	Page #
36	Amend ESS deferral rules to ensure that shareholders that have a liquidity event, but who have not received or become entitled to a liquid asset, would be entitled to continue to defer their taxing date until the next qualifying liquidity event.	3 submitters	147
37	Remove dividends as a liquidity event from proposed section EA 4B(4) by deleting paragraph (a).	8 submitters	148
38	Amend drafting of deferral rules to clarify that different employees can have different ESS deferral status.	6 submitters	149
39	Amend proposed section EA 4B(2) of the ITA to define the required notification period for the issue of "employee deferred shares".	Officials	152
40	Amend drafting of proposal to clarify that employers' deductions for employee share schemes arise on the share scheme's taxing date.	7 submitters	153
41	Withdraw amendment to section CE 7B of the ITA clarifying the meaning of "share scheme taxing date".	6 submitters	154

Income from residential supply of excess electricity

Rec #	Recommendation description	Submitter	Page #
42	Narrow the tax exemption for income derived by an individual from the residential supply of excess electricity to only apply when the person supplying excess electricity is a resident of the dwelling where the electricity is generated.	10 Submitters	158

Information disclosure by way of Ministerial agreement

Rec #	Recommendation description	Submitter	Page #
43	Amend drafting to ensure consistency of terminology.	New Zealand Law Society	191

Other policy items

Power for Commissioner to set certain rates

Rec #	Recommendation description	Submitter	Page #
44	Include a requirement for determinations to apply from the date of the next standard provisional tax date that falls at least one month after the date the determination is made in section 120H of the TAA (similar to proposed rule in section 90B for FBT prescribed rate).	Deloitte	223

Overseas donee organisations

Rec #	Recommendation description	Submitter	Page #
45	Amend clause 104 of the Bill to make additional maintenance changes to schedule 32 of the ITA. Update references to the following charities: ▪ "EduTech Nepal Foundation" to "EduTech Foundation" from 30 July 2025 ▪ "Hope Foundation Development" to "Building for Education" from 21 June 2010 ▪ "Hope International Charitable Trust" to "HOPENZ Charitable Trust" from 13 August 2013	Officials	226

Rec #	Recommendation description	Submitter	Page #
	▪ "International Christian Aid (ICA)" to "International Christian Aid Relief Enterprises" from1 April 2008 ▪ "Revive Afghanistan NZ" to "Revive All NZ" from 16 July 2025 ▪ "Te Tūao Tāwāhi: Volunteer Service Abroad Incorporated" to "Volunteer Service Abroad: Te Tūao Tāwāhi Incorporated" from18 April 2017 ▪ "The New Zealand Society for the Intellectually Handicapped (Incorporated)" to "IHC New Zealand Incorporated" from 1 April 2008. Remove the following charities from date of enactment: ▪ Four Sherpa Trust ▪ Fund for Timor ▪ New Zealand Disaster Assistance Response Team Trust ▪ NPH New Zealand Charitable Trust ▪ NZ-Iraqi Relief Charitable Trust ▪ Sir Ray Avery Foundation ▪ Solomon Outreach Society ▪ Toraja Rural Development Charitable Trust ▪ Tender Trust ▪ Valehead Community Health Centre Trust.		
46	Repeal sections 2(40) and 119(3) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 to remove the sunset clause applying to Heilala Vanilla Foundation's overseas donee status.	Officials	227

GST remedials

Effective date for change from filing frequency selected in error

Rec #	Recommendation description	Submitter	Page #
47	Simplify the test for when a change in GST filing frequency for a newly registered person can be backdated to the start date of their registration.	2 submitters	232

Business-to-business zero-rating of financial services election process

Rec #	Recommendation description	Submitter	Page #
48	Make the application date for the amendment to the business-to-business zero-rating of financial services election process retrospective to 1 April 2025.	2 submitters	234

Sale of land as separate supply

Rec #	Recommendation description	Submitter	Page #
49	Remove proposed amendment to treat the sale of land as a separate supply so further analysis and consultation can occur.	2 submitters	236

Record-keeping requirements for supplies to unregistered persons

Rec #	Recommendation description	Submitter	Page #
50	Clarify that the recipient of a supply that exceeds $1,000 is responsible for confirming they are a registered person and providing the requisite "recipient details" that make up part of the taxable supply information for the supply.	3 submitters	238

Customs concession

Rec #	Recommendation description	Submitter	Page #
51	Clause 116 of the Bill (modifying customs concessions) should come into force on 1 April 2026.	Officials	242

Investment Boost remedials

Additional measures

Rec #	Recommendation description	Submitter	Page #
52	Separate paragraphs (a) and (b) of proposed section DI 2(1B) of the ITA with a colon rather than "or".	2 submitters	248
53	Clarify that the purchaser of a commercial building can claim an Investment Boost deduction if the developer always held the building as trading stock before sale, even if the developer leased the building before sale or takes a long time to sell the building.	3 submitters	249

Rec #	Recommendation description	Submitter	Page #
54	Clarify that all improvements to existing assets are eligible for Investment Boost.	PwC	258
55	Extend the clawback of an Investment Boost deduction following a change of use to also apply when the proportion of a building configured as a residential building increases by 25% or more.	Officials	259
56	Amend section DI 6 of the ITA to ensure the cost of an asset for calculating depreciation deductions (or similar deductions for non-depreciable assets) is always reduced by the full Investment Boost deduction available if the asset was used entirely for business.	Officials	260

Fringe benefit tax remedials

Gift cards

Rec #	Recommendation description	Submitter	Page #
57	Modify the definition of "gift card" to include cards that are used to "purchase goods and services".	iGoGroup (NZ) Ltd	264
58	Replace the "in lieu of remuneration" requirement with a targeted "purpose or effect of defeating the application of the Child Support Act 1991".	6 submitters	265
59	Modify the treatment of gift cards to better align with current unclassified benefits.	6 submitters	266

Accounting for Investment Boost

Rec #	Recommendation description	Submitter	Page #
60	Change the valuation percentage for vehicles on which Investment Boost has been claimed, and the tax book value is used, to 41.4%	2 submitters	267

Rec #	Recommendation description	Submitter	Page #
61	Amend proposal to apply the unclassified de minimis rule to amounts subject to the equalisation rule.	Corporate Taxpayers Group	269

Other remedials

RDTI: Partnerships with non-standard balance dates

Rec #	Recommendation description	Submitter	Page #
62	Remove proposed amendment to align how partnerships with non-standard balance dates return income with the method for applying for the Research and Development Tax Incentive.	2 submitters	279

Cryptoasset staking income and PIE eligibility

Rec #	Recommendation description	Submitter	Page #
63	Delete "in the form of new or additional cryptoassets" from proposed new section HM 12(1)(b(ixb) of the ITA and HL 10(2)(b)(vii) of the ITA.	Deloitte	283

Non-resident contractors' tax: Software as a service

Rec #	Recommendation description	Submitter	Page #
64	Omit the exception for a service that "involves" infrastructure located in New Zealand from the NRCT SaaS exceptions.	5 submitters	287
65	Clarify personnel exception to ensure that the 92-day threshold exemption is available for personnel located in New Zealand for the provision of SaaS and other similar services.	Bell Gully	289

Short selling and foreign shares

Rec #	Recommendation description	Submitter	Page #
66	Extend the ability to match the income and deduction from short selling.	3 submitters	290

Rec #	Recommendation description	Submitter	Page #
67	Clarify the PIE tax rules to ensure that multi-rate PIEs can include short sale gains and losses on an accruals basis, to the extent they are reflected in the PIE's unit pricing/financial statements.	Deloitte	293

Increase cash basis person thresholds

Rec #	Recommendation description	Submitter	Page #
68	Repeal deferral threshold in section EW 57(3) of the ITA.	7 submitters	294
69	Cash basis person threshold increases to take effect from start of 2025–26 income year.	Baucher consulting	296
70	For foreign currency denominated financial arrangements, use the principal amount converted at a set date (eg, the first day of the financial arrangement) to test the absolute value threshold, ignoring subsequent foreign exchange fluctuations.	KPMG	299

Clarify Commissioner's ability to publish information on internet

Rec #	Recommendation description	Submitter	Page #
71	Remove redundant words "and is available to them" from the consequential amendment to section 20(3CG)(c) of the GST Act.	Officials	303

Securitisation

Rec #	Recommendation description	Submitter	Page #
72	Make a remedial amendment to the association rules for securitisations so that association does not arise in the ordinary course of a securitisation arrangement.	4 submitters	317
73	Make remedial drafting improvements to the debt funding special purpose vehicle regime.	4 submitters	317

Miscellaneous submissions

Māori Fisheries Amendment Act 2024

Rec #	Recommendation description	Submitter	Page #
74	Seek the Business Committee's approval to amend schedule 2, clause 7(1) of the Māori Fisheries Amendment Act 2024 to ensure that the cancellation of ordinary shares under clause 2(1) of the schedule does not create a breach in shareholder continuity.	Te Ohu Kai Moana Trustee Limited	320

Matters raised by officials

Earnings-related compensation remedial

Rec #	Recommendation description	Submitter	Page #
75	Clarify that ACC can recover PAYE from Inland Revenue when an earnings-related accident compensation payment is overpaid and legally recoverable, but ACC decides not to collect that debt for other reasons.	Officials	329

Multi-year support payments

Rec #	Recommendation description	Submitter	Page #
76	Clarify period required to qualify for alternative tax treatment under section RD 20B of the ITA.	Officials	330

Partnerships

Rec #	Recommendation description	Submitter	Page #
77	Allow limited partnerships to elect to account for NRWT prior to payment when a limited partner makes a payment of non-resident passive income by enabling advance notification for both inbound and outbound situations.	Officials	331
78	Amend the ITA to explicitly provide for partnership transparency when applying company ownership-based tests.	Officials	331

Financial arrangements remedial

Rec #	Recommendation description	Submitter	Page #
79	Exclude companies from treating variable principal debt instruments as excepted financial arrangements.	Officials	333

Multi-rate PIEs

Rec #	Recommendation description	Submitter	Page #
80	Provide Commissioner with a discretion to allow a multi-rate PIE to retain PIE status if a breach of section HM 48 occurred despite the PIE taking reasonable care, it did not have a material impact on any investor in the PIE, and is not part of a pattern of non-compliance.	Officials	334

FBT on protective clothing

Rec #	Recommendation description	Submitter	Page #
81	Clarify that clothing meeting the definition of personal protective equipment in the Health and Safety at Work Act 2015 would come within the health and safety FBT exemption.	Officials	335

Science sector reform

Rec #	Recommendation description	Submitter	Page #
82	Retrospectively preserve the tax treatment of the Crown Research Institutes that amalgamated 1 July 2025.	Officials	336
83	Introduce provisions to confirm the New Zealand Institute for Advanced Technology would be subject to income tax from its establishment date.	Officials	336
84	Amend the TAA to ensure information sharing provisions remain operational after the disestablishment of Callaghan Innovation in June 2026.	Officials	336

Replace references to previous personal income tax rate and threshold

Rec #	Recommendation description	Submitter	Page #
85	Amend incorrect and missing personal income tax rate and threshold references in TAA to ensure consistency of the legislation.	Officials	337

Maintenance items

Rec #	Recommendation description	Submitter	Page #
86	Correct terminology in sections DI 5 and DI 6 of the ITA.	Officials	338
87	Insert missing words in section YA 1 (definitions of market value interest and voting interest) of the ITA.	Officials	338
88	Update a cross-reference in section 11(1)k) of the GST Act.	Officials	338