BILL COMMENTARY

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

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Minister of Revenue

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

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Annual rates for 2024–25

Annual rates for 2024–25 tax year

Clause 3

Summary of proposed amendment

The Bill sets the annual income tax rates that would apply for the 2024–25 tax year. These would be set at the same rates currently specified in schedule 1 of the Income Tax Act 2007. This includes the recent changes legislated as part of Budget 2024.

Effective date

The proposed amendment would be effective for the 2024–25 tax year.

Generic response measures for emergency events

Generic response to emergency events

Clauses 8, 11, 17, 18, 20, 27(1), 28, 30, 44, 45, 53, 105(2), (8), (11), (13), (15), (19), (29), and (30), 117(6), 118, 147, and 153(1)

Summary of proposed amendments

The proposed amendments would improve Inland Revenue's ability to provide timely tax relief following emergency events by building certain tax relief measures into the legislation, any of which could be activated by an Order in Council.

Effective date

The proposed amendments would take effect on 1 April 2025.

Background

Tax relief has been provided during emergency events and in the subsequent recovery phase depending on the nature of the event. Currently, these responses are initiated through a combination of Commissioner of Inland Revenue (the Commissioner) discretions, Orders in Council and primary legislative amendments.

A more streamlined and timely process for initiating those measures that currently require primary legislation would be achieved by building the measures into the legislation and using Orders in Council to activate them when there is an emergency event that warrants their use. This will still leave Ministers with discretion over which measures to apply to a particular emergency. Such a generic approach had been suggested by the Finance and Expenditure Committee that considered the proposed tax relief measures for the 2023 North Island flooding events, as contained in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024.

Key features

The proposed changes introduce a step-down approach. This approach would involve initially amending primary legislation to incorporate, on a generic basis, the tax measures from past major emergency events that proved to be useful to affected taxpayers, (such as taxation rollover relief and turning off the bright-line test). An activating provision in the Tax Administration Act 1994 (TAA) would enable activation of any of those measures by Order in Council in a future emergency. An Order in Council should take no more than two months to activate.

The proposals would also:

- involve changing the current Order in Council power to remit use of money interest (UOMI) into a Commissioner's discretion to expedite the activation, and
- introduce a limited information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue (in previous emergencies) being generally[1] unable to share relevant information to help other agencies deliver assistance when requested to do so.

Detailed analysis

The process now

Tax relief has been provided for past emergency events, depending on the nature of the event. Currently, responses are initiated through a combination of:

- Commissioner discretions for:
  - waiving late filing and payment penalties
  - early withdrawals from/late deposits into the income equalisation deposits scheme, and
  - the declaration of an event as an emergency event so support payments to relieve the adverse impacts of that event are not included as family scheme income for Working for Families purposes.
- Orders in Council for:
  - the remission of UOMI
  - declaring certain support payments not to be taxable grants or subsidies for GST purposes, and
  - extension of filing times for research and development tax credits.
- Primary legislative amendments when there is an unexpected tax liability (such as depreciation recovery income, or the application of the bright-line test to a local authority property buy-out) that would not have arisen but for the event. This category is the principal issue.

Amending primary legislation can be resource-intensive and creates uncertainty for taxpayers while the necessary Parliamentary approvals are obtained, even though such legislation is generally backdated to the beginning of the event.

Although each event has its own characteristics, comparable legislative changes were provided for the Canterbury and Hurunui/Kaikōura earthquakes, and the 2023 North Island

[1] An exception was made for the COVID-19 pandemic, when specific legislation was enacted that allowed information to be shared.

flooding events. This included the provision of capped tax-free employer payments and fringe benefits to support employees who needed alternative accommodation and transport, as well as the extension of the time period for tax-free accommodation allowances for those working away from home on major flood-related reconstruction projects.

Legislative tax measures were also enacted for the Mycoplasma bovis outbreak. These enabled the additional income arising from the forced sale of livestock to be spread over six years to match expected stock replacement.

Emergency event definition

The proposed amendments would rely on existing definitions of "emergency" and the declarations of an emergency under other legislation, rather than creating a totally new definition for income tax purposes. This approach is already used for the Commissioner declaring an emergency event so support payments made to relieve the effects of that event are not included as family scheme income for Working for Families purposes.

A definition of "emergency event" as an emergency in accordance with section 4 of the Civil Defence Emergency Management Act 2002[2] and declared an emergency under that Act would be inserted in section 3(1) of the TAA (with a consequential cross-reference in the definition section of the Income Tax Act 2007 (ITA)). For the purposes of the Civil Defence Emergency Management Act, an emergency declaration is either:

- a state of national emergency under section 66 of that Act, or
- a state of local emergency under section 68 of that Act.

The exercise of powers under section 121 or 122 of the Biosecurity Act 1993 to examine, test for, and destroy a particular biosecurity pest/risk are also included in the proposed definition. This would cover situations such as the programme for eradicating Mycoplasma bovis or any future foot and mouth outbreak.

This combination of events is considered the most appropriate to cover the likely broad range of natural disasters that could occur in New Zealand.

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[2] **emergency** means a situation that—

(a) is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(b) causes or may cause loss of life or injury or illness or distress or in any way endangers the safety of the public or property in New Zealand or any part of New Zealand; and

(c) cannot be dealt with by emergency services, or otherwise requires a significant and co-ordinated response under this Act.

A state of national emergency has been declared three times in New Zealand, in response to:

- the February 2011 Christchurch earthquake
- the COVID-19 pandemic, and
- Cyclone Gabrielle flooding.

However, there have been substantially more local emergencies over the same period. For example, the flooding that occurred in Auckland over Auckland Anniversary weekend 2023 was initially only designated a local emergency. It was only once flooding had also occurred in the Gisborne and Hawke's Bay regions that the Government declared a state of national emergency existed and incorporated the Auckland floods. Another example is the Hurunui/Kaikōura earthquakes, which were declared a local emergency.

From a tax perspective, some events, such as a drought or very localised event, have required fewer measures and have been largely handled through the Commissioner's discretions. That process would continue. More widespread and/or protracted events have needed a wider set of measures regardless of whether they have been declared a national or local emergency. This means the proposed generic measures need to cover both. The common theme for tax purposes is that the event creates unexpected income for a significant number of taxpayers.

The proposed provisions would enable relevant responses to be decided at the time, rather than being automatically activated or triggered by an emergency event. The proposed streamlined activation process would facilitate this, with the definition of "emergency event" simply setting the boundary as to what events might ultimately lead to activation of any of the proposed generic tax measures. Ministerial decisions would still be required, and Orders in Council initiated, for situations not covered by the Commissioner's discretions.

Remission of UOMI

The Bill proposes an amendment to section 183ABA of the TAA that would allow the Commissioner to remit UOMI following the declaration of an emergency event. This would be a change in process only, because currently the Commissioner can choose not to charge interest on late payments by taxpayers when enabled to do so by an Order in Council. The Order in Council power would be retained for rare situations when an event was not declared as an emergency under the Civil Defence Emergency Management Act 2002, but it was still considered warranted to remit UOMI.

Information sharing

The Bill includes a proposed amendment that would provide Inland Revenue with an information-sharing power consistent with that already available to other agencies in a national emergency. This additional measure is in response to Inland Revenue being generally unable to share information in a timely manner to help other agencies deliver

assistance in previous emergencies (except for the COVID-19 pandemic). Such a power would contribute to a more coherent and efficient whole-of-government response.

The power would be activated by Order in Council and would give the Commissioner a discretion to share sensitive revenue information with other agencies that need and request that information to help in delivering assistance in an emergency, provided certain safeguards are met.

The proposed specific safeguards are:

- The power would only be available for events that are declared national emergencies.
- The power would need to be consistent with the Civil Defence National Emergencies (Information Sharing) Code 2020.[3] That code sets out the situations when government agencies can share information with other agencies in an emergency.
- Information could only be shared for as long as is necessary to fulfil the purpose of the information requests for that event.
- The Commissioner would need to be satisfied that sharing the information would not be undesirable (for example, that it would not undermine the integrity of the tax system), and that the information was readily available.
- A written agreement would need to be drawn up and agreed between the Commissioner and the party that requested the information specifying the information to be shared.

Included measures

The proposed generic measures are summarised in the following table.

Measure	Current mechanism	Proposed mechanism	When previously used
Taxation rollover relief[4] for: ▪ revenue account property ▪ depreciable property ▪ amortisable land improvements	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events

[3] Issued by the Privacy Commissioner under the Privacy Act 2020.

[4] Deferral of the unexpected income resulting from an insurance payout on a destroyed asset provided the asset is replaced.

Measure	Current mechanism	Proposed mechanism	When previously used
Depreciation amendments associated with rollover relief	Primary legislation	Order in Council	Canterbury and Kaikōura earthquakes 2023 North Island flooding events
Capped employer payments and fringe benefits, and extended tax-free accommodation period	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events
Income spreading provisions for forced livestock sales	Primary legislation	Order in Council	Mycoplasma bovis outbreak commencing 2017
Turning off the bright-line test and other time-based land sale rules[5]	Primary legislation	Order in Council	Canterbury earthquakes 2023 North Island flooding events (Local/central government buy-outs were provided in both cases)
Information sharing for a specific event	N/A	Order in Council providing Commissioner with discretion to share information for a national emergency, subject to safeguards	COVID-19 pandemic response, through specific primary legislation
Remission of UOMI	Order in Council	Generally, Commissioner discretion	Regularly used for large-scale emergencies including Hawke's Bay gastro-medical event

[5] If a residential property is sold within a set period of time after being acquired, the owner may have to pay income tax on any gain on the sale.

These measures were selected based on the measure:

- having been applied to multiple past emergency events (either local or national emergency events) or it being a measure for a specific type of emergency event (ie, a biosecurity event)
- being used by affected taxpayers, and
- having limited fiscal impact.

If a past measure was used by a relatively limited number of taxpayers, was overly complex, or had a significant fiscal cost, it was excluded because the measure would likely not be used in future emergency events. Measures with a significant fiscal cost should continue to be subject to both Ministerial and Cabinet decision-making and Parliamentary approval. This ensures that discretionary decision-making is limited.

Consequential Amendments

Several consequential amendments are required to the Income Tax Act to ensure that the emergency event measures interact correctly with the wider tax rules. These amendments are contained in clauses 8, 11, 17, 18, 20, 27, and 28. These consequential amendments include ensuring that any income under proposed new subpart FP is income under Part C of the Act.

Detailed analysis of measures

The tax technical detail for the relevant past generic measures can be found in:

- *Tax Information Bulletin* Vol 36, No 4, May 2024.
- *Special report: Taxation (Annual Rates for 2020–21, Feasibility Expenditure, and Remedial Matters) Act 2021* (28 April 2021).
- *Special Report: Tax relief for North Island flooding events* (4 April 2023).

Taxation rollover relief

The proposed changes would provide the option of taxation rollover relief for any of the following assets destroyed[6] by an emergency event:

- Land or buildings held as revenue account property for which insurance or other compensation is provided that results in a profit over its cost price.
- Depreciable property subject to depreciation recovery income as a result of an insurance payout.

[6] Irreparably damaged or useless for income-earning purposes.

- Amortised farmland improvements for which income arises because of an insurance payout.

The taxation rollover relief would defer the unexpected income that arises in such situations provided the assets are replaced within five years.

Common features

In all three cases, the additional income would be suspended until the replacement asset is acquired. When the asset is replaced (or partially replaced if the replacement expenditure is incurred gradually), the suspended income impacts on the cost of the replacement asset, reducing that cost for tax purposes. The income suspension also ceases if the business ceases operations or no longer intends to acquire a replacement asset, in which case the suspended income is brought to account in that earlier income year.

Because rollover relief is optional, the taxpayer would need to elect to use their chosen option and notify the Commissioner of their election. Generally, this must be done by the date their return of income is required to be filed for each income year that they elect to use rollover relief. The Commissioner may allow the person to file the notice at a later date if the Commissioner considers there are exceptional circumstances.

Whether there are "exceptional circumstances" would depend on the facts and circumstances of the particular case, and on whether those facts and circumstances provide a person with a reasonable justification for not filing a notice by a due date. Certain information (such as a description of the affected property, the amount replaced in the year, and the remaining amount of suspended income) is required as part of the notification. Its purpose is to ensure that the taxpayer turns their mind each year to deciding whether they still intend to replace the asset.

Points of difference

The formula varies for each of the three types of rollover relief because the income being deferred differs.

Example 1: Revenue account asset

A taxpayer's revenue account building located in the Manawatū is destroyed by a flooding event. The flooding event has been declared an emergency event and proposed new section FP 3 has been selected from the tax relief measures and activated by Order in Council.

The building originally cost $1.5 million. The replacement insurance proceeds are $3 million, and the replacement building (costing $3 million) is completed on 15 June 2037. In the absence of rollover relief, the building owner will have taxable income of

$1.5 million (under section CG 6). Proposed new section FP 3 allows the owner to defer that income tax liability by allocating an amount of $1.5 million to the replacement building.

As a result of negotiations between the building owner and the insurance company, the insurance proceeds can be reasonably estimated on 30 September 2034.

In the tax return for the tax year ending on 31 March 2035, the building owner files an election to defer the $1.5 million of income pending replacement of the building. Provided the taxpayer continues to elect to defer the income, it remains suspended for the tax years ending on 31 March 2036 and 31 March 2037.

Because the replacement building is completed on 15 June 2037, the tax return for the tax year ending 31 March 2038 will include the new building at a cost of $1.5 million (being the $3 million cost of the new building less the $1.5 million rollover relief).

A notice will have to be filed with the tax return for the year ended 31 March 2038 advising that the deferred income has been rolled into the tax base for the replacement asset. The taxpayer must also give notice that the amount of unallocated suspended income has been reduced by $1.5 million to $0.

When the replacement asset is eventually sold, the difference between the $1.5 million cost and the sales proceeds will be taxable, provided the building is sold for more than $1.5 million.

Example 2: Depreciable asset

Plant and equipment destroyed by an earthquake had a cost of $1 million. The earthquake has been declared an emergency event and proposed new section FP 4 has been selected as one of the tax relief measures.

On the day of the earthquake, the plant and equipment had an adjusted tax book value of $700,000. The owner receives an insurance payout of $1 million. The net depreciation recovered is, therefore, $300,000, and this becomes the suspended recovery income. The replacement assets are acquired over two years at a cost of $400,000 per year. In year three, the owner decides to acquire no more replacement assets.

Under proposed new section FP 4, the $300,000 suspended recovery income is allocated as follows:

Year 1 ($400,000 x $300,000) / $1,000,000 = $120,000

Year 2 ($400,000 x $300,000) / $1,000,000 = $120,000

The cost of the replacement plant and machinery is reduced in total by $240,000.

The remaining suspended recovery income balance of $60,000 (representing the portion of assets not replaced) is taxed in the year the taxpayer decides to make no further investment in replacement property.

Example 3: Farmland improvement

Crop support frames costing $50,000 have been amortised under section DO 4 (improvements to farmland). Their amortised value is $26,500 when they are destroyed by a cyclone. The cyclone has been declared an emergency event and proposed new section FP 5 has been selected as one of the tax relief measures. Insurance proceeds of $75,000 are received.

The remaining expenditure ($26,500) can be deducted under section DO 11.

Under proposed new section FP 5, the insurance payout is income to the extent of the various deductions that have been allowed ($50,000 in total).

The taxpayer elects, under proposed new section FP 5, to apply rollover relief to this amount of income and replaces the destroyed frames at a cost of $75,000.

In accordance with proposed new section FP 5(4), the cost of the replacement frames for the purposes of amortisation under section DO 4 is $25,000 because the insurance income of $50,000 is less than the replacement cost of $75,000 by that amount.

Depreciation amendments associated with rollover relief

Deductibility of expenses when no income-earning activity

Proposed new section FP 6 addresses the situation when some taxpayers are no longer able to deduct their on-going expenses or losses relating to their income-earning activity. For example, this may occur when land is not physically accessible due to silt or a building is not accessible due to an earthquake, resulting in the business activity being so disrupted by the emergency event that there is no longer a sufficient nexus between the expenses and the income-earning activity.

The proposed new section provides certainty on the deductibility of expenses or losses for affected taxpayers who intend to continue their income-earning activities. To qualify, the person must:

- have an income-earning activity in the "affected area" immediately before the emergency event, and
- during the period of interruption, have incurred expenditure or loss in meeting an obligation relating to the income-earning activity and that interruption expenditure does not meet the requirements of the general deductibility permission (in section DA 1) of the ITA, but would have done so but for the interruption, and
- resume the income-earning activity before an income year that is five income years after the income year in which the emergency event first occurs.

If all these conditions are met, the person is allowed to deduct the expenditure in the year their income earning is resumed.

Damaged depreciation property that is uneconomic to repair

The tax depreciation rules do not provide an appropriate outcome when there is an insurance payout on an asset damaged by an emergency event and the asset has been assessed as uneconomic to repair. This is because the tax rules distinguish between assets that are repairable and those that are irreparably damaged or rendered useless for earning income. Assets that are uneconomic to repair are generally included in the former category because they can be technically repairable. The consequence is that a taxpayer might face a significant unexpected tax liability when an insurance amount was received for the damaged asset.

To help overcome this problem, proposed new section FP 7 provides for a deemed disposal and reacquisition of assets that are damaged by an emergency event and are assessed by the person receiving the insurance payout as uneconomic to repair. This would better align their depreciation treatment with that of assets that have been irreparably damaged by an emergency event. Rollover relief is then available for those assets.

The asset would be deemed to be reacquired for nil consideration on the same day as the deemed disposal (which is for the amount of insurance), meaning that any post-emergency event repairs to the damaged building are capitalised rather than being treated as deductible expenditure.

Example 4: Asset uneconomic to repair

An asset has a cost of $5 million, accumulated depreciation deductions of $4 million, and an adjusted tax value of $1 million. It is damaged by an earthquake. The earthquake has been declared an emergency event through an Order in Council and

proposed new section FP 7 has been selected from the tax relief measures. The company that insures the asset decides it has an obligation under the insurance policy to pay out $10 million.

The owner makes the reasonable assessment that the asset is no longer fit for purpose and is uneconomic to repair. The insurance payout is sufficient to fund a replacement. The damaged asset is retained by the insured party and put to another, less productive, use.

Proposed new section FP 7 would apply in these circumstances. The damaged asset would be treated as being disposed of for $10 million and reacquired for nil consideration on the date of the earthquake that caused the asset to be uneconomic to repair. Because the asset was treated as having been disposed of, the owner of the asset could apply the optional matching rule in proposed new section FP 7 to smooth the timing of income calculated under section EE 48.

Under section EE 48, the result would be:

- original cost – $5 million
- depreciation deductions – $4 million
- adjusted tax value – $1 million
- amount for disposal (consideration) – $10 million
- depreciation recovery income – $4 million
- capital gain – $5million.

Provided a replacement asset was acquired, rollover relief (under proposed new section FP 4) would be available to the asset owner for the $4 million of depreciation recovery income.

Cap on depreciation recovery income

Any insurance proceeds that exceed the sum of the asset's adjusted tax value and expenditure on repairing the asset are taxable under section EE 52 of the ITA. As a result, the tax rules may end up taxing more than the amount of earlier depreciation deductions allowed for the asset. In the context of an emergency event, this means that some taxpayers may face significant unanticipated income tax liabilities in relation to damaged (but repairable) assets.

Accordingly, if activated, proposed new section FP 8 would limit depreciation recovery income to the amount of depreciation deductions previously taken when insurance proceeds are received for a repairable depreciable asset damaged by the relevant emergency event.

Example 5: Depreciation recovery income cap

An asset valued at $5 million is damaged by a flooding event but is repairable. The flooding event has been declared an emergency event and proposed new section FP 8 has been selected as one of the tax relief measures.

The asset has an adjusted tax value of $1 million, with depreciation deductions of $4 million taken. Insurance proceeds of $7 million are received, with $1 million of the proceeds being spent on repairing the asset. Under section EE 52, the depreciation recovery income would be $5 million. However, proposed new section FP 8 would cap the amount of depreciation recovery income at $4 million. The remaining $1 million would be treated as a capital gain.

Property that is available for use

For an item of property to be depreciated for tax purposes, it must be used in a business or be available for use. However, it was not clear how this rule should be applied when access to depreciable property is temporarily restricted by an emergency. Proposed new section FP 9, when activated as one of the emergency responses for a particular emergency event, would address this issue by treating the item as being available for use during the period of restricted access. This would be on the proviso that the asset was available for use immediately before the restriction was imposed. Depreciation could therefore be claimed.

Optional timing rule when damage results in disposal

Proposed new section FP 10 would provide an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for depreciable property that has been irreparably damaged or rendered useless for earning income because of an emergency event. The timing rule would also apply to depreciable assets that are uneconomic to repair and to which proposed new section FP 7 would apply.

The optional rule would apply to individual items of depreciable property, in line with the general approach under the depreciation rules. The proposed new section provides that any income or deductions would be recognised at the earlier of:

- the first income year in which:
    - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
    - the cost of disposing of the item is, or has been, incurred or able to be reasonably estimated, and

  - the consideration from the disposal of the item is, or has been, derived or able to be reasonably estimated, or
- the income year that is five income years after the income year in which the emergency event first occurred.

Whether insurance proceeds and other amounts can be reasonably estimated is essentially a question of fact, which would depend on the individual circumstances of each case.

Proposed new section FP 10 would override the normal depreciation timing rules. The section could also be applied to assets depreciated in a pool. A person who opts to use the matching rule would be required to use it for all their items of depreciable property that meet the criteria for applying the rule. This is to prevent taxpayers "cherry-picking" the assets to which they apply the rule. A taxpayer's election to use the matching rule would be reflected in the tax position they take in their return of income for each tax year – no prior notice of election would be required.

Example 6: Optional timing rule for disposal

Equipment originally costing $10,000 is irreparably damaged by a storm. The storm has been declared an emergency event and proposed new section FP 10 has been selected as one of the tax relief measures.

The asset's tax book value is $7,000, with $3,000 of accumulated depreciation deductions. The disposal costs are reasonably estimated in the 2034–35 income year to be $1,000. The insurance proceeds received for the asset are reasonably estimated in the 2035–36 income year as being $9,000. The equipment has a scrap value of $100, which is reasonably estimated in 2034–35. Applying the new matching rule, any income or deductions would be recognised in the 2035–36 income year because this is when all the insurance proceeds, disposal costs and disposal proceeds could be reasonably estimated. Accordingly, in the 2035–36 income year, proposed new section FP 10 would apply to determine the amount of depreciation recovery income or depreciation loss.

Optional timing rule when damage does not result in disposal

Proposed new section FP 11 would introduce an optional rule to smooth the timing of income and deductions when insurance proceeds have been received for a depreciable asset that has been damaged in an emergency event, but the asset is repairable.

The rule is broadly similar to proposed new section FP 10 in design except, in this case, the asset is economically repairable. Again, the owner would need to choose to apply the timing rule to all their depreciable assets that meet the requirements, including assets depreciated

in a pool. The proposed timing rule provides that any income or deductions would be recognised at the earlier of:

- the first income year in which:
  - the insurance receipt is, or has been, derived or able to be reasonably estimated, and
  - the cost of repairing the asset is, or has been, incurred or able to be reasonably estimated, or
- the income year that is five income years after the income year in which the emergency event first occurred.

Example 7: Optional timing rule when no disposal

Machinery originally costing $100,000 is damaged by a flooding event. The flooding event has been declared an emergency event and proposed new section FP 11 is one of the tax relief measures activated by Order in Council.

The asset's adjusted tax value is $60,000, with $40,000 of accumulated depreciation deductions. The insurance proceeds are estimated in 2032–33 as being $110,000. Repair costs are estimated in the 2034–35 income year to be $20,000, and $10,000 is actually incurred in each of the 2034–25 and 2035–26 income years.

Applying the matching rule, any income or deductions are recognised in the 2034–35 income year because this is when the insurance proceeds and total repair costs can reasonably be estimated. Accordingly, in the 2034–35 income year, sections CG 4 and EE 52 would apply.

The repair costs are deductible under the general deductibility rules.

Section CG 4 would treat $20,000 of the insurance proceeds as taxable because this is the amount of insurance proceeds that recovers deductible expenditure.

Section EE 52 requires the amount by which the insurance proceeds are more than the repair expenditure to be deducted from the adjusted tax value, as follows:

Adjusted tax value of $60,000 less ($110,000 – $20,000) = −$30,000

As the result is negative, the adjusted tax value is reduced to nil and depreciation recovery income under section EE 52 would be $30,000.

Optional adjustment to assets under thin capitalisation rules

When activated, proposed new section FP 12 would provide an optional adjustment to how group assets are measured for the purposes of the thin capitalisation rules when assets have been damaged by an emergency event. The adjustment would mitigate a timing problem that would arise because insurance proceeds may be recognised for tax purposes at a later date than the damage caused by an emergency event.

The thin capitalisation rules are based on accounting measures of assets. For accounting purposes, damaged assets are immediately impaired or derecognised (that is, no longer considered an asset). In contrast, insurance proceeds cannot be recognised until they are reasonably expected.

Proposed new section FP 12 is designed to mitigate this timing difference by allowing certain taxpayers to carry back known insurance proceeds to the date on which an asset was impaired or derecognised as a result of damage caused by an emergency event. The amount that could be carried back would be limited to the lesser of the amount of damage or the related insurance proceeds.

Without this option, a business could be temporarily disadvantaged in terms of how much debt they could carry on their balance sheet under the thin capitalisation rules, resulting in reduced interest deductions.

A person who chooses to use this option would be required to notify the Commissioner and provide certain information.

Tax relief for employers' welfare contributions to employees

Generally, payments and benefits provided by an employer to an employee are taxable, either as monetary remuneration or by way of fringe benefit tax (FBT).

Following an emergency event, employers may make ex-gratia welfare contributions of cash or benefits to their flood-affected employees. The proposed generic tax-relief measures include two proposed measures that would allow certain amounts and benefits to be exempt from income tax or FBT.

The exemptions could be applied to:

- accommodation
- "sundry" fringe benefits when the employer cannot reasonably estimate which employees received which benefits, and
- the first $5,000 of monetary remuneration and fringe benefits of the kind where the employer can reasonably be expected to know which employees received which benefits.

These proposed measures are inter-linked. Proposed new section FP 13 would provide that income (which could include accommodation benefits) derived by an employee from an employer would be exempt income if it meets all the following requirements:

- it is provided by the employer for the purpose of relief of employees from the adverse effects of an emergency event
- it would otherwise be assessable income
- it is derived in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the income as being exempt income of the employee.

Example 8: Payment of accommodation allowance

Klover Kiwifruit Ltd (KKL) has been adversely affected by a flood in the Northland area. Its kiwifruit orchard has been badly damaged. It is a family-owned business that has several long-serving staff (including some family members) who live in dwellings near the property. Those dwellings have been substantially damaged by the flooding and are not currently liveable.

Kevin Klover, the owner of KKL, tells staff to find alternative accommodation and advises that the company will provide the staff with an accommodation allowance until the staff can get back to some sense of normality after the impact of the flooding. KKL pays an accommodation allowance to its staff for eight weeks. All employees have the same entitlement and, therefore, it is not relevant that some payments were made to associated family members of Kevin.

The flooding event has been declared an emergency event and proposed new section FP 13 has been selected from the tax relief measures and activated by Order in Council. Therefore, the staff (including the family members) could treat the accommodation allowance paid as exempt income as it would meet the requirements of proposed new section FP 13.

Fringe benefit tax exemption

Similarly, proposed new section FP 14 would provide that a benefit received by an employee from an employer would be exempt from FBT if all the following requirements were met:

- it is for the purpose of relief of employees from the adverse effects of an emergency event
- it would otherwise be a fringe benefit
- it is received in the eight-week period beginning on the first day of the relevant emergency event
- it does not replace a PAYE income payment, that is, it is not paid in substitution for wages or salary
- it does not depend on the seniority of the employee
- if the employee is associated with the employer, it is also available to an unrelated full-time employee, and
- the employer treats the benefit as not being a fringe benefit.

If the employer could estimate the value of a benefit that an employee has received for an emergency event, the benefit would be exempt from FBT to the extent that the $5,000 employee income exemption for the relevant emergency event under proposed new section FP 14 was not used to exempt employee income.

Example 9: Specific benefit

Hannah is an employee of Harris Hardware Ltd (HHL), which is a hardware company based in Marlborough. Hannah is a keen cyclist and travels to work and most other places on her e-bike. She has access to a work ute during the day to allow her to fulfil delivery orders. No private use of the vehicle is permitted, and the vehicle is locked in a garage at HHL's premises during the evenings and at weekends.

Hannah lives in a rural area that was hit hard by an earthquake. The earthquake has been declared an emergency event and proposed new sections FP 13 and FP 14 have been selected from the tax relief measures.

Hannah's e-bike was damaged during the earthquake, so she is unable to get around. Carl, the owner of HHL, allows Hannah to use the work ute to travel to and from home as well as to assist her neighbours in the clean-up of their properties. This private use of the vehicle would usually incur FBT.

HHL also provided a cash payment of $500 to each of its staff that was paid as exempt income under proposed new section FP 13.

HHL could treat the provision of the vehicle as exempt from FBT up to the value of $4,500 (the maximum aggregate amount of exempt cash and fringe benefits permitted would be $5,000).

Projects of limited duration

Proposed new section FP 15 would provide for a modified definition of "projects of limited duration" for projects related to a specific emergency event to recognise the extended timeframes that those rebuilding projects could take. The value provided or expenditure incurred by an employer on accommodation for employees working on those projects would be exempt income for the employees.

The provision would apply for the purposes of section CW 16B (Accommodation expenditure: out-of-town secondments and projects) when:

- the employment duties of an employee require them to work on a project of limited duration for rebuilding or recovery in areas affected by an emergency event, and
- the distant workplace is a workplace in the areas affected by the emergency event.

The usual three-year time limit in the definition of "project of limited duration" would be extended to five years if the employee starts work within six months of the date the relevant emergency event first occurs.

Example 10: Extended time limit

Rory Roads Ltd (RRL) provides contracting services, primarily road building. They have a large plant based in Napier that services the area. They also have a plant based in Christchurch that services the South Island.

In May 2030, with the need to assist in rebuilding the roading infrastructure in the Napier area following a major earthquake, the owner of RRL asks 20 of the Christchurch crew to relocate to Napier to assist with the work for the foreseeable future. The earthquake has been declared an emergency event and proposed new section FP 15 has been selected as one of the tax relief measures.

Rory provides those employees with accommodation in Napier for the duration of the project, which is expected to be four to five years. The exemption in proposed new section FP 15 would apply to treat the provision of that accommodation as exempt income (subject to the other criteria in section CW 16B being satisfied).

Biosecurity emergency event tax relief

Proposed new section FP 16 would enable the taxable income arising when breeding stock need to be culled in response to a qualifying biosecurity emergency event to be spread over six income years following a biosecurity emergency event, provided the stock is intended to be replaced.

Background

Some farmers may have significant unexpected taxable income through their herds being culled following a primary sector and government decision to eradicate or manage a biosecurity event in New Zealand. The income would arise through the stock being sold or compensation being paid, or a combination of both.

The issue would arise for farmers who have used a cost-based method (that is, national standard cost (NSC) or the self-assessed cost scheme) to value their breeding stock on hand for tax purposes. This is because the difference between the total proceeds received from the cull and the cost of the stock would be income. This would create a cash-flow issue for those farmers who purchase replacement livestock after the cull. The replacement stock would be valued at its purchase price and could not, for tax purposes, be immediately written down to the homebred cost to offset the income.

To avoid this outcome, proposed new section FP 16, if activated, would enable the proceeds from the cull to be transferred from the year of the cull and to be spread evenly over the following six income years following the first occurrence of an emergency event. This ability to spread would be optional.

Key features

The income could only be spread if:

- A person had, as part of their business, mixed-age female stock on hand at the start of the cull year that they use for breeding and those stock were valued under either NSC or the cost price method at the end of the income year before the cull year. The focus on mixed-age breeding stock is to ensure that the spread is provided to those who have sizeable additional income as a result of the cull given that female breeding stock make up a high proportion of a standard herd. Breeding stock would include immature female stock intended for future breeding in the business.
- In the cull year, some or all the person’s cattle needed to be destroyed because of the biosecurity emergency event, using the powers in either section 121 or 122 of the Biosecurity Act 1993 that enable Biosecurity New Zealand to examine organisms and give directions. Normally the whole herd is destroyed, but in some isolated cases only a portion needs to be destroyed.

- A significant portion of the culled stock is replaced by the end of the income year following the cull year. The expectation is that the culled livestock are replaced with purchased stock.
- The replacement stock continues to be valued using, as relevant, NSC or the cost price method. This is to ensure that farmers cannot enter the herd scheme on more advantageous terms than those not affected by the biosecurity emergency event.

Given that a livestock owner might use a couple of valuation methods in combination, not all the breeding stock might be valued at cost. However, only the income derived from the culling of the breeding stock valued under NSC or the cost price method could be spread. The income equalisation scheme may be able to be used to mitigate the income implications of the cull for the income arising from the culling of stock valued under another valuation method or stock culled from a fattening stock business valued under NSC.

Owners of the affected livestock, including sharemilkers, would be covered, that is, the ability to spread income from the cull is not limited to just the owners of farmland with livestock.

The qualifying proceeds from the cull would comprise payments from the slaughterhouse, top-up compensation from the government for the difference between the normal market value for the stock and the payments from the slaughterhouse, and, in some cases, further compensation to cover the additional cost of purchasing equivalent replacement stock.

The Order in Council enacting the provision would indicate the types and classes of livestock for which the spread would be available for the particular biosecurity emergency event. The types of livestock would be selected from those listed in schedule 17 of the ITA. Although that schedule lists cattle (beef and dairy), deer, goats, pigs and sheep, the nature of the future emergency event would determine which of these types would be selected. Most likely, an Order would be focused on cattle, sheep or deer, or a combination of these. The Mycoplasma bovis outbreak, for example, impacted cattle.

The livestock owner would need to indicate which type(s) of livestock their election covered and apply it separately for each type of livestock. The spreadable amount would be calculated for each type and class of breeding animal using the formula in proposed new section FP16.

For each type of livestock, the formula basically multiples the number of breeding stock for the relevant class that are valued under either NSC or the cost price method by the total proceeds received for the stock in that class and divides it by the number of culled stock for that class.

If this option is used, the maximum amount that could be deposited in the taxpayer’s main income equalisation scheme account would be reduced in accordance with the proposed amendments to sections EZ 80 and EZ 81 of the ITA.

Relevant current legislation

The livestock valuation rules are contained in subpart EC of the ITA, including the requirements that apply when using multiple valuation options and the restrictions on switching between valuation options. These rules ensure that the cost of stock on hand is valued appropriately and that the cost of purchases is not deducted ahead of their being sold.

Emergency event relief: turning off bright-line and other timing tests

Proposed new section FP 17 would ensure that the bright-line and other land-based timing tests in the ITA do not apply to a person who has had their land purchased by the Crown or a local authority following an emergency event.

The ITA contains a set of time-based tests that, if not met, result in any gain or loss on disposal of the property being either taxable or deductible. The most well-known test is the "bright-line". The bright-line test taxes property sold on or after 1 July 2024 if it is sold within two years of acquisition. There are also a series of 10-year tests for land dealers, developers and associated parties.

Normally the various time-based tests should potentially apply when there is a compensatory buy-out. However, also under normal circumstances, the owner could decide to hold on to the property for more than the minimum period to avoid the tax implications. However, the owner has, in effect, little option other than to sell when offered a compensatory buy-out (such as from the Crown or local authority) on a property that has been designated as unsafe for habitation because of an emergency event.

Proposed new section FP 17 would turn off the bright-line and other timing tests so the buy-out means that not only are there no gains but also no losses for tax purposes.

Proposed new section FP 17 ensures that the timing tests are turned off regardless of the legislative vehicle used to make the buy-out offers, provided that the disposal is as a result of an emergency event.

Inland Revenue
Te Tari Taake

Date: August 2024

Crypto-Asset Reporting Framework and amendments to Common Reporting Standard

Crypto-Asset Reporting Framework

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

Summary of proposed amendments

The amendments would give legislative effect in New Zealand to the *Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard* (CARF) developed by the Organisation for Economic Co-operation and Development (OECD).

Effective date

The proposed amendments would take effect on 1 April 2026. On this timeframe:

- New Zealand-based reporting crypto-asset service providers would be required to collect information on the transactions of reportable users that operate through them from 1 April 2026.
- These reporting crypto-asset service providers would need to report this information to Inland Revenue by 30 June 2027, and Inland Revenue would exchange this information with other tax authorities (to the extent it related to reportable users resident in that other jurisdiction) by 30 September 2027.

Background

The CARF provides for the collection and automatic exchange of information on crypto-assets. The CARF requires reporting crypto-asset service providers (RCASPs) to provide tax authorities with information on crypto-asset transactions for its reportable users. This information is then exchanged between tax authorities that have implemented the rules.

The material in this Bill commentary item explains New Zealand's proposed implementation of the CARF. It does not provide comprehensive analysis of the rules themselves. The rules themselves, including associated commentary and guidance, are available on the OECD's website. Further information on where this material can be accessed is included at the end of this item.

Crypto-assets are digital representations of value that can be transferred, stored or traded electronically. Instead of relying on a financial institution to verify transactions, crypto-asset transactions are confirmed by computers operating on the crypto-assets network. This is known as distributed ledger technology and blockchain is a form of this technology.

Since the introduction of Bitcoin in 2009, the market for crypto-assets worldwide has experienced fast growth and development. There are currently more than 22,000 crypto-

assets with a market capitalisation of almost NZ$4 trillion. The technological innovations brought about by the growth of crypto-assets and blockchain technology has also led to the development of new products, such as decentralised finance, non-fungible tokens, and the growth of the metaverse. Between 6% to 10% of New Zealanders own some crypto-currency according to three different online surveys that were conducted in 2022.[7] Inland Revenue analytics show that 80% of crypto-asset activity by New Zealanders is undertaken through offshore exchanges.

The rapid growth of crypto-assets has also led to the development of new investment products and payment practices. The characteristics of the technology that underlies crypto-assets, cryptography, poses unique challenges for tax administrations from a tax compliance perspective. The crypto-assets that utilise this technology can be stored and transferred in a decentralised manner, without reliance on traditional intermediaries. This has given rise to a new set of intermediaries, such as crypto-asset exchanges and wallet providers, that are currently subject to little regulatory oversight. In many cases, the intermediary will be located in a different jurisdiction to its users, and it is difficult for tax authorities to obtain information about their tax residents if this information is held offshore.

This development means that tax authorities do not have visibility over income derived through crypto-assets like they do with income generated through more traditional sources. Inland Revenue receives regular income information from employers and investment income payers. For employees, Inland Revenue receives income information from employers on a regular basis. For those with investment income, Inland Revenue receives information from companies, banks, and other investment vehicles on a regular basis. Inland Revenue relies on this information to administer the tax system. This information is used to make sure that taxpayers are paying the right amount of tax and are receiving correct entitlements under social policy schemes.

On an international stage, there has been increased impetus to ensure that tax authorities retain visibility over income or investment earning opportunities that are facilitated for individuals through large-scale intermediaries. For example, the OECD developed the Common Reporting Standard (CRS), which already imposes information gathering and reporting obligations on financial institutions in relation to financial account information about people and entities investing outside their tax residence jurisdiction. More recently, the OECD has developed rules for the platform economy to ensure tax authorities have visibility over income that taxpayers earn through their activities on digital platforms (such as ride-sharing and short-stay accommodation). The platform economy reporting rules took effect in New Zealand on 1 January 2024.

[7] Financial Markets Authority, *2022 Investor Confidence Survey*. Survey conducted March and April 2022.
Financial Services Council, *Money and You* research report. Survey conducted January 2022.
Finder Cryptocurrency adoption index, August 2022.

Against this background, the OECD has developed the CARF, which is available for jurisdictions to implement. This OECD standard provides a standardised framework for the automatic exchange of tax-relevant information on crypto-assets. It makes changes to the CRS to ensure that crypto-related assets held through traditional financial intermediaries are subject to reporting. It also includes other minor technical amendments to improve the usability of the CRS.

The changes related to the CRS are covered in Amendments to Common Reporting Standards below.

All legislative references in this commentary item are to the Tax Administration Act 1994 (TAA) unless otherwise stated.

Key features

The key features of the proposed amendments include:

- incorporating the CARF into the TAA
- changes to the TAA necessary to support the interpretation and implementation of the CARF in New Zealand
- requiring RCASPs (and crypto-asset users) to comply with the requirements set out in the CARF, including self-certification procedures, due diligence requirements, reporting and record keeping
- new civil penalties that would apply if RCASPs and crypto-asset users do not comply with their obligations under the CARF, and
- a regulation-making power that would enable the Governor-General to make Orders in Council that block the effect of future changes to the CARF if necessary.

Detailed analysis

Key terms

To help give effect to the CARF in New Zealand, a definition of "crypto-asset reporting framework" would be included in section 3(1) of the TAA. This definition refers to Part I of the CARF document. A wider definition of "CARF document" would also be included in section 3(1) and this definition refers to the OECD publication in its entirety, which also includes the amendments to the Common Reporting Standard. The CARF itself is set out in Part I of the CARF document.

Proposed new section 185U(1) would also provide that any terms used in the TAA that relate to the CARF have the same meanings as they have in the CARF. This ensures that New

Zealand's law remains consistent with the CARF, even though the CARF is incorporated by reference.

For the avoidance of doubt, it is noted that other Inland Revenue Acts currently contain definitions for "cryptoasset" and "cryptocurrency" (see section 2(1) of the Goods and Services Tax Act 1985 and section YA 1 of the Income Tax Act 2007 (ITA)) that, although broadly similar, differ slightly to the OECD CARF definitions. The definitions in those Acts continue to apply for the purposes of those Acts.

Although proposed new section 185U(1) makes it clear that the OECD terms apply for the purposes of the TAA, this is subject to the proviso "unless the context otherwise requires". The intention here is that any defined term that is subsequently added to the TAA that conflicts with a term in the CARF could take on a separate meaning for the purposes of interpreting other provisions. However, the definitions set out in the CARF take precedence for any provisions in the TAA that pertain to New Zealand's implementation of the CARF.

Key terms defined in CARF

Although the following terms are not defined directly in New Zealand legislation, they are terms that are defined in the CARF that are useful context to include in this commentary item.

A **"Reporting Crypto-Asset Service Provider"** means any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers, including by acting as a counterparty, or as an intermediary, to such Exchange Transactions, or by making available a trading platform.

The term **"Relevant Crypto-Asset"** means any Crypto-Asset that is not a Central Bank digital currency, a specified electronic money product or any Crypto-Asset for which the reporting crypto-asset service provider has adequately determined that it cannot be used for payment or investment purposes.

The term **"Exchange Transaction"** means:

- exchange between relevant crypto-assets and fiat currencies, and
- exchange between one or more forms of relevant crypto-assets.

The term **"Crypto-Asset User"** means an individual or Entity that is a customer of a reporting crypto-asset service provider for purposes of carrying out relevant transactions. An individual or Entity, other than a financial institution or a reporting crypto-asset service provider, acting as a crypto-asset user for the benefit or account of another individual or Entity as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as a crypto-asset user, and such other individual or Entity is treated as the crypto-asset user. When a reporting crypto-asset service provider provides a service effectuating Reportable Retail Payment Transactions for or on behalf of a merchant, the reporting crypto-

asset service provider must also treat the customer that is the counterparty to the merchant for such reportable retail payment transaction as the crypto-asset user with respect to such reportable retail payment transaction, provided that the reporting crypto-asset service provider is required to verify the identity of such customer by virtue of the reportable retail payment transaction pursuant to domestic anti-money laundering rules.

The term **"reportable user"** means a crypto-asset user that is a reportable person.

The term **"excluded person"** means (a) an Entity the stock of which is regularly traded on one or more established securities markets; (b) any Entity that is a Related Entity of an Entity described in clause (a); (c) a Governmental Entity; (d) an International Organisation; (e) a Central Bank; or (f) a Financial Institution other than an Investment Entity described in Section IV E(5)(b).

These terms are correct at date of publication. These terms are far from exhaustive. Please refer to the CARF itself for the rules and defined terms.

Overview

In summary, the proposed new rules would affect:

- reportable users that operate through RCASPs and transact in relevant crypto-assets, and
- RCASPs that facilitate exchange transactions on behalf of reportable users.

Under the CARF, RCASPs must collect and report personal information (such as the name, address, date of birth and tax identification number) for all its reportable users, along with aggregate level data on all relevant crypto-asset transactions in relation to each reportable user. This data includes information on crypto-to-crypto transactions, crypto-to-fiat transactions and transfers of relevant crypto-assets (such as to a wallet address). RCASPs must also carry out due diligence procedures and obtain valid self-certification from crypto-asset users to determine whether they are a reportable user (by verifying their identity and tax jurisdiction).

An RCASP is required to report crypto-asset transaction information on its users to Inland Revenue. To the extent this information relates to New Zealand tax residents, Inland Revenue will use it for tax administration and compliance purposes, such as ensuring that New Zealanders pay the correct amount of tax on their crypto-asset income. When information relates to non-resident users, Inland Revenue will share this information with the relevant tax authority of the non-resident user, who could also use the information for tax administration purposes.

Example 11: Basic operation of CARF in New Zealand

Jacob (a New Zealand tax resident) and Kelvin (a non-resident for tax purposes) operate through a New Zealand-based crypto-asset exchange called Bit-Trade to buy and sell crypto-assets.

Under the proposed amendments to implement the CARF in New Zealand, Bit-Trade is an RCASP and must collect identifying information from Jacob and Kelvin and provide this, along with data on all relevant crypto-asset transactions for the pair, to Inland Revenue.

Inland Revenue:

- Can use the information it receives from Bit-Trade about Jacob for tax administration purposes (such as ensuring that Jacob has returned the correct amount of tax on any profit he has made from his crypto-asset trading activity).
- Must share the information it receives about Kelvin with the tax authority in the jurisdiction in which Kelvin is a tax resident. Kelvin's tax authority could then use this information for tax administration purposes.

Example 12: Information to be reported under CARF

Ben (a New Zealand resident) buys and sells bitcoin through a New Zealand crypto-asset exchange, "KraymondCoin".

Ben loads New Zealand dollars onto his exchange account at KraymondCoin and purchases 0.1 Bitcoin (BTC) for $10,000 (including a $30 transaction fee).

BTC goes up in value and, three months later, Ben decides to sell half of the BTC he has purchased. Ben sells 0.05 BTC for $6,000 and receives $5,980 after the exchange transaction fee is deducted.

BTC continues to rise and Ben worries that he is missing out. Two weeks later, Ben decides to purchase more, this time paying $12,000 for 0.075 BTC (including a $40 transaction fee).

Three weeks later, Ben sells 0.1 BTC for $18,000 (out of which he pays a $60 transaction fee).

Ben's acquisitions and disposals of BTC through KraymondCoin can be summarised as follows:

Acquisitions of BTC	Disposals of BTC
0.1 BTC = NZ$9,970	0.05 BTC = NZ$5,980
0.075 BTC = NZ$11,960	0.1 BTC = NZ$17,940
Aggregate acquisition: 0.175 BTC = NZ$21,930	**Aggregate disposal:** 0.15 BTC = NZ$23,920

The XML schema will prescribe the format of reporting line items. However, at a high level, KraymondCoin is required to report the following aggregate information to Inland Revenue in respect of Ben's transactions under the CARF:

	Gross amount paid/received	Aggregate number of units	Number of relevant transactions
Acquisitions of BTC	NZ$21,930	0.175 BTC	2 acquisition transactions
Disposals of BTC	NZ$23,920	0.15 BTC	2 disposal transactions

Proposed new section 185U(4)(d) would require that the information that relates to a tax year is reported to Inland Revenue within three months of the end of that tax year. The reporting period is for the 1 April to 31 March tax year, so information must be reported to Inland Revenue by 30 June following the tax year to which it relates.

Penalties are also proposed to apply to RCASPs and crypto-asset users that do not comply with their obligations under the CARF. These penalties will be covered later in this commentary item.

Implementing CARF in New Zealand

It is proposed that the CARF is incorporated into New Zealand law by reference instead of full transposition. This is consistent with how other international information-sharing initiatives have been implemented in New Zealand.

Part 11B of the TAA contains provisions related to international sharing agreements. This is made clear by section 185E, which states that the purpose of this Part is to give effect to and implement foreign account information-sharing agreements.

In light of this, proposed new section 185E(6) provides that proposed new section 185U would impose requirements on a person in relation to the CARF, thus giving effect to the CARF in New Zealand.

Automatic flow-through of changes made to CARF

A key feature of the proposed amendments would be that any changes made at the OECD level to the CARF will automatically flow through into New Zealand law unless explicitly blocked by an Order in Council made by the Governor-General on recommendation of the Minister of Revenue. This is set out in section 226E and will be covered later in this commentary item.

Implementation and administration of CARF

Proposed new section 185U contains various provisions that are necessary to support the interpretation, administration, and implementation of the CARF in New Zealand.

Proposed new section 185U(2) would provide that an RCASP must comply with the requirements of the CARF.

Proposed new section 185U(3) would provide that a crypto-asset user must provide information to a person (such as an RCASP) if that information is necessary for that person to comply with the requirements of the CARF.

It is noted that, under the CARF, an RCASP will be subject to the rules and have a reporting obligation in a jurisdiction if they satisfy any of the reporting nexus requirements (for example, being tax resident in a jurisdiction or having a regular place of business in that jurisdiction).

In circumstances when an RCASP has a reporting nexus to more than one jurisdiction, there is a hierarchy of nexus rules to enable the RCASP to determine in which jurisdiction they have the reporting obligation and to avoid double reporting. Because these rules are incorporated by way of reference to the OECD standard in New Zealand law, RCASPs should refer to the OECD CARF document itself to determine the relevant reporting obligation.

Example 13: Application of CRS in New Zealand

Crypto-ex is a large crypto-asset service provider that is headquartered and tax resident in the EU. Crypto-ex also has a regular place of business in New Zealand via its New Zealand branch, which deals with onboarding New Zealand customers and providing these customers with technical assistance when necessary.

Although Crypto-ex has a reporting nexus to New Zealand by virtue of having a branch in New Zealand, it does not have a reporting obligation in New Zealand. This is because it is tax resident in the EU and, under the hierarchy of nexus rules in the CARF, tax residency in a jurisdiction is considered a higher nexus when determining in which jurisdiction the RCASP has a reporting obligation.

Crypto-ex therefore has a reporting obligation in the EU. This means the reporting requirements and due diligence procedures will be completed by Crypto-ex in the EU. The EU will exchange information with New Zealand to the extent it relates to New Zealand residents operating through Crypto-ex.

As previously mentioned, proposed new section 185U(1) provides that, for the purposes of the TAA, terms used in the TAA that relate to the CARF would have the same meanings as they have in the CARF.

Proposed new section 185U(4) further clarifies how certain provisions in the CARF would apply in New Zealand. It specifies that:

- references to "jurisdiction" in the CARF are to be taken as references to New Zealand, unless the context requires otherwise (paragraph (a))
- the "effective date" for the CARF in New Zealand is 1 April 2026 (paragraph (b))
- the "reporting period" is a tax year, which is 1 April to 31 March (paragraph (c))
- the information subject to the reporting requirements under the CARF must be reported by the RCASP to Inland Revenue within three months of the end of the tax year to which the information relates (paragraph (d)).

Proposed new section 185U(4) also contains provisions related to record keeping and self-certification, which will be discussed below.

Record-keeping requirements

Proposed new section 185U(4)(e) would require RCASPs to retain records of all documentation and data obtained under the CARF for a period of at least seven years after the end of the tax year to which the information relates.

Standard Practice Statement SPS 21/02 *Retention of business records in electronic formats, application to store records offshore and keeping records in languages other than English or te reo Māori* applies to customers who are required to keep records under the Inland Revenue Acts. It is intended that RCASPs must therefore keep records in accordance with SPS 21/02. This means that these records must be kept in New Zealand and in English or te reo Māori unless the RCASP has approval from the Commissioner of Inland Revenue to store records outside New Zealand or in another language.

Due diligence procedures

An RCASP must conduct due diligence procedures for the purposes of determining whether a crypto-asset user is a reportable user. For these purposes, the RCASP must obtain valid self-certification from all crypto-asset users operating through it.

A self-certification contains identifying information about the user, including their tax residency, and must be signed or otherwise positively affirmed by the crypto-asset user to be valid.

For pre-existing crypto-asset users that are already operating through the RCASP prior to the implementation of the rules in New Zealand (ie, before 1 April 2026), the RCASP must obtain valid self-certification within a 12-month period following the effective date for the rules. Proposed new section 185U(3)(f) provides that the relevant date for the definition of "preexisting individual crypto-asset user" is 31 March 2026. Similarly, 31 March 2026 is the relevant date for the definition of "preexisting entity crypto-asset user" in proposed new section 185U(3)(g). The effect of this is that the RCASP has a 12-month period until 31 March 2027 to obtain a valid self-certification in respect of pre-existing users (users who had an account with the RCASP prior to New Zealand's rules taking effect on 1 April 2026).

When establishing a relationship with a crypto-asset user who has not previously transacted through the RCASP (ie, a new user rather than a pre-existing user), the expectation is that the RCASP obtains valid self-certification when the user signs up to the platform and before facilitating exchange transactions on behalf of that user.

An RCASP that does not adhere to the self-certification requirements would be subject to New Zealand's proposed penalty provisions. Similarly, a crypto-asset user that fails to provide an RCASP with the information necessary for the RCASP to comply with its obligations under the CARF would also be subject to penalties. The proposed penalty regime is discussed later in this commentary item.

Form, due date and use of information under CARF

The CARF requires RCASPs to provide information to tax authorities in accordance with the relevant XML schema. This ensures that the data tax authorities receive will be in a standardised format that is capable of being exchanged between tax authorities.

RCASPs that have a reporting requirement in New Zealand are required to provide information in respect of reportable users operating through them to Inland Revenue by 30 June each year (within three months following the end of the New Zealand tax year on 31 March). This reporting date is set by reference to the CARF and proposed new section 185U(4)(d)).

This information is then exchanged by Inland Revenue with other foreign jurisdictions to the extent it relates to users resident in that jurisdiction. Under this exchange, Inland Revenue also receives information from other jurisdictions that have implemented the CARF in relation to New Zealand resident users operating through RCASPs in those jurisdictions.

Inland Revenue proposes to use the information it receives under the CARF (and from foreign tax authorities) for tax administration purposes. This would include ensuring that crypto-asset users returned the correct amount of tax on their crypto-asset income.

Enforcement and penalties

Jurisdictions that implement the CARF are required to implement effective enforcement provisions to address any non-compliance by:

- RCASPs with reporting obligations, and
- crypto-asset users who operate through RCASPs.

The Bill proposes new civil penalties in the TAA that could apply to RCASPs and crypto-asset users that fail to comply with their obligations under the CARF. The penalties are based on the penalties introduced to the TAA when the CRS and platform economy rules were implemented in New Zealand.

The definition of "civil penalty" in section 3(1) would be amended to include references to the new penalty provisions for RCASPs (proposed new section 142L) and crypto-asset users (proposed new section 142M). This would ensure that late payment penalties and use-of-money interest apply when penalties have been assessed if they have not been paid by the due date.

Consistent with the penalty provisions for CRS and the platform economy, it is proposed that the civil penalties under the CARF are also discretionary and must be assessed by the Commissioner before they become payable. Proposed new section 94E(1) provides that the Commissioner may make an assessment of the amount of penalty under proposed new sections 142L and 142M (the proposed new penalty provisions) that, in the Commissioner's

opinion, ought to be imposed. However, this discretion is tempered by proposed new section 94E(2), which would provide that the section does not apply to the extent to which a person establishes in proceedings challenging the assessment that the assessment is excessive or that they are not chargeable with the penalty.

The Commissioner would be able to make an assessment of a penalty under proposed new sections 142L and 142M without the need to issue a notice of proposed adjustment (NOPA), see amended section 89C(lba).

Proposed new sections 142L(6) (for RCASPs) and 142M(2) (for crypto-asset users) provide that any penalty assessed by the Commissioner under those sections would become payable on the later of:

- 30 days after the date on which the Commissioner makes the assessment for the penalty, and
- the date set out by the Commissioner in the notice of assessment for the penalty as being the due date for payment of the penalty.

Penalties when RCASPs fail to comply

Proposed new section 142L(1) provides that the section would apply when an RCASP does not comply with the requirements they have in New Zealand under proposed new section 185U. This means that an RCASP can be liable for penalties if they do not comply with their obligations under the CARF.

Under proposed new section142L(2), an RCASP would be liable for a penalty of $300 for each occasion that they do not comply with the requirements of the CARF. This is capped at a maximum of $10,000 per tax year under proposed new section 142L(5)(a). RCASPs would not be liable if their non-compliance is due to circumstances outside their control, see proposed new section142L(3). However, they would still be liable for this penalty if a crypto-asset user has not provided them with a valid self-certification as required by the CARF, even if this is beyond their control.

An RCASP that does not obtain valid self-certification would still be liable for penalties under proposed new section 142L(3) on the basis that the OECD guidance requires jurisdictions to have strong measures in place to ensure valid self-certifications are obtained. Self-certification is an important component of the CARF that is used to verify the identity and tax residence of crypto-asset users and to therefore determine whether they are a reportable user under the CARF. The obligation to obtain valid self-certification from a crypto-asset user sits with the RCASP under the CARF. However, this penalty will not apply to an RCASP that prevents a crypto-asset user from transacting via the RCASP if they have not provided valid self-certification in accordance with the CARF.

Proposed new section 142L(4) sets out penalties that may be applied in circumstances when an RCASP does not take reasonable care to comply with the requirements of the CARF and

no penalties have been imposed under proposed new section 142L(2). In these circumstances, the Commissioner can assess penalties payable on each occasion the RCASP is identified as having failed to take reasonable care to meet a requirement of the CARF. On the first occasion, the Commissioner can assess a penalty of $20,000. On subsequent occasions, the Commissioner can assess a penalty of $40,000. The total amount of penalties that can be assessed for a tax year is proposed to be $100,000 under proposed new section 142L(5)(b).

Example 14: Penalties for RCASPs

Inland Revenue anticipates receiving information from a New Zealand-based RCASP in respect of reportable users operating through it. Inland Revenue does not receive this information by 30 June (three months from the end of the tax year). Inland Revenue writes to the New Zealand-based RCASP and asks when to expect the information.

The RCASP responds stating that they refuse to comply with their obligations under the CARF.

On this occasion, the Commissioner imposes a $20,000 penalty under proposed new section 142L(4).

Following the imposition of the penalty, the New Zealand-based RCASP starts to adhere to the reporting requirements and provides Inland Revenue with the relevant aggregate transaction information for its reportable users as required by the CARF.

Despite now providing information as required, Inland Revenue notices that the RCASP only obtains valid self-certifications from some of its users. Inland Revenue imposes multiple $300 penalties under proposed new section 142L(2) for each occasion that the RCASP does not comply, quickly hitting the $10,000 cap in proposed new section 142L(5). Inland Revenue also writes to the RCASP advising them of the self-certification requirements under the CARF. The RCASP responds, stating that the self-certification requirements are not a priority for them, and it continues to not obtain valid self-certification from crypto-asset users.

On this occasion, the Commissioner imposes a $40,000 penalty under proposed new section 142L(4).

Penalties when crypto-asset users fail to comply

A crypto-asset user would be liable for a penalty of $1,000 under proposed new section 142M for a failure to provide information to a person (for example, to an RCASP) if the information is necessary for the person to comply with the requirements of the CARF in relation to the crypto-asset user or related person.

Example 15: Penalties for crypto-asset users

Simon is a crypto-asset user that buys and sells crypto-assets through a New Zealand-based RCASP. Simon has been a customer of the RCASP since 2019 and is a pre-existing individual crypto-asset user under the CARF. Simon is a non-resident for tax purposes in New Zealand.

As Simon is a pre-existing user, the RCASP must obtain valid self-certification from Simon by 1 April 2027 (ie, by 12 months after the effective date of the CARF in New Zealand).

For the RCASP to obtain valid self-certification from Simon, Simon must provide the RCASP with personal information about himself, including his jurisdiction of residence for tax purposes, and ensure that his self-certification is signed or positively affirmed by him.

Simon does not provide this information because he knows that it could result in information about his crypto-asset transactions being shared with his tax authority.

Under proposed new section 142M, the Commissioner could assess a penalty of $1,000 against Simon.

Absolute liability and strict liability offences would not apply

Section 143(2C) would be amended to include a reference to the CARF. This ensures no person may be convicted of an absolute or strict liability offence for not complying with a requirement under the CARF.

Regulations related to CARF

Section 226E contains a regulation-making power that enables the Governor-General to make Orders in Council that provide for the effect or lack of effect of a change to the CRS, the time period to which such changes may apply, and how that effect may apply to a person or group of persons.

Section 226E would be amended to include reference to the CARF.

As a default position, changes made to the CARF by the OECD would take effect in New Zealand without the need for regulation or legislative change to incorporate the effect of those changes in New Zealand. This is intended to ensure that New Zealand's rules are equivalent with other OECD member countries that have also implemented the rules.

The purpose of the proposed amendment to section 226E is to provide a mechanism to block changes from having effect in New Zealand that may be inappropriate. This could

include, for example, changes that are optional and that the Government decides should not have legislative effect.

Detailed guidance on CARF

The purpose of this Bill commentary item is to focus on the specific amendments to New Zealand's tax laws to give effect to the OECD CARF.

The CARF itself is available on OECD's website at *https://web-archive.oecd.org/temp/2023-11-10/642426-crypto-asset-reporting-framework-and-amendments-to-the-common-reporting-standard.htm*

Amendments to Common Reporting Standard

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

Summary of proposed amendments

The Bill would give effect to a number of amendments to the Common Reporting Standard (CRS) that were adopted by the Organisation for Economic Co-operation and Development (OECD) Council in June 2023. The proposals would support the Crypto-Asset Reporting Framework (CARF) (outlined above) and would also make several minor technical changes to improve the usability of the CRS. The Bill would also include several consequential amendments that are necessary to implement the CRS amendments.

Effective date

The proposed amendments to the CRS would take effect on 1 April 2026.

The first year for which reports under the amended CRS would be required would be the 2026–27 tax year, and these would be due in 2027.

Background

The OECD and G20 developed the CRS for automatic exchange of information (often referred to as "AEOI") to improve tax transparency and combat tax evasion. The CRS is the global framework for the collection, reporting and exchange of financial account information between tax authorities about persons that invest outside their jurisdiction of tax residence. The CRS requires in-scope financial institutions to meet specified due diligence and reporting requirements about non-resident account holders and controlling persons. An in-scope financial institution reports the specified account information to its domestic tax authority, and the authority then shares the information with the tax authority in the account holder's or the controlling person's jurisdiction of tax residence under the CRS.

These amendments to the CRS follow the first comprehensive review of the CRS and have been released together with the CARF. The amendments comprise changes to both the CRS Rules and Commentary and result in changes to the supporting XML schema.

New Zealand implemented AEOI and the CRS[8] in 2017. The approach adopted was to incorporate the CRS into the Tax Administration Act 1994 (TAA) by reference to the OECD standard, subject to modifications for New Zealand purposes. This approach reduces the risk of inadvertent differences between domestic legislation and the CRS and broadly enables

[8] See the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017.

amendments to flow into New Zealand law. As a result, only minimal changes are required to New Zealand legislation to give effect to the amendments to the CRS and to provide for New Zealand's specific requirements.

To support these amendments, Inland Revenue's guidance would be updated to set out the amended CRS obligations.

Key Features

The CARF and the CRS are separate, complementary, frameworks. The proposed amendments to the CRS would ensure a smooth interaction between the CRS and the CARF. The proposals would also incorporate several minor or technical amendments to improve the CRS.

The key amendments to the CRS would:

- include new digital financial products that are alternatives to holding money or financial assets in an account that is currently subject to CRS reporting
- change the definition of financial asset to include derivatives referencing crypto-assets and the definition of investment entity to include those investing in crypto-assets
- introduce stronger due diligence procedures and more detailed reporting requirements to include contextual information about the account holders, controlling persons, and the financial accounts they own, and
- exclude capital contribution accounts intended for the incorporation of a new company or a pending capital increase.

For New Zealand purposes, the amendments would be incorporated in New Zealand law automatically by section 185O of the TAA. The new definition of "CARF document" in section 3(1) of the TAA would confirm the application of the CARF and the 2023 update to the CRS. This Bill proposes the effective dates for the amendments to the CRS and makes other changes to ensure its implementation in New Zealand.

Detailed analysis

New digital financial products

Electronic money products and central bank digital currencies are functionally similar to a traditional bank account and may therefore entail tax compliance concerns similar to those associated with bank accounts currently covered by the CRS.

The defined terms under Section VIII of the CRS would be amended to ensure that the reporting and due diligence requirements under the CRS also apply to depository institutions that hold electronic money products and central bank digital currencies.

Definitions of "financial asset" and "investment entity"

The CRS requires financial institutions to apply due diligence and reporting requirements to investments in derivatives and interests in funds and wealth management vehicles. The proposed amendments would expand the definitions of "financial asset" and "investment entity" in Section VIII of the CRS to include investments in derivatives referencing crypto-assets and interests in funds and wealth management vehicles that hold crypto-assets. The definition of "passive income" in section 3(1) of the TAA would be amended accordingly to include relevant crypto-assets. However, unless they choose otherwise, financial institutions would not be required to report the information on certain assets that have to be reported under the CARF.

New due diligence and reporting requirements

New reporting requirements would be included in Section I of the CRS to require additional information, such as the type of financial account, the roles of equity interest holders and controlling persons in an investment entity, and whether valid self-certification has been provided. The additional requirements in Sections II to VII of the CRS would strengthen the due diligence procedures, such as the conditions under which financial institutions can rely on anti-money laundering (AML)/know your client (KYC) procedures.

Exclusion of certain capital contribution accounts

The definition of "excluded account" in Section VIII of the CRS would be amended to include capital contribution accounts. These accounts hold funds for a limited period of time for the purpose of the incorporation of a new company or a pending capital increase. To avoid misuse of such accounts, they will only be treated as excluded for a maximum period of 12 months.

Other minor amendments

Under section 185O(3)(b) of the TAA, the CRS standard is treated as applying consistently with the Commentary on the CRS. The CRS update includes amended Commentary. This is intended to increase consistency in the application of the CRS and to incorporate guidance and responses to frequently asked questions that have been released by the OECD since the initial implementation of the CRS.

New Zealand specific changes

Wider approach to CRS

New Zealand adopted the wider approach to the CRS. The wider approach is intended to minimise compliance effort by enabling due diligence to apply to all non-residents, regardless of whether the person is resident in a reportable jurisdiction (one with which New Zealand shares CRS information). The approach to due diligence is mandatory for all New Zealand financial institutions. Financial institutions are only required to report information on accounts that belong to a resident of a reportable jurisdiction. However, they have the option of reporting all account information to Inland Revenue, meaning that they do not need to further sort non-resident data.

The wider approach was given effect in New Zealand through schedule 2, part 1, item 2 of the TAA by replacing sections I to VII of the CRS with the text of Annex 5 included in the CRS publication. Annex 5 contains an extract from Sections I to VII that has been amended to reflect the wider approach.

Although the definition of "CRS standard" under section 3(1) of the TAA includes any future amendments to the CRS, parts of the current amendments to the CRS might be nullified under the current law because the wider approach in Annex 5 was not correspondingly amended by the OECD. As such, while there has been no change to the application of the wider approach to due diligence in New Zealand, schedule 2, part 1 of the TAA would be amended to ensure that any amendments to the CRS would be automatically incorporated while also retaining the application of the wider approach. Additional items in schedule 2, part 1, would be amended to ensure that the CRS works as intended.

Lower/higher value accounts

The CRS requires more stringent due diligence requirements for pre-existing individual and entity accounts with aggregate balances above certain thresholds (US$1,000,000 for individual accounts and US$250,000 for entity accounts). This is intended to reduce the compliance burden.

An individual or entity account will be deemed a pre-existing account if the financial account is maintained by a financial institution the day before the implementation of the CRS. The due diligence requirements that would apply to the individual or entity account would depend on the aggregate balance of the account.

With the inclusion of new financial assets, the amended CRS approved by the OECD includes an amended definition of "pre-existing account" to cater for financial accounts that should be treated as pre-existing accounts solely by virtue of the amendments to the CRS. However, corresponding adjustments have not been made to the provisions that would determine if the account should be subjected to less or more stringent due diligence requirements.

Amendments proposed under schedule 2, part 1 of the TAA would clarify that the due diligence requirement that applies to a financial account that becomes a pre-existing account solely by virtue of the amendments to the CRS would depend on the aggregate balance of the financial account.

Qualified non-profit entities

A non-profit entity, such as a charity, is required to report under the CRS if it meets the definition of a "reporting financial institution". Very few New Zealand charities are required to report under the CRS and there is no evidence that the existing treatment of non-profit entities has led to unintended consequences in New Zealand.

As such, New Zealand will not be implementing the optional provision to include a "qualified non-profit entity" as a "non-reporting financial institution" (see the Commentary on Section VIII of the CRS).

Dates

The OECD left the dates for the amendments to the CRS to take effect unspecified. For New Zealand, the first year the changes would come into operation would be the 2026–27 tax year, with the first reports being made in 2027. This is in line with the OECD's expected timeline for jurisdictions to incorporate the changes in 2026 and to commence exchange under the amended CRS in 2027. Proposed changes to schedule 2 would specify the relevant dates for implementation of the amended CRS.

When appropriate, the provisions in section 185N and schedule 2 of the TAA that refer to initial implementation date of the CRS would also be amended to incorporate the implementation of the amendments to the CRS.

Inland Revenue
Te Tari Taake

Date: August 2024

Taxation of transfers from overseas pension schemes

Taxation of transfers from overseas pension schemes

Clauses 13, 87, 93, 94, 95(1), (3), and (4), 104, 105(4), (24), (27), (32), (33), and (34), 113(2), 117(2), (7), (9), and (10), 119, 120, 121, 122, 123, 124, 133, 139, 140, 188, 190, and 191

Summary of proposed amendments

The proposed amendments would address two issues that affect the transfer of pension funds to New Zealand by:

- providing for a "scheme pays" option to allow a person transferring their overseas pension fund to certain New Zealand superannuation schemes to elect to have the New Zealand scheme pay the tax due on the transfer on the person's behalf, and
- allowing certain currently "locked-in" funds that a person originally transferred from the United Kingdom (UK) to a New Zealand KiwiSaver scheme to be transferred to a New Zealand qualifying recognised overseas pension scheme (QROPS) to allow for the balance of the person's funds in the KiwiSaver scheme to be managed without UK tax implications.

Effective date

The proposed amendments to introduce "scheme pays" would take effect on 1 April 2026.

The proposed amendments to allow the transfer of locked-in UK funds would take effect on 1 April 2025.

Background

New Zealand's system for taxing retirement savings

New Zealand has a "taxed, taxed, exempt" (TTE) system for taxing retirement savings—scheme contributions and investment returns are taxed, but withdrawals are exempt.

Under this system, foreign pension transfers to New Zealand, when made outside the four-year transitional residence period,[9] result in New Zealand tax payable at an individual's

[9] During the transitional residence period, a migrant's passive foreign-sourced income is exempt from New Zealand tax. Transitional residence is a concession to reduce compliance costs for migrants who are new to New Zealand.

marginal rate on some of the lump sum transferred. The tax applies only to the amount of income derived by the pension fund (fund growth) after the person became New Zealand tax resident or after their transitional period ended (when applicable). The tax on transfer is a catch-up of the tax that would have been paid on the fund if it had been invested in New Zealand from the time the person became resident here. In some cases, the amount of tax payable can be substantial, such as when a person transfers a large pension fund many years after becoming New Zealand resident.

United Kingdom's system for taxing retirement savings

In contrast to New Zealand, the UK has an "exempt, exempt, taxed" (EET) system for taxing retirement savings. Contributions and investment returns are exempt, but withdrawals are taxed.

Because contributions and investment returns are not taxed, the UK has strict rules governing transfers of UK pension funds to overseas schemes and subsequent payments from those schemes. Transfers to overseas schemes are only permitted free of tax if the receiving scheme is a QROPS. Broadly, QROPS are schemes that must comply with the UK rules for pension schemes. These include a rule that generally disallows withdrawals from the fund before the UK's minimum retirement age (currently 55).

Transfers to overseas schemes that are not QROPS are subject to unauthorised payment charges of up to 55%. In effect, the charges claw back the relief given to the pension funds accumulated in the UK.

Similar tax charges apply to withdrawals or transfers from QROPS made before age 55.

Although time limits apply to these UK charges, ongoing issues for migrants arise.

Problem 1: payment of tax on transfer

New Zealand's TTE system means some migrants who transfer their pension fund to a QROPS after many years in New Zealand are met with a substantial tax liability, which they struggle to pay without making a withdrawal from the fund itself. However, doing so triggers UK tax charges. This creates a barrier to QROPS transfers.

Problem 2: locked-in KiwiSaver schemes

KiwiSaver schemes ceased to be recognised by HMRC, the UK tax authority, as QROPS from 6 April 2015[10] because they allow withdrawal before age 55 in various circumstances, such as the purchase of a first home or significant hardship. Consequently, UK pension funds

[10] KiwiSaver schemes continued to be able to receive transfers until 17 June 2015, due to a short transitional concession.

transferred to KiwiSaver schemes before this change was made are in some cases unable to be transferred to another KiwiSaver scheme or managed without UK tax charges applying (ie, they are locked in). This causes issues for migrants and KiwiSaver providers wanting to transfer funds between schemes.

Key features

Payment of tax on transfer – "scheme pays"

Proposed new subpart RI of the Income Tax Act 2007 (ITA) would allow a person who is transferring their UK pension fund to a New Zealand QROPS or non-UK pension fund to a KiwiSaver scheme[11] to elect to have the New Zealand scheme pay the tax due on transfer on the person's behalf. This election, referred to in this commentary as "scheme pays", would have the following features:

- "Scheme pays" would be available only for transfers, not withdrawals; withdrawals would continue to be taxed at marginal rates.
- "Scheme pays" would only be available for transfers to a "transfer scheme", defined in section YA 1 of the ITA as a QROPS or a KiwiSaver scheme. A definition of QROPS would also be inserted in section YA 1.
- All QROPS and KiwiSaver schemes would be required to participate in "scheme pays".
- The person could still choose to pay the tax themselves under current rules; "scheme pays" would be optional for the person.
- Under proposed sections RI 3 and RI 5, if the person elected "scheme pays", the scheme would be required to withhold and pay the tax due (transfer scheme withholding tax (TSWT)) to the Commissioner of Inland Revenue by the 20th day of the following month. The transfer scheme would file a return in the prescribed form, under proposed new section 57C of the Tax Administration Act 1994 (TAA).
- Proposed section RI 4 provides that TSWT would be at a flat rate of 28% of the "assessable withdrawal amount" (a definition of this would be inserted in section YA 1).
- TSWT would be a final tax on the assessable withdrawal amount for the person. The definition of "schedular income" in section YA 1 would be amended to include an assessable withdrawal amount that is subject to TSWT, and new clause 15 of schedule 1 would set the tax rate at 28%, regardless of the person's marginal tax rate.
- A "scheme pays" election by the person would be irrevocable.

[11] As explained further in Detailed analysis, the proposal that "scheme pays" be available for transfers of non-UK pension funds to KiwiSaver schemes is motivated by equity considerations that arise as a consequence of creating the "scheme pays" mechanism for UK pension transfers.

- Section 22D of the TAA would be amended to make an assessable withdrawal amount “reportable income”.
- Sections 25B, 25C and 25E of the TAA would be amended and proposed new section 25LB would be inserted so that an assessable withdrawal amount on which tax is paid by the scheme under “scheme pays” or by the person under current rules would be defined as “investment income” and subject to the appropriate reporting requirements. Scheme providers would need to submit, in the form prescribed by the Commissioner, monthly digital reports of transfers received, regardless of whether the relevant person has elected “scheme pays”.
- The person would be liable for providing to the scheme the correct personal information and the amount of their assessable withdrawal amount under proposed new section 31D of the TAA.
- Under proposed new section 98C, the Commissioner would be able to make an assessment of the assessable withdrawal amount.

Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

Proposed new sections 220C and 220D and clause 16B of schedule 1 of the KiwiSaver Act 2006 would allow a KiwiSaver provider or individual member to elect for the member’s locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds had been transferred to the QROPS, the remaining balance of the KiwiSaver account could then be managed without UK tax implications.

The election would come with the following requirements:

- If the KiwiSaver provider makes the election, it must obtain the written consent of:
  - the member, for the provider to transfer the locked-in UK funds to a designated QROPS, and
  - the designated QROPS, to receive the transfer.
- If the individual member makes the election, they must:
  - notify their KiwiSaver provider that it needs to transfer the locked-in funds to a designated QROPS, and
  - obtain the written consent of the designated QROPS to receive the transfer.
- The provider or individual could designate any QROPS to receive the transfer. However, there would be no legislative requirement for a QROPS to accept such transfers; it would be up to KiwiSaver providers and members to get written consent from a QROPS to receive locked-in UK funds.

- The amount of locked-in funds would be treated as comprising the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015) and any investment returns on that amount. The provider would be required to have records showing how the locked-in amount was identified.
- Only locked-in UK funds (treated as including investment returns on the original amount) would be transferrable into a QROPS. The remaining KiwiSaver balance would remain subject to the existing KiwiSaver rules, under which the accumulation can only be transferred to another KiwiSaver scheme.
- The entire amount of locked-in UK funds would have to be transferred to the QROPS in one transaction.

Detailed analysis

As briefly noted in Background above, transfers of UK pension funds to overseas schemes that are not QROPS are subject to UK tax charges of up to 55%. Transfers and withdrawals made from QROPS before age 55 are also subject to such charges, but certain time limits apply to these. These limits are a "10-year non-residence rule" and an additional "five years from transfer rule".[12]

Migrants face the two issues detailed below because the relevant actions would be taken within the time windows in which the tax charges apply and would trigger those charges.

Payment of tax on transfer – "scheme pays"

Currently, migrants wanting to transfer their UK pension funds to a QROPS outside the transitional residence period must generally pay the transfer tax out of personal funds. They cannot withdraw from the transferred funds to pay the tax without incurring UK tax charges of up to 55%, since the withdrawal for that purpose would always be within the time limit. However, for many migrants, paying the tax themselves is difficult – particularly when the tax due is substantial.

The proposed "scheme pays" option would resolve this issue. The QROPS would withhold the tax from the transferred funds and pay it to Inland Revenue directly, and the UK would not impose any tax charges because no funds would flow to the migrant personally.[13] In effect, "scheme pays" would eliminate the cashflow barrier to QROPS transfers and thereby enable more migrants to move their pension funds to New Zealand. In addition to removing this

[12] PTM 113210 – International: UK tax charges on non-UK schemes: the member payment charges and taxable property charges: the member payment charges: basic principles – HMRC internal manual

[13] Inland Revenue consulted HMRC when developing these proposals.

barrier for individuals, "scheme pays" may increase investment in New Zealand's capital markets and contribute to economic growth.

There are a number of design considerations for "scheme pays". Below is an analysis of each of the key features outlined in the previous section.

"Scheme pays" available only for transfers, not withdrawals

"Scheme pays" would not be available for withdrawals. These would continue to be taxed at marginal rates. Changes to the withdrawal rules are outside the scope of this policy proposal.

"Scheme pays" only available for transfers to QROPS and KiwiSaver schemes

Limiting "scheme pays" to transfers to QROPS and KiwiSaver schemes would mitigate a possible integrity risk. The concern is that a high-income migrant might decide not to withdraw their foreign pension fund directly but instead **transfer** the fund to a New Zealand scheme, have the scheme pay the tax at 28% under "scheme pays", and then immediately withdraw the fund, effectively circumventing tax at their marginal rate under the withdrawal rules (wash-through).

However, most transfers to QROPS and KiwiSaver schemes should not pose this concern. In the case of transfers to QROPS, the UK could impose charges of up to 55% if the migrant withdrew immediately after transferring. In the case of transfers to KiwiSaver schemes, there are various conditions around withdrawals that would make wash-through infeasible in most cases.

All QROPS and KiwiSaver schemes must participate in "scheme pays"

Requiring KiwiSaver schemes to participate in "scheme pays", as well as QROPS, would increase horizontal equity between migrants from different countries. In principle, UK migrants should not be advantaged over migrants from other countries by having unique access to the 28% flat rate for transfers. However, it should be noted that not all countries allow emigrants to transfer their pension funds to a scheme in their destination country – some only allow direct withdrawal. The proposed requirement would ensure horizontal equity between migrants from countries that permit transfers, to the extent those transfers are made to QROPS or KiwiSaver schemes.[14]

"Scheme pays" optional for person

Making "scheme pays" optional for migrants means that migrants with a marginal rate lower than 28% could still pay the tax themselves if they wanted and were able to. Migrants with a higher marginal rate would also be able to pay the tax themselves if they preferred to do so.

[14] As noted, for integrity reasons "scheme pays" would not be available for transfers to schemes that are neither QROPS nor KiwiSaver schemes. See "Scheme pays" only available for transfers to QROPS and KiwiSaver schemes.

Scheme must pay tax if "scheme pays" elected

If the person elected "scheme pays", the scheme would have the liability for the tax on transfer and not the person. There would be no ability for the scheme to decline to pay the tax from the person's transferred funds if the person had elected for the scheme to do so. This would support the policy intent of facilitating transfers.

The due date for the tax would be the 20th of the month following the transfer. This is in line with payment deadlines for tax on other investment income paid for a particular month.

The requirement for the scheme to file a return at that time is also in line with filing requirements for other payers of investment income, such as multi-rate portfolio investment entities (which most QROPS are).

Tax due under "scheme pays"

The tax payable by the scheme under "scheme pays" (TSWT) would be imposed at a flat 28% of the "assessable withdrawal amount" (as defined in section CF 3(7) of the ITA) notified to the scheme by the person.

The flat rate would be simple for Inland Revenue's systems and would remove the risk of miscalculations that might result in tax flowing back to the individual, in breach of the UK's rules.

Final tax under "scheme pays"

If the person chooses to have the transfer scheme pay TSWT at the 28% rate, this would effectively be a final tax on the assessable withdrawal amount for the person. It would be treated as schedular income under a proposed amendment to the definition of "schedular income" in section YA 1 and subject to tax at 28% under proposed new clause 15 of schedule 1 of the ITA, regardless of the person's marginal tax rate.

"Scheme pays" election irrevocable

It is proposed that "scheme pays" elections be irrevocable. Allowing a person to change their mind and elect to pay the tax themselves after the scheme had already paid the tax would create additional complexity, which would not be warranted.

Taxable amount treated as "reportable income"

Making an assessable withdrawal amount "reportable income" would mean that, if the person decided they would pay the tax on the amount themselves, the amount would be included in the person's pre-populated account for the purposes of determining their income tax liability for the year. This would be in line with the treatment of various other kinds of income paid to persons, such as PAYE income and attributed PIE income.

Taxable amount treated as "investment income"

Assessable withdrawal amounts on which tax is paid by the scheme under "scheme pays" or by the person under current rules would be "investment income" (as defined in section 25C of the TAA).

Defining the amounts this way would allow the relevant tax administration provisions, including deadlines, penalties, and reporting, to apply to transfers. No new tax administration requirements would need to be created for "scheme pays".

Since transferred amounts would be defined as "investment income", schemes would be required to provide monthly digital reports of transfers received, regardless of whether the person elected "scheme pays". The report would include details of the individual, their presence in New Zealand, the amount being transferred, and whether the scheme will pay the tax, and, if so, the tax paid. The additional reporting is intended to improve compliance with payment of tax on foreign superannuation transfers and to enable pre-population of the individual's MyIR account, easing compliance. Currently, there is a concern that some individuals struggle to comply with the tax rules for these transfers. Reporting by schemes would give Inland Revenue better visibility of them.

Liability for correct information

The person would be liable for providing to the scheme the correct personal information and the amount of their assessable withdrawal amount.[15]

The scheme would only be liable for tax on the advised amount. If the amount advised by the person to the scheme turned out to be less than the correct taxable amount, then the person would be liable for, and would need to pay to Inland Revenue, the shortfall together with any applicable interest and penalties.

In consultation, scheme providers expressed reservations about them being responsible for determining the correct taxable amount because they did not always have the necessary information.

Commissioner may make assessment of taxable amount

Enabling the Commissioner to make an assessment of the assessable withdrawal amount would address the possible situation when the Commissioner has reason to believe that the amount from which the transfer scheme withheld the tax was incorrect. The Commissioner would issue an assessment either requiring the scheme to pay an assessed shortfall or refunding an assessed overpayment to the scheme.

[15] The assessable withdrawal amount may be calculated using either the schedule method or the formula method, set out in section CF 3(10) to (19) of the ITA.

Example 16: "Scheme pays" election

In 2017, Emma migrated from the UK to New Zealand. Emma has a UK pension fund, which she decided to leave in the UK in case she planned to return one day. However, over time she becomes settled in New Zealand and, in January 2027, Emma decides she wants to transfer her UK pension fund to a New Zealand QROPS (which is a portfolio investment entity (PIE)).

Using the formula method, Emma works out that the assessable withdrawal amount portion of her transferred funds is NZ$300,000. Her marginal tax rate is 33%. Emma does not have sufficient liquid funds to pay the $99,000 of tax due. She also does not want to make a withdrawal from the QROPS to pay the tax because the UK would impose charges of up to 55% of the transferred amount.

Instead, Emma elects "scheme pays". She provides the QROPS receiving the transfer with her personal information and the amount of the assessable withdrawal amount. The QROPS withholds $84,000 (being 28% of $300,000) from the total amount transferred and remits it directly to Inland Revenue. The QROPS also reports the transfer as part of its monthly investment income reporting.

There is no further tax to pay on the transferred amount. Going forward, the investment returns Emma earns through the QROPS will be taxed under the PIE regime.

Locked-in KiwiSaver schemes – election to transfer UK funds to QROPS

KiwiSaver schemes ceased to be included in the UK's QROPS regime on 6 April 2015 (although transfers already in progress could be completed by 17 June 2015 without incurring UK tax charges).

Currently, there is uncertainty among some KiwiSaver providers and members as to the status of funds transferred prior to 17 June 2015. In particular, there is uncertainty as to whether such funds can be transferred to another KiwiSaver scheme without triggering UK tax charges. Several UK tax rules contribute to this uncertainty.

First, as noted above, UK pension funds can only be transferred to an overseas scheme free of UK tax charges if the funds are transferred to a QROPS. If UK funds are transferred to a non-QROPS, charges of up to 55% apply.

However, under the five-year non-residence rule then in force, UK tax charges do not apply to payments made in relation to a member's transferred funds if the member is not UK

resident at the time of the payment and was not UK resident earlier in the tax year or in any of the five previous tax years.

The application of these rules to historic KiwiSaver scheme transfers is as follows.

Since KiwiSaver schemes were considered QROPS prior to 6 April 2015, many migrants from the UK transferred their UK pension funds to a KiwiSaver scheme and were then free to transfer between KiwiSaver schemes if they or the providers wished. However, after 17 June 2015, a transfer to a different KiwiSaver scheme became subject to unauthorised payment charges. Therefore, in effect, migrants were "locked in" to the KiwiSaver provider they were with on that date.

Nevertheless, this was time limited. If a locked-in migrant was not UK resident earlier in the tax year, or in any of the five previous UK tax years, they would be able to transfer KiwiSaver schemes without incurring unauthorised payment charges, and in that sense, they would no longer be locked in. The UK tax year runs from 6 April to the following 5 April, so migrants could have ceased to be locked in from 6 April 2021.

KiwiSaver providers have continuing obligations for locked-in members. These will include individuals who have had a period of UK residence since 17 June 2015, causing the five-year non-residence rule to reset for them. KiwiSaver providers have therefore continued to advocate for a solution to the locked-in issue.

The proposed solution would amend the KiwiSaver Act to allow a KiwiSaver provider or an individual member to elect for the member's locked-in UK retirement funds to be transferred from the KiwiSaver scheme into a New Zealand QROPS. After the UK funds had been transferred to a QROPS, the remaining balance of the KiwiSaver account could then be managed without UK tax implications. This is because the KiwiSaver account would no longer contain the funds to which UK tax rules had applied.

Below is an analysis of each of the key features outlined in the previous section.

Consent requirements for election

The choice of retirement savings provider is an investment decision that should generally be up to the individual member, where practicable. This is why it is proposed that the provider would need the member's consent to make the election to transfer the locked-in funds to a QROPS, whereas the member would not need the provider's consent.

It is also important that the provider or member obtain the written consent of the QROPS to receive the transfer. It is not proposed that QROPS be required by legislation to receive such transfers because doing so would seem an overreach for what is a very confined policy issue. It would be up to providers, members and QROPS to agree between themselves how to manage the transfers of locked-in funds.

Any QROPS may receive transfer

The provider or individual would be able to designate any QROPS to receive the transfer. However, as noted, there would be no legislative requirement for a QROPS to accept such transfers; it would be up to KiwiSaver providers and members to get written consent from the QROPS to receive locked-in UK funds.

Locked-in amount for purposes of transfer

The amount of locked-in funds would be treated as comprising the original amount transferred from the UK scheme to the KiwiSaver scheme (prior to 17 June 2015) and any investment returns on that amount. The provider would need to have records showing how the locked-in amount was identified.

Strictly speaking, the actual locked-in amount is only the original amount transferred from the UK scheme to the KiwiSaver scheme, since it is only this amount that is subject to UK member payment charges if withdrawn within the time periods specified in UK legislation. However, in some cases the original amount of UK funds transferred may not be easily identifiable, only the amount held currently, which includes investment returns. To make the transfer election practical to implement, it is therefore proposed that investment returns on the original locked-in amount be permitted to be transferred to a QROPS together with the original amount.

Only UK funds transferrable to QROPS

Only locked-in UK funds (treated as including investment returns on the original amount) would be transferrable into a QROPS. The remaining KiwiSaver balance would remain subject to the existing KiwiSaver rules, under which the accumulation can only be transferred to another KiwiSaver scheme.

It would undermine the integrity of the KiwiSaver regime, under which the retirement withdrawal age is 65, to allow more than the UK-related funds to be transferred to a QROPS, which allows withdrawals from age 55.

UK funds transferred to QROPS in single transaction

It is proposed that the entire amount of locked-in UK funds must be transferred to the QROPS in a single transaction. A one-time, “all or nothing” approach is simpler than allowing multiple partial transfers.

Requiring a one-time transfer would also mitigate the potential risk to the integrity of the KiwiSaver rules outlined above because the complexity of multiple transfers could more easily result in more than the amount of locked-in UK funds (plus investment returns) being transferred to a QROPS.

Example 17: Election to transfer locked-in UK funds from KiwiSaver scheme to QROPS

On 30 September 2014, soon after migrating from the UK to New Zealand, Richard transferred his UK pension fund of NZ$400,000 to a KiwiSaver scheme. The KiwiSaver scheme was understood to be a QROPS, so no UK tax charges applied to the transfer.

However, on 6 April 2015, Richard's KiwiSaver scheme (and all KiwiSaver schemes) ceased to be recognised by the UK as a QROPS. The UK funds transferred to his KiwiSaver continued to be treated as QROPS funds, but now Richard could not transfer to another KiwiSaver scheme without incurring UK tax charges; he was locked into his current KiwiSaver scheme.

On 3 July 2025, Richard is notified by his KiwiSaver provider that the scheme is winding up, and all its members will be transferred to another better-performing KiwiSaver scheme. This will be a transfer under the KiwiSaver Act.

The KiwiSaver provider decides to transfer Richard's locked-in UK funds to a designated QROPS. The provider obtains the written consent of:

- Richard, for the provider to transfer the locked-in UK funds to a designated QROPS, and
- the designated QROPS, to receive the transfer.

The provider then transfers the portion of Richard's KiwiSaver accumulation attributable to UK funds to the QROPS. The amount transferred is $450,000, comprising the original $400,000 of UK funds and $50,000 of investment growth on that $400,000. The KiwiSaver provider has records that show the UK funds were ring-fenced so they could be separately identified.

There are no adverse UK consequences because it is a transfer to a QROPS, and Richard never had access to the funds.

Now that the UK funds have been transferred out of Richard's KiwiSaver scheme, the provider initiates the transfer of the KiwiSaver. The remaining balance in Richard's KiwiSaver account is transferred to the new KiwiSaver scheme with no UK tax implications.

Other policy items

Approved issuer levy retrospective registration

Clauses 128(3), 141, and 199

Summary of proposed amendments

The proposed amendments to the Stamp and Cheque Duties Act 1971 (SCDA) and the Tax Administration Act 1994 (TAA) would allow a New Zealand borrower paying interest to a non-associated non-resident lender to register a security for approved issuer levy (AIL) retrospectively if the borrower did not register it on time in certain circumstances. This would allow AIL to be paid on interest paid prior to registration.

Effective date

The proposed amendments would take effect on 1 April 2025. Retrospective registration would be available from 1 April 2025 but could not be backdated before that date.

Background

NRWT versus AIL

The default position is that a New Zealand borrower paying interest to a non-resident lender is required to withhold non-resident withholding tax (NRWT) from the payments at 10% or 15%.[16] However, if the borrower is not associated with the lender, they can instead opt to pay AIL on the interest payments at 2% (or in certain cases 0%[17]), which reduces the NRWT liability to zero.

The AIL regime was introduced in 1991 to reduce the cost of third-party debt provided by non-residents to New Zealand borrowers. Foreign lenders can typically demand a certain after-tax return on their investment. Therefore, unless the lender can easily claim a full credit for New Zealand NRWT in its home jurisdiction, it will typically require the borrower to gross up their interest payments to cover the NRWT, which increases the cost of capital for the borrower. The AIL regime significantly reduces the tax cost to the borrower in situations when the lender is passing that cost onto them.

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[16] Depending on whether New Zealand has a double tax treaty with the country in which the lender is resident.

[17] The 0% rate is only applicable to certain widely held retail bonds.

Requirements for paying AIL

To pay AIL rather than NRWT on a particular security, the borrower is required to:

- either be an approved issuer or become an approved issuer
- apply to register the security, and
- pay the amount of AIL for the security.

The security must be registered before an interest payment is made for NRWT to be zero-rated on that interest payment.

No scope for retrospective registration of securities

Currently, if a borrower does not register a security for AIL at the outset and sometime later the Commissioner of Inland Revenue becomes aware of the mistake (whether through audit, review, or a voluntary disclosure by the borrower), the borrower can register the security at that later time, but only on a prospective basis. This means they continue to have an NRWT liability on any interest payments already made. The Commissioner does not have the administrative flexibility to allow retrospective registration for AIL.

While not common, Inland Revenue has dealt with several cases of borrowers mistakenly not registering securities for AIL on time. In some cases, the borrower realised the mistake and disclosed it to Inland Revenue; in other cases, the mistake was discovered on review. Regardless, Inland Revenue's practice is to enforce the existing NRWT obligation on the interest payments made prior to registration, in accordance with the AIL/NRWT legislation.

Key features

Proposed new section 86H(3) of the SCDA would allow a New Zealand borrower paying interest to a non-associated non-resident lender to apply to register the security for AIL retrospectively if the borrower did not register it on time. Retrospective registration would only be approved if:

- the Commissioner is satisfied that the borrower failed to register the security on time due to an oversight, and
- the application for retrospective registration is made within two years of the date that the first interest payment on which the borrower had an NRWT liability was made.

There would be no deadline for the Commissioner to consider applications for retrospective registration.

Proposed new section 86H(4) provides that, in evaluating whether the delay in registration was caused by an oversight, the Commissioner may consider the following factors (which would be neither exhaustive nor individually determinative):

- the explanation and evidence that the borrower has provided as to the cause of the error
- the borrower's history of compliance with their tax obligations
- whether the documentation recording the money lent includes a clause dealing with AIL
- whether the borrower has already paid an amount that would have been AIL if the security had been registered and the person had been an approved issuer
- the tax residence of the borrower over the term of the security
- whether the borrower is a natural person, and
- whether the borrower has made a voluntary disclosure of the error.

Additional features to note:

- Retrospective registration would be available both for securities on which AIL is payable at 2% and securities qualifying for 0% AIL.
- Under proposed new section 32M(2C) of the TAA, if the Commissioner backdates a person's date of registration, the person would also be treated as being an approved issuer from the date of registration (if the person was not already an approved issuer).
- Under proposed new section 138E(1)(e)(iib) of the TAA, a decision by the Commissioner in relation to retrospective registration would not be challengeable.

Detailed analysis

Application for retrospective registration

The borrower would be expected to apply for retrospective registration of a security for AIL in the manner prescribed by the Commissioner. It is envisaged that the borrower would use the existing form for registration of a security and submit with it a letter outlining the request for retrospective registration. The borrower would be able to choose any date between the date the loan agreement was signed and the date the form is submitted to the Commissioner as the date on which the security is to be treated as registered. However, as previously noted, the Commissioner would not approve applications made more than two years after the date of the first interest payment on the security on which the borrower had an NRWT liability.

The Commissioner would have no legislative deadline to approve or decline applications.

Delay must be caused by oversight

Retrospective registration would be restricted to cases when the delay in registration was due to an oversight to support voluntary compliance with the AIL regime. If retrospective registration were permitted in all circumstances, taxpayers could deliberately not comply with the regime in the knowledge that, if they were audited, they would get the same basic outcome as if they had registered for and paid AIL on time (although interest and penalties could also be payable in the former case).

Two-year window for retrospective registration

Retrospective registration would only be permitted if the application was submitted within two years of the date that the first interest payment on which the borrower had an NRWT liability was made. The main reason for imposing the deadline would be to preserve the incentive for borrowers to review their AIL compliance and identify and rectify registration mistakes in a timely manner.

Factors considered by Commissioner in evaluating cause of delay

The proposed amendments include some factors the Commissioner may consider in evaluating whether the borrower is applying for retrospective registration of a security for AIL because of an oversight. These factors would guide operational staff in assessing applications and give borrowers some idea of whether their application was likely to be successful. These factors would not be exhaustive because the Commissioner might want to consider other factors not initially contemplated. Similarly, no factor would be individually determinative; building an accurate picture of the nature of an error would involve consideration of multiple factors.

Explanation and evidence

In the letter requesting retrospective registration, the borrower would be able to provide an explanation of the delay in applying for registration and evidence to support that explanation. The Commissioner would be more likely to approve an application if the borrower provided such information, because it would be easier to assess whether the cause of the delay was genuinely an oversight.

Borrower's compliance history

If the borrower had a poor compliance history with AIL and NRWT, or with tax obligations generally, the Commissioner would be less inclined to regard the cause of the delay leading to retrospective registration as an oversight.

Whether loan agreement includes AIL clause

An AIL clause in the loan agreement would generally be evidence that the borrower intended to register the security and pay AIL. From the Commissioner's perspective, this would increase the likelihood that the failure to register the security on time was an oversight.

Whether borrower already paid AIL on security

If the borrower had already paid an amount equivalent to AIL[18] on the security they were seeking to retrospectively register, and they were therefore at least partly compliant with the AIL regime, the Commissioner would be more likely to consider that the borrower's failure to register the security on time was an oversight.

Tax residence of borrower during term of security

If the borrower was non-resident at the time the loan agreement was signed, there would logically be no AIL clause, since the borrower was not in New Zealand's tax net. This would make it more likely that the borrower's failure to register the security for AIL was an oversight. When they moved to New Zealand sometime during the term of the security, they may not have appreciated their new withholding tax obligations in relation to their interest payments to the non-resident lender.

Whether borrower a natural person

A natural person is less likely than an entity to be well-advised, making it more likely that their delay in registering a security was an oversight.

Whether borrower made voluntary disclosure of error

If the borrower made a voluntary disclosure of the error, it would be less likely that they deliberately did not comply with the AIL regime, since they chose to draw the Commissioner's attention to the error. Therefore, it would be more likely that the error was an oversight.

Other features

Retrospective registration available for AIL at 2% or 0%

Retrospective registration would be available for securities subject to either 2% or 0% AIL. Only certain widely held securities qualify for 0% AIL, but there is no policy reason not to

[18] Technically, under legislation, a borrower is not treated as paying "AIL" unless they are an approved issuer and the security is registered. However, if a borrower already has an AIL account open because they are an approved issuer, they can pay an amount equivalent to AIL on a security despite having failed to register the security. If the borrower does not already have an AIL account open, this is not possible.

allow such securities to be registered retrospectively, just as securities subject to 2% AIL would be, if the conditions were met.

Commissioner would also backdate approved issuer status if necessary

In some cases, a borrower who failed to register a security for AIL on time and applies to register it retrospectively may also be new to AIL and may not be an approved issuer either. In such cases, if the Commissioner approved the application for retrospective registration (which would include the borrower's election to become an approved issuer), the Commissioner would backdate the borrower's new approved issuer status to the same date as the registration. This is necessary because being an approved issuer is a precondition for paying AIL.

Commissioner's decision in relation to retrospective registration not challengeable

A decision by the Commissioner to decline an application for retrospective registration would not be challengeable. Retrospective registration is a concession, and it is not desirable that the Commissioner be required to devote additional resources to engaging in a dispute with a borrower if they have not made a satisfactory case for accessing the concession.

Effective date

Under proposed new section 86H(5) of the SCDA, retrospective registration would be available from 1 April 2025 but not able to be backdated before that date. This would ensure the change was prospective and did not result in any borrowers coming forward and claiming refunds of NRWT paid because of past failures to register securities for AIL on time.

Example 18: Retrospective registration likely to be approved

On 13 May 2025, the New Zealand-headquartered Dolphin Bank signs a loan agreement with the US-headquartered Jellyfish Bank to borrow NZ$60 million at 5% interest per annum. The term of the security is five years, and the interest payments are monthly. Dolphin is not associated with Jellyfish.

When negotiating the terms of the loan agreement, Jellyfish makes it clear that Dolphin will have to bear the cost of any New Zealand taxes due on the interest payments. To avoid having to gross up the interest payments to cover NRWT at 10%, Dolphin decides it will pay AIL (2%), and includes an AIL clause in the loan agreement. Dolphin is already an approved issuer; it has issued many other securities to foreign lenders, which it has registered on time and paid AIL on time for.

Dolphin makes its first interest payment to Jellyfish on the new security on 1 June 2025. However, there has recently been a change of staff on Dolphin's tax team, and during

the handover the new tax manager forgot to register the security for AIL. He also fails to pay AIL after interest payments are made.

In March 2026, while preparing Dolphin's annual tax return, the tax team realises that the security with Jellyfish was not registered and no AIL has been paid on it. Dolphin promptly applies to the Commissioner to register the security retrospectively from the date of the loan agreement. In its letter, Dolphin explains the cause of the error and provides documentation showing that new staff were recruited shortly before the first interest payment on the security was due. Dolphin also attaches a copy of the loan agreement.

The Commissioner is likely to approve Dolphin's application for retrospective registration because Dolphin:

- provided an explanation and evidence for the cause of the delay in registering the security, showing that it was an oversight
- had a perfect compliance record with AIL previously
- included an AIL clause in the loan agreement
- voluntarily disclosed the error, and
- made the application for retrospective registration within two years of the first interest payment on which there was an NRWT liability being made.

If the Commissioner backdates the date of registration of the security, Dolphin will owe AIL rather than NRWT on the ten interest payments already made. The interest payments totalled $2.5 million, so the AIL due will be $50,000. NRWT at 10% would be approximately $250,000[19], so Dolphin will save approximately $200,000 in tax. Dolphin will then continue to pay AIL on the interest payments going forward.

Example 19: Retrospective registration unlikely to be approved

On 1 July 2025, the New Zealand-headquartered Anion Energy Ltd signs a loan agreement with the UK-headquartered Eternity Bank to borrow NZ$40 million at 6% interest per annum. The term of the security is three years, and the interest payments are quarterly. Anion is not associated with Eternity.

[19] In reality, the NRWT would be somewhat higher because of the gross up.

In the loan agreement, there is a clause stipulating that Eternity will not bear the cost of any New Zealand taxes due on the interest payments. However, there is no detail as to whether Anion will pay AIL or NRWT.

Anion is not an approved issuer. It does not notify the Commissioner that it wishes to become one or register the security for AIL. Anion also has a variable record with tax compliance generally; it has been late on a number of end-of-year return filings.

Anion makes seven interest payments to Eternity between 1 September 2025 and 1 March 2027, on which it pays neither AIL nor NRWT.

In April 2027, Inland Revenue audits Anion and discovers that it has not been meeting its New Zealand tax obligations in relation to its interest payments to Eternity. On 20 April 2027, Anion applies to register the security for AIL retrospectively from the day before the first interest payment. In its letter, Anion states that it intended to register the security for AIL but forgot to do so. It provides no further explanation of the mistake and does not provide a copy of the loan agreement.

The Commissioner is unlikely to approve Anion's application for retrospective registration, despite it being made within the two-year time period, because Anion:

- provided only a very brief and unsubstantial explanation of the cause of the error
- did not provide a copy of the loan agreement to the Commissioner, meaning the Commissioner could not see whether it contained an AIL clause (which it did not)
- did not voluntarily disclose the error
- has a variable record with tax compliance generally, and
- is a corporate taxpayer, which is generally expected to be well-advised.

If the Commissioner declines the application for retrospective registration, Anion will owe NRWT rather than AIL on the seven interest payments already made. The interest payments totalled $4.2 million, so the NRWT due will be approximately $420,000.[20] Anion can still potentially become an approved issuer and pay AIL going forward.

[20] See previous footnote.

Exempt employee share scheme threshold increase

Clause 21

Summary of proposed amendment

The proposed amendment would increase the thresholds used for exempt employee share schemes to recognise past inflation and provide a buffer against future inflation. The maximum value of the shares that can be offered would be increased from $5,000 to $7,500, and the maximum benefit provided would be increased from $2,000 to $3,000.

Effective date

The proposed amendment would be effective for offers of shares made under exempt employee share schemes on and after 1 April 2025.

Background

Employee share schemes are arrangements whereby shares in an employer company are provided in whole or in part in return for services. These are an important way of remunerating employees in New Zealand and internationally. A “benefit” received under an employee share scheme is generally taxable income.

Employers can provide exempt benefits to employees under an exempt employee share scheme. The intention of this exemption is to reduce compliance costs for schemes that are offered to all, or almost all, a business’s employees, and when both the benefit of the scheme and the amount required to be invested by an employee to get that benefit are limited.

As prescribed by section CW 26C of the Income Tax Act 2007, the eligibility criteria currently include, among other things, the following conditions:

- the maximum market value of the shares provided to an employee is $5,000 a year
- the maximum discount an employer can provide on the market value of the shares to an employee is $2,000 a year
- 90% or more of full-time permanent employees who are not subject to the securities law of other jurisdictions must be eligible to take part in the scheme, and
- any minimum period of service that may be required before an employee becomes eligible to take part must not exceed three years.

The two thresholds above (namely, those that govern the maximum market value of shares that may be provided to an employee and the maximum permissible discount on the shares' market value) were last set in 2018.

Key features

In recognition of the impact of inflation since the thresholds were last set and to provide a buffer against future inflation, the proposed amendments would increase:

- the maximum market value of the shares provided from $5,000 to $7,500 a year, and
- the maximum benefit that can be provided from $2,000 to $3,000 a year.

This is intended to make it easier for companies in the start-up and tech sectors to attract and retain talent through the use of employee share schemes.

Example 20: Exempt employee share scheme

Facts

A Co offers an employee share scheme to its employees. This is offered to all its employees provided they have worked at A Co for a period of three years.

A Co provides these shares at a market value of $7,500 with a discount rate of $3,000. This means that employees are required to spend $4,500 to receive the shares.

If offers of shares occur before 1 April 2025

A Co has exceeded the thresholds for use of an exempt employee share scheme prescribed by the current section CW 26C.

The discount provided by A Co is considered employment income, and it is therefore a taxable benefit under the general regime. A Co is allowed a deduction for the benefit provided to the employee and any money spent establishing or managing the exempt scheme.

If offers of shares occur on or after 1 April 2025

A Co would be within the new thresholds for an exempt employee share scheme prescribed by the proposed changes to section CW 26C. It would also meet all the eligibility criteria for operating an exempt employee share scheme, which include but are not limited to:

- offering the shares to all (or almost all) of its employees, and
- having a minimum period of service to receive the shares that does not exceed three years.

A Co would be operating an exempt scheme and would be required to notify Inland Revenue that the scheme exists.

The discount provided by A Co would be exempt income for the employee. A Co would be denied a deduction for the benefit provided to the employee. However, it would be allowed a deduction for establishing or managing the exempt scheme.

New Zealand Business Number information sharing

Clause 153(2) and (3)

Summary of proposed amendment

The proposed amendment would authorise Inland Revenue to share the contact address and tax file numbers of unincorporated entities with the Ministry of Business, Innovation and Employment (MBIE). This would be carried out in a one-off exercise.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Unincorporated entities can voluntarily register for a New Zealand Business Number (NZBN), whereas companies are automatically assigned an NZBN. The voluntary aspect of registering is meant to reduce compliance costs for unincorporated entities that may not require an NZBN. However, there has been a relatively slow uptake in unincorporated entities registering for an NZBN.

Without widespread uptake, the effectiveness of NZBNs in supporting business confidence and certainty and creating smoother business interactions is reduced since the data held in the register is incomplete.

MBIE would like to address this issue through an email campaign aimed at unincorporated entities without an NZBN that would communicate the benefits of NZBNs and the process of registering. This would utilise the contact details and IRD numbers for unincorporated entities that Inland Revenue holds.

To authorise the sharing of this information, the current provision in the Tax Administration Act 1994 (schedule 7, part C, subpart 1, clause 25) needs to be amended to enable information to be shared for the purpose of undertaking the email campaign.

Enrolling persons aged under 16 in KiwiSaver

Clause 189

Summary of proposed amendment

The proposed amendment would allow young persons under the age of 16 to enrol in KiwiSaver if one of their guardians contracts directly with a provider in the name of the young person.

Effective date

The proposed amendment would take effect on 1 July 2025.

Background

The ability of prospective KiwiSaver members to enrol in KiwiSaver varies with age. For example, provided they meet the eligibility criteria:

- Persons aged 18 or over can join KiwiSaver by either contracting directly with a KiwiSaver provider or enrolling through their employer.
- Persons aged 16 to 17 who have a guardian can enrol in KiwiSaver if the person and one of their guardians jointly contracts directly with a provider in the name of the person.
- Persons aged under 16 and who are not in the care of Oranga Tamariki can join KiwiSaver provided all their guardians contract directly with a provider in the name of the young person.

These settings seek to balance access to KiwiSaver against the rights of parents and guardians to make decisions about the welfare of the young people they are responsible for.

However, the current enrolment rules can pose a challenge for solo parents in situations when it is difficult to secure the agreement of a former partner who is a guardian of the young person.

Under the proposed amendment, young people under the age of 16 could enrol in KiwiSaver provided one of their guardians contracts directly with a provider in the name of the young person. This would help encourage them to begin saving for their retirement and reduce the barriers to enrolling in KiwiSaver.

Overseas donee status

Clause 115

Summary of proposed amendment

The proposed amendment would add six charities to the list of donee organisations in schedule 32 of the Income Tax Act 2007. Donors to these charities would be eligible for tax benefits on their donations.

Two organisations would be removed from schedule 32.

Effective date

The proposed additions to schedule 32 would take effect on 1 April 2024.

The proposed removals from schedule 32 would take effect on the day after the date the Bill receives the Royal assent.

Background

Donors to organisations listed in schedule 32 are entitled, as individual taxpayers, to a tax credit of 33.33% of the monetary amount donated up to the amount of their taxable income. Companies and Māori authorities may claim a deduction for donations up to the level of their net income. Charities that apply funds towards purposes that are mostly outside New Zealand must be listed in schedule 32 before donors become eligible for these tax benefits.

Detailed analysis

Additions to schedule 32

Kapuna Education Charitable Trust

Kapuna Education Charitable Trust (KECT) operates in the Kikori District in the Gulf Province in Papua New Guinea. KECT provides financial support to students of a primary school and a secondary school in the area, which provide education for local children from grades 1 to 10. The trust aims to empower and support the local community through education, infrastructure, and financial aid. As well as the running and upkeep of the schools, KECT currently supports 10 disadvantaged children through school, all the way up to attending university in Port Moresby. The school also aims to assist with building local teacher capacity, enabling them to train and work at the school.

ReliefAid

ReliefAid is a New Zealand charity that has been operating internationally since 2015, focusing on providing aid for people affected by armed conflict and natural disasters. Its largest aid networks are situated in Türkiye, and ReliefAid has been active in providing humanitarian aid and support in Syria, Ukraine, Afghanistan and the Gaza Strip, providing shelter materials, food, water and medical supplies to families in need. ReliefAid works with existing non-government networks.

Rescue and Prevent Trust

Rescue and Prevent Trust (Rescue and Prevent) is a New Zealand charity operating in Thailand with a goal to rescue and educate victims of sex trafficking. Rescue and Prevent implements a five-step solution to help rescue victims of sex trafficking and prevent it from happening again in the future. Rescue and Prevent's goals are to educate, find, rescue, prosecute and restore. Rescue and Prevent assists Thai police efforts to prevent trafficking of at-risk women and children by providing capability and capacity building at a local law enforcement level and assisting with the prosecution of perpetrators under Thai law.

Support Services for Humanity

Support Services for Humanity is a Hamilton-based charity that operates in Uganda. The charity raises funds in New Zealand towards pop-up medical camps in Uganda, partnering with local Ugandan health services and hospitals to provide medical services, such as vaccines, treatment, and testing, to local communities. Support Services for Humanity places particular emphasis on treatment of malaria, which disproportionately affects African regions, with Uganda accounting for 5.1% of malaria deaths worldwide.

Support Services for Humanity's donee status would be for a limited time, ending on 31 March 2029.

Altus Resource Trust

Altus Resource Trust (Altus) works with in-country partners in the Pacific Islands to provide services and equipment to children and adults with disabilities. Altus is currently working with organisations in Samoa, Vanuatu, Tonga and the Cook Islands.

Kiwi Trust for Palestinian Children Relief

Kiwi Trust for Palestinian Children Relief (Kiwi Trust) was founded in 2012 with the goal of providing aid and relief to Palestinian children and their families through humanitarian, educational, social and small enterprise projects. A substantial amount of its aid is provided in the form of food packages and/or the sponsorship of orphans and families in poverty. Kiwi

Trust also provides mental health support for children suffering from conflict and hardship-related mental health issues.

Removals from schedule 32

The proposed amendments would also remove Help a Child Foundation and SpinningTop Trust from schedule 32 because these two charities have ceased activities and been wound up.

GST remedials

Zero-rating rules for international vessels exempt from import entries

Clause 159(1)

Summary of proposed amendment

The proposed amendment would ensure that services provided directly in connection with temporarily imported commercial vessels are zero-rated for GST purposes.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Services that are provided directly in connection with temporarily imported goods are zero-rated for GST purposes. The policy rationale for zero-rating these services is that they ultimately relate to consumption that will occur outside New Zealand when the goods are re-exported. This accords with the destination principle, which is a widely adopted international taxation principle that assigns the right to tax consumption of goods and services to the country in which those goods and services are destined to be consumed.

There is currently a disparity in the GST treatment that applies to services provided directly in connection with temporarily imported non-commercial vessels and commercial vessels that are passing through New Zealand. The issue is that services provided in relation to temporarily imported non-commercial vessels are zero-rated for GST purposes, but services provided in relation to commercial vessels that are passing through New Zealand are subject to GST. By way of example, cleaning or repair services provided in relation to a non-commercial temporarily imported yacht are zero-rated, but the same services provided in relation to a commercial ship that is temporarily in New Zealand are currently standard rated.

It is contrary to the policy intent for GST to apply to these services. This is because the services are provided in relation to vessels that are merely passing through New Zealand and thus ultimately reflect consumption that will occur outside New Zealand.

The current treatment of these services also creates inefficiencies in the GST system because it means that foreign entities that operate commercial vessels need to register for GST in New Zealand to claim back the GST charged on these services. By contrast, if services

provided in relation to commercial vessels were zero-rated for GST purposes, the foreign entities that operate these vessels would not be required to register for GST.

Detailed analysis

Section 11A(1)(i) of the Goods and Services Tax Act 1985 (GST Act) provides that services supplied directly in connection with goods referred to in sections 136 and 137 of the Customs and Excise Act 2018 are zero-rated for GST purposes. These sections in the Customs and Excise Act refer to temporarily imported goods, but they exclude vessels that are used commercially from the scope of the zero-rating rule.

The Bill proposes amending the scope of section 11A(1)(i) of the GST Act to also include services provided directly in connection with specific vessels that are exempt from import entry under regulation 25 of the Customs and Excise Regulations 1996. It is proposed that the scope of the zero-rating rule is expanded to also include services provided directly in connection with commercial vessels that are not used for cargo or passengers (see regulation 25(1)(b)), commercial vessels that engage in the movement of cargo or passengers (regulation 25(1)(ba)), and any craft that arrives solely for repair during the course of an international voyage (see regulation 25(1)(c)).

Approved taxable period end dates

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

Summary of proposed amendments

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

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The proposed amendments would take effect on 30 March 2022.

Background

Under the GST Act, a registered person's taxable period generally ends on the last day of a month. However, under sections 15E(2) and 15EB, a registered person may apply to the Commissioner for approval to have a taxable period ending on a different day, provided the requested end date meets certain requirements.

For instance, there are businesses that operate on the "4-4-5"[21] accounting calendar for their finance functions, including income tax reporting and GST returns. The 4-4-5 calendar structure divides the year into four quarters of 13 weeks, with each quarter grouped into two four-week "months" and one five-week "month". Amendments to the GST Act were made in 2022 to better enable registered persons operating on the 4-4-5 accounting calendar to seek the Commissioner's approval to have taxable period end dates that align with their accounting cycle. However, the amendments were not entirely successful in achieving this outcome.

The Bill proposes further amendments to ensure the law provides the desired level of flexibility for the Commissioner to approve a registered person's requested taxable period end dates. The changes would apply equally to monthly, two-monthly and six-monthly filers, as well as non-resident suppliers who are required to file quarterly.

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[21] In some cases, the sequencing in the person's accounting calendar might in fact be "4-5-4" or "5-4-4". This commentary uses "4-4-5" to refer generically to all three variations (4-4-5, 4-5-4, 5-4-4) for convenience.

Key features

The proposed amendments would:

- Provide a broad Commissioner's discretion to approve the taxable period end dates of a registered person if the Commissioner is satisfied that:
    - the person has good commercial reasons for those end dates, and
    - approving the change in the person's end dates is consistent with the purpose of the rules allowing approved taxable period end dates (the purpose of the rules is proposed to be set out in a "purpose" provision).

  These changes are proposed to replace the current rules in sections 15E(2) and 15EB in their entirety.
- Provide the Commissioner with an additional power that would apply when a registered person filing monthly or two-monthly is approved to have taxable period end dates based on a four-weekly accounting cycle. Under the proposed power, the Commissioner may prescribe a method that the person may use to determine their approved taxable period end dates and corresponding filing and payment due dates.

Detailed analysis

Wider Commissioner's discretion to approve alternative end dates

Section 15E(1) sets out that a taxable period ends on the last day of a month. Despite this rule, sections 15E(2) and 15EB currently provide that a registered person may apply to the Commissioner for approval of a taxable period end date that is not the last day of a month if certain requirements included in those sections are met.

The Bill proposes to replace sections 15E(2) and 15EB in their entirety.

Proposed new section 15E(2) would provide that a taxable period may have an end date that is not the last day of a month if the Commissioner approves a change in end date for a registered person under proposed new section 15EB.

Proposed new section 15EB(1) would be a purpose provision for the rules for approved taxable period end dates. The subsection would provide that the Commissioner may approve a change in a registered person's taxable period end date under proposed new section 15EB(2) to reduce the person's compliance costs.

For example, the person may have an accounting cycle for their finance functions that is not based on calendar months (such as the 4-4-5 accounting cycle mentioned above). In this situation, the person may wish to have taxable period end dates that are aligned with their accounting cycle to reduce their compliance costs. Another example might be when a

registered person is applying for an approved taxable period end date as a "one off" because they intend to join or leave a GST group during a taxable period.

Proposed new section 15EB(2) would set out that, on application by a registered person, the Commissioner may approve an end date for the person's taxable period that is not the last day of a month. Under the proposed subsection, the Commissioner may approve the person's requested end date if the Commissioner is satisfied that:

- the person has good commercial reasons for it, and
- making the change is consistent with the purpose set out in proposed new section 15EB(1) for making changes to taxable period end dates (namely, reducing compliance costs that would arise for the person if they were required to have taxable period end dates based on the last day of a month).

The proposed discretion is similar to an existing rule that allows the Commissioner to approve a taxable period end date for a registered person if the Commissioner is satisfied there are good commercial reasons for the person's chosen date. The main difference is the current rule only applies when the person is requesting an end date that is a specific date in the month (for example, the 20th of the month, regardless of the day of the week on which it falls). For instance, the current rule does not apply when the taxpayer's chosen end date is a specific day of the last week in the relevant period.

The rule in proposed new section 15EB(2) would make no such distinction between an end date that is a specific **date** in the month and one that is a given **day** of the week. The proposed new rule is intended to be broad enough to accommodate either scenario.

The proposed changes would also enable approvals of taxable period end dates to apply indefinitely, rather than being time-limited to only apply for one year (as has been the Commissioner's past practice with taxpayers using the 4-4-5 accounting cycle).

An application to change the end date of a taxable period would still need to be made in writing.

Proposed replacement of rules currently in sections 15E(2) and 15EB

As noted above, the Bill proposes to replace section 15EB in its entirety, along with section 15E(2). This would remove the current restrictions on the Commissioner's discretion when a registered person filing monthly or two-monthly is seeking approval for an end date that is a specific day of the last week in the period and falls outside seven days before or after the end of the month. This means that:

- The current requirement that the person's accounting systems do not allow the use of an end date within seven days of the end of the month (which is problematic for some businesses using a 4-4-5 accounting cycle and for businesses using a four-weekly cycle) would no longer apply.

- The current rules limiting the length of the person's taxable period to just four or eight weeks would also no longer apply.

Example 21: Monthly filer using 4-4-5 accounting cycle

Company A, a monthly filer for GST, uses the 4-4-5 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Thursday, except the June taxable period, which always ends on 30 June (being Company A's balance date) regardless of the day of the week on which it falls.

Based on Company A's accounting calendar for its 2024–25 financial year, Company A is approved by the Commissioner to have the following taxable period end dates shown in the table below.

Taxable period	Approved end date
July 2024	1 August 2024
August 2024	29 August 2024
September 2024	3 October 2024
October 2024	31 October 2024
November 2024	28 November 2024
December 2024	2 January 2025
January 2025	30 January 2025
February 2025	27 February 2025
March 2025	3 April 2025
April 2025	1 May 2025
May 2025	29 May 2025
June 2025	30 June 2025 (balance date)

The Commissioner is satisfied that Company A has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the

purpose of the rules allowing approved taxable period end dates (because the dates are based on the normal accounting cycle used by Company A for its finance functions, and it would be expensive for Company A to re-run periods outside of its normal accounting cycle).

The Commissioner's approval also extends to allowing Company A to continue to use taxable period end dates that are aligned with its 4-4-5 accounting calendar on an ongoing basis (that is, for future financial years).

Example 22: Two-monthly filer using 4-5-4 accounting cycle

Company B, a two-monthly filer for GST, uses the 4-5-4 accounting calendar for its finance and other reporting functions. Each four- or five-week "month" in its accounting cycle usually ends on a Friday. Company B would like to have taxable period end dates for GST that are aligned with this accounting cycle, except for the February/March taxable period, which would always end on 31 March (being Company B's balance date) regardless of the day of the week on which it falls.

Based on Company B's accounting calendar for its 2025–26 financial year, Company B is approved by the Commissioner to have the following taxable period end dates shown in the table below (as well as to have taxable period end dates based on its 4-5-4 accounting calendar on an ongoing basis).

Taxable period	Approved end date
April/May 2025	30 May 2025
June/July 2025	25 July 2025
August/September 2025	26 September 2025
October/November 2025	28 November 2025
December 2025/January 2026	23 January 2026
February/March 2026	31 March 2026 (balance date)

The Commissioner is satisfied that Company B has good commercial reasons for these taxable period end dates and that approving these end dates is consistent with the purpose of the rules allowing approved taxable period end dates.

It does not matter that one of Company B's end dates (23 January) is more than seven days before the relevant month end or that future end dates might also be more than seven days before or after the relevant month end.

Extension of wider discretion to six-monthly and quarterly filers

The proposal to widen the Commissioner's discretion to approve taxable period end dates (if there are good commercial reasons for those dates) would not only apply to monthly and two-monthly filers, but would also apply to:

- Six-monthly filers. Currently, six-monthly filers may only apply to have taxable period end dates approved by the Commissioner if those dates are not more than seven days before or after the last day of the month. The proposed amendments would remove this restriction, placing six-monthly filers on an equal footing with monthly and two-monthly filers.
- Non-resident suppliers who are required by section 15(6) to have three-month (quarterly) taxable periods. Unlike the rules that applied before the 2022 changes, the rules currently do not allow non-residents filing quarterly to apply to the Commissioner for a taxable period end date that is not the last day of a month. The proposed changes would restore the position that these registered persons may apply for approved taxable period end dates, but without the previous "seven days before or after" restriction.

When change in end date would take effect

Proposed new section 15EC would apply when a registered person has approval under proposed new section 15EB(2) to change the end date of their taxable period. The proposed rule would provide that the change in taxable period end date takes effect at:

- the end of the taxable period in which the person applies (for example, if a registered person filing monthly applies during March to change the last day of each of their taxable periods to the 28th of the relevant month, the first taxable period that the change in end date will be effective for is the April taxable period, as this is the first taxable period after the end of the March taxable period)
- the end of a later taxable period nominated by the person and approved by the Commissioner, or
- the date of the person's registration under the GST Act if they apply for the change before the end of their first taxable period following their registration.

The approval of the change in end date would continue to have effect until:

- the Commissioner withdraws the approval because the Commissioner considers the person does not have good commercial reasons for their end date or the approval is not consistent with the purpose set out in proposed new section 15EB(1)
- the person changes to using the "default" taxable period end dates (being the last day of a month), or
- a new approved taxable period end date takes effect if the person re-applies under proposed new section 15EB(2) for a new taxable period end date.

Changing from approved end dates to default end dates

There may be situations when a registered person who has approved taxable period end dates may wish to change from using those dates to the default (month end) dates. For example, this may arise when the person purchases a new accounting system.

Proposed new section 15E(2) would provide that a registered person who has a change of end date approved under proposed new section 15EB(2) may subsequently choose to use the default end date. If they choose to do so, they must notify the Commissioner of this change.

In other situations, the Commissioner might discover that a person with approved taxable period end dates does not actually have good commercial reasons for those end dates, or the approval of those dates might not be consistent with the purpose of the rules set out in proposed new section 15EB(1). In this situation, the Commissioner may withdraw the approval for the person's end dates, meaning the person may be required to change back to using the default end dates if no other end date has been approved under proposed new section 15EB(2).

In either case (when the person chooses to change to the default end dates, or the Commissioner withdraws approval for the person's current end dates), a change to the default end dates would take effect under proposed new section 15ED at:

- the end of the taxable period in which the person chooses to use the default end date, or in which the Commissioner withdraws approval for the end dates that were previously approved under proposed new section 15EB(2), or
- the end of a later taxable period nominated by the person and approved by the Commissioner.

Power for Commissioner to prescribe method for determining approved end dates and corresponding due dates

The rules currently in section 15E(2B) and (2C) are proposed to be replaced with a power for the Commissioner to prescribe a method for certain registered persons that are approved to have taxable period end dates based on their accounting cycle to determine which of the reporting or "cut-off" dates in their accounting cycle are their approved end dates.

Currently, the rules in section 15E(2B) and (2C) apply to:

- determine which calendar month a registered person's approved end date corresponds to (based on whether the end date falls on or before, or after, the 15th of the month), and
- aggregate two consecutive "months" into a single taxable period when the end dates for those two "months" are treated as corresponding to the same calendar month.

Currently, these rules apply whenever a registered person has a taxable period with an end date that is not the last day of the month. However, it appears these rules were intended for a specific and relatively rare scenario, being when a registered person filing monthly or two-monthly is approved by the Commissioner to have taxable period end dates that are aligned with a four-weekly accounting cycle.

For a monthly filer in this situation, dividing their GST cycle into taxable periods of four weeks (or approximately four weeks) each would result in the person, in theory, having thirteen periods that are equivalent to a one-month taxable period in the year, when in fact they can only have twelve taxable periods over the course of a year. Likewise, for a two-monthly filer, dividing their GST cycle into taxable periods of approximately eight weeks each would result in the person having six and a half periods that are equivalent to a two-month period in the year (rather than six).

In both cases, there needs to be some way to deal with the "leftover" four-week period and to determine which dates the person may have as their approved end dates, as well as their corresponding filing and payment due dates. The rules currently in section 15E(2B) and (2C) are intended to resolve these matters, but they only provide one (rather prescriptive and complex) method for determining the relevant dates when other methods may also make sense and be simpler for taxpayers to apply.

To address these issues, proposed new section 15EB(5) would apply to a registered person who has:

- a one-month or two-month taxable period, and
- approved taxable period end dates that are based on an accounting cycle that consists of 13 periods in a year that are each four weeks (or approximately four weeks) in length.

Proposed new section 15EB(5) sets out that the Commissioner may prescribe a method that a registered person in this situation may use to determine an approved taxable period end date for their circumstances. It is proposed that the method must provide:

- a system of deciding the end dates for the person's taxable periods, and
- a way to enable the person to determine the filing and payment due dates corresponding to those taxable periods.

The prescribed methods would be published in Inland Revenue guidance shortly after the enactment of the proposed legislation and would include the method currently set out in section 15E(2B) and (2C), along with at least one alternative method that taxpayers could choose to use instead. Taxpayers using a prescribed method to determine their approved taxable period end dates would still need to tell Inland Revenue what those dates are before the end of the relevant month.

Consequential amendments

The Bill also proposes the following consequential amendments:

- Repealing the changes that were made to sections 15(1) and (5)(a), 15C, and 15D in 2022, so that the respective versions of those sections that applied before the 2022 amendments would be reinstated. As outlined above, the provisions setting out when changes in taxable period end dates take effect would be contained in proposed new sections 15EC and 15ED, rather than in section 15D.
- Minor wording changes to section 15B(4) and (4B). Currently, section 15B(4B) refers to section 15E(2B), which is proposed to be repealed. Under the proposed amendment, a person's cycle of taxable periods would be considered aligned with their balance date (as per the requirement of section 15B(4)) if their last taxable period before their balance date ends on a date approved by the Commissioner under proposed new section 15EB(2).

Permanent change of use rule and assets acquired before 1 April 2023

Clause 201

Summary of proposed amendment

The proposed amendment would allow section 21FB of the Goods and Services Tax Act 1985 (GST Act) to apply to assets acquired before 1 April 2023, so long as the relevant permanent change of use adjustment is made in a return for a taxable period starting on or after 1 April 2023.

Effective date

The proposed amendment would take effect on 1 April 2023.

Background

As part of 2023 reforms to simplify the GST adjustment rules, section 21FB was replaced by section 143(2) of the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 (PERM Act) to enable a one-off GST adjustment to be made when there was a permanent change of use, rather than requiring two or more adjustments over consecutive adjustment periods. This was intended to reduce compliance costs, particularly for taxpayers who acquired business assets before registering for GST.

The application provision for the reform in section 143(3) of the PERM Act was "from a registered person's adjustment period starting on or after 1 April 2023". However, the interaction of this application provision and the definition of "first adjustment period" in section 21G of the GST Act created an unintended consequence.

If a person purchased a business asset before 1 April 2023 and subsequently registered for GST in the current year, they are currently required to initially apply the pre-1 April 2023 version of section 21FB, which requires them to make two adjustments. In this case, the relevant adjustment period starts on "the date of acquisition" (which occurred on a date before 1 April 2023), rather than from the beginning of the tax year in which the adjustment occurs.

The proposed amendment would replace the application date in section 143(3) so that section 143(2) of the PERM Act (which replaced section 21FB of the GST Act) would apply to a registered person's adjustments made in returns for taxable periods starting on or after 1 April 2023.

Temporary registration for certain types of deemed supplies

Clauses 178 and 179

Summary of proposed amendments

The proposed amendments would expand the scope of the temporary GST registration rules so they could also be applied to an unregistered person who is subject to the existing deemed supply rule in section 5(16C) of the Goods and Services Tax Act 1985 (GST Act).

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

If an unregistered person receives a supply of land that was incorrectly zero-rated, they may be liable to return GST on that land. In these cases, section 51B(4) to (6) of the GST Act currently provides the Commissioner of Inland Revenue with the ability to temporarily register the person for GST, assess GST on the supply of the land, and then deregister that person.

The proposed amendments would expand the scope of the temporary GST registration rules so these rules can also apply to an unregistered person who is subject to the existing deemed supply rule in section 5(16C).

Section 5(16C) applies to deem a supply of goods or services (usually land) to be considered a taxable supply in cases when a person has previously claimed input tax deductions but failed to correctly account for output tax when they deregistered or changed their use to non-taxable use. Section 5(16C) may also apply to a person who had applied section 21FB to increase their non-taxable use of the goods or services in contemplation of selling those goods. In both cases, the disposal of the goods is deemed to be a supply made by the person in the course or furtherance of a taxable activity.

The proposed changes would reduce administration costs by making it easier for the Commissioner to assess and collect GST under this deemed supply rule. They would reduce compliance costs because the liable taxpayer can be deregistered from GST immediately after the GST is assessed (so would not be required to continue filing GST returns).

Agreed adjustment methods and limitations on adjustments

Clause 172

Summary of proposed amendment

The proposed amendment would clarify that when a registered person agrees an adjustment method with the Commissioner of Inland Revenue under section 21(4) or (4B) of the Goods and Services Tax Act 1985 (GST Act), then this agreed method will override the limitations on making adjustments listed in section 21(2).

Effective date

The proposed amendment would take effect on 18 March 2019.

Background

Under section 21(4) and (4B), GST registered persons can agree a "fair and reasonable" adjustment method with the Commissioner to reduce their compliance costs.

Most agreed adjustment methods typically apply to all the registered person's inputs, regardless of the value of those inputs.

However, section 21(2) states that annual adjustments are "not permitted" on inputs purchased for $10,000 or less. This limitation can potentially create a conflict if the adjustment method that was agreed under section 21(4) or (4B) allows the registered person to make GST adjustments for all their inputs (not just those acquired for more than $10,000).

The proposed amendments would therefore apply retrospectively from 18 March 2019, the date "not required" was changed to "not permitted" in the opening words of section 21(2) of the GST Act.

Clarification of taxable activity exclusion on deregistration

Clause 158(2) and (4)

Summary of proposed amendment

The proposed amendment would clarify that the taxable activity exclusion for certain goods in section 6(3)(e) of the Goods and Services Tax Act 1985 (GST Act) includes supplies that occur due to the person deregistering from GST.

Effective date

The proposed amendment would be effective for supplies made on or after 1 April 2011.

Background

When a person deregisters from GST, section 5(3) of the GST Act deems them to make a supply of any goods or services currently used in their taxable activity.

In April 2023, new section 6(3)(e) was added to the definition of taxable activity to exclude certain qualifying goods from being part of a registered person's taxable activity when the goods are sold (so they would not be required to charge GST for these goods). The qualifying goods will typically be dwellings that have a mainly private or exempt use and some minor business use (such as a home office) that the person has treated as not being used to make their taxable supplies.

The policy intention, reflected in the Bill commentary and *Tax Information Bulletin* guidance on this rule, noted that section 6(3)(e) is intended to apply to supplies that include the deemed supply that occurs when a person de-registers from GST. However, the opening words of the current section 6(3)(e) refer to a "supply of goods by way of sale" and the deemed supply is not an actual sale.

The proposed amendment would change the opening words to insert a reference to a supply made under section 5(3) and to remove the words "by way of sale". The proposed amendment would have the same application date as section 6(3)(e) of the GST Act. However, a savings provision would ensure it did not apply to supplies for which an assessment has been made before 30 August 2022.

Limitation on final deduction for non-taxable use of land supplied by property developer

Clause 173

Summary of proposed amendment

The proposed amendment would clarify that section 21F(6) of the Goods and Services Tax Act 1985 (GST Act) also applies to property developers that deal in land or erect buildings.

Effective date

The proposed amendment would take effect on 24 February 2020.

Background

When a registered person sells land that they have used partly for a taxable use (such as property development) and partly for a private or exempt use (such as a residential tenancy), they are generally required to treat the sale of the land as a taxable supply but can claim a final input tax deduction under section 21F of the GST Act for the percentage of private or exempt use.

However, for property developers, this deduction is limited by section 21F(6) to the GST fraction of the original purchase price. This ensures that GST is collected on the full increase in the land's value because the increase in value is likely to be due to their property development activity (for example, constructing new dwellings on the land), rather than the non-taxable use (for example, continuing a residential tenancy for an old dwelling until the new construction work begins).

Section 21F(6) refers to "developing land or dividing land into lots" to describe a taxable activity of property development. The same wording is also used in certain provisions of the Income Tax Act 2007 (ITA). However, because there are separate provisions in the ITA for "erecting buildings" and for "dealing in land", there is a potential risk that "developing land" could be interpreted narrowly in the GST context. The proposed amendment would clarify that section 21F(6) also applies to property developers that deal in land or erect buildings.

The proposed amendment would take effect on 24 February 2020, which is the date section 21F(6) was amended to include the reference to "developing land". However, a savings provision would preserve a tax position based on the current legislation taken before the date of introduction of this Bill.

Associated persons and secondhand goods deductions

Clause 156

Summary of proposed amendment

The proposed amendment would limit input tax deductions on arrangements when secondhand goods have been sold between several associated persons before being sold by an unregistered supplier to an associated registered person. In most cases, it would limit the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

Effective date

The proposed amendment would be effective for goods acquired by a person on or after 30 March 2022.

Background

The Goods and Services Tax Act 1985 (GST Act) provides secondhand goods deductions for registered persons who acquire goods from an unregistered person. These deductions are limited by section 3A(3)(a) when the registered person acquires the secondhand goods from an associated person.

An amendment that was made to these rules with effect from 30 March 2022 unintentionally allows some taxpayers to claim a higher amount of deductions in a scenario when the same goods are sold multiple times between three or more associated persons (from one unregistered person to another unregistered person) before being acquired by a registered person.

Although this scenario is rare, some taxpayers could exploit this to produce an unintended tax advantage. A remedial amendment is required to address the potential fiscal risk. The proposed amendment would take effect on 30 March 2022. However, a savings provision would preserve tax positions taken before the date of introduction of this Bill that applied section 3A(3)(a)(i) of the GST Act.

Key features

Proposed new section 3A(3BB) would apply when the supplier of the secondhand goods to an associated registered person has themselves acquired the same goods from an associated person.

In most cases, proposed new section 3A(3BB)(a) would then limit the input tax deduction for the registered person to the tax fraction of the purchase price of the goods when they were last supplied by a non-associated person.

Example 23: Land acquired by registered person after last owned by series of associated persons

Jacob is an unregistered person who purchased land from a non-associated person for $1.15 million in 2018.

Jacob later sells the land to a company he owns called Landbank for $2.3 million in 2023.

In 2025, Landbank sells the land to an associated GST-registered company that Jacob also owns, called Green Lane Development, for $2.4 million. Green Lane Development will be using the land to make taxable supplies.

Because Landbank is not a registered person, Green Lane Development is entitled to claim a secondhand goods input tax deduction. Under proposed new section 3A(3BB)(a), this input tax deduction would be limited to $0.15 million. This is because $0.15 million is the tax fraction of the $1.15 million paid by Jacob in 2018 when the land was last supplied by a person that was not associated with Landbank (the supplier to the associated registered person, Green Land Development).

Proposed new section 3A(3BB)(b) may apply in scenarios when the goods have been sold multiple times through a chain of associated persons that includes an associated supply by a registered person who had accounted for output tax on the supply of the goods. In these cases, the input tax deduction would be limited to output tax previously accounted for on the associated supply made by the registered person.

Example 24: Land sold by registered person to associated unregistered person and then reacquired by registered person

Build Co is a registered person who purchased land for $1.15 million in 2016.

Build Co constructs three dwellings on the land and sells it for $2.3 million to an associated unregistered person, Rent Co, in 2021, and returns $0.3 million of output

tax. In 2025, Rent Co sells the land back to Build Co for $2.6 million because Build Co intends to renovate the existing dwellings before selling them as taxable supplies to some new buyers.

Under proposed new section 3A(3BB)(b), Build Co would be able to claim a secondhand goods input tax deduction for $0.3 million when it acquires the land for $2.6 million in 2025. This $0.3 million input tax deduction corresponds to the amount of output tax that was accounted for by Build Co when it sold the land to Rent Co in 2021.

Timing of GST on accommodation supplied through electronic marketplace

Clauses 166, 167, and 170(3)

Summary of proposed amendments

The proposed amendments would provide operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) with the option of accounting for GST on a supply of taxable accommodation[22] made through an electronic marketplace on the completion of the performance of the services (in practice, this would be the guest's check-out date) or at an earlier time.

Effective date

The proposed amendment would take effect on 1 April 2024.

Background

The GST rules for supplies of listed services, which includes taxable accommodation performed, provided or received in New Zealand, came into effect on 1 April 2024. Under the new rules, operators of electronic marketplaces (and, in some cases, listing intermediaries) are required to account for GST on supplies of listed services made on or after 1 April 2024. In some cases, the provider of the accommodation (referred to as the "underlying supplier") may be able to opt out of the electronic marketplace rules to remain responsible for their own GST obligations.

When these rules were introduced, no corresponding changes were made to the rules determining when GST must be accounted for on supplies of taxable accommodation. This means if the person treated as the supplier of the accommodation is using the invoice basis, they must account for GST on the supply in accordance with the normal time of supply rules, being the earlier of when:

- a payment is received for the supply, or
- an invoice is issued for the supply.

If the person uses the payments basis, they must account for GST to the extent to which payment is received for the supply.

[22] This refers to accommodation other than accommodation that is an exempt supply under the Goods and Services Tax Act 1985.

This may create several problems. First, in situations when an underlying supplier has opted out of the marketplace rules to remain responsible for their own GST obligations, the guest's payment may be received and held (or an invoice may be issued) by the marketplace operator. Therefore, the marketplace operator may have triggered time of supply for the underlying supplier, with the underlying supplier potentially being unaware of this. Second, even if the underlying supplier is aware that time of supply has occurred, they may not have sufficient cash available to pay their GST liability.

Further problems may arise when time of supply has occurred but the value of the supply changes or the supply is cancelled. In these circumstances, the person who is treated as the supplier may have already accounted for output tax (and input tax for the flat-rate credit, if applicable) and will need to make an adjustment to their tax position.

Key features

It is proposed that operators of electronic marketplaces, listing intermediaries, and underlying suppliers (as applicable) may choose to account for output tax (and deduct input tax for the flat-rate credit, if applicable) on a supply of taxable accommodation through an electronic marketplace when the performance of the services is completed or in an earlier taxable period. The rule would be optional to apply, meaning that these persons could account for GST based on the normal timing rules if they prefer, in line with their normal accounting basis.

If a marketplace operator, listing intermediary, or underlying supplier chooses to use this rule, it will not affect when the time of supply is deemed to occur under section 9 of the Goods and Services Tax Act 1985 (GST Act).

Detailed analysis

Proposed new section 19DB of the GST Act would apply when a registered person (which may be an operator of an electronic marketplace, a listing intermediary, or the underlying supplier, depending on the circumstances) is required to account for, as applicable:

- output tax on a supply of taxable accommodation made through an electronic marketplace, and
- input tax for a flat-rate credit that is required to be passed on to the underlying supplier of the accommodation.

The proposed new section would also apply to other services that are closely connected to the supply of taxable accommodation if they are advertised, listed, or otherwise made available through an electronic marketplace.

Under the proposed new rule, the person may choose to account for output tax (and/or input tax for the flat-rate credit) in or before the taxable period in which the performance of the services is completed. In practice, the "taxable period in which the performance of the services is completed" would be the taxable period in which guest check-out occurred.

Rule would be optional to apply, including on supply-by-supply basis

The proposed rule would be optional to apply for a given supply, meaning the person could choose to apply the rule to some supplies of taxable accommodation made through an electronic marketplace but would not have to apply it to all such supplies.

If a person chooses to apply the rule, it would be applied by accounting for GST on the relevant supplies in the taxable period in which the performance of the services was completed, or in an earlier taxable period (such as the taxable period in which the guest checked in to the accommodation if different to the taxable period in which the guest checked out). The person would not need to notify Inland Revenue of their choice to apply the rule, but they would need to keep evidence of their choice for a minimum period of seven years in accordance with the record-keeping rules in the GST Act.

If the person chooses to apply the optional rule, output tax on the supply would be attributed to the taxable period in which the person chooses to account for it (see proposed new section 20(4)(e) of the GST Act). This taxable period must not be later than the one in which the performance of the services is completed. If the person is liable for both output tax on a supply and to meet requirements relating to the flat-rate credit for that supply, they would still be required to account for output tax and take an input tax deduction for the flat-rate credit on the supply in the same taxable period.

If the person chooses not to apply the proposed rule, they would account for GST on the supply according to their normal accounting basis.

Example 25: Electronic marketplace chooses to account for GST before performance of services is completed

Max books accommodation at a holiday home in Queenstown for two nights through Willow's Hideaways Ltd, an electronic marketplace. The underlying supplier of the accommodation has not opted out of the electronic marketplace rules.

Willow's Hideaways Ltd chooses to use the optional rule by accounting for GST on the supply in the taxable period that includes Max's check-in date.

Example 26: Underlying supplier makes supplies through multiple marketplaces

Hotel Co makes supplies of accommodation through two electronic marketplaces: electronic marketplace A (EMA) and electronic marketplace B (EMB). Hotel Co is registered for GST and has elected to account for GST on the invoice basis. Hotel Co has notified the marketplace operators it will remain responsible for its own GST obligations because it makes supplies of more than $500,000 in a 12-month period.

When guests book accommodation with Hotel Co through EMA, the guest pays the marketplace operator directly and not Hotel Co. In this situation, Hotel Co chooses to apply the optional rule, allowing them to account for GST on the supply when the performance of the services is completed (that is, the guest's check-out date). Hotel Co includes these supplies in its GST returns in accordance with the optional rule.

For accommodation booked with Hotel Co through EMB, the guest pays Hotel Co directly (Hotel Co separately pays EMB's charges). In this situation, Hotel Co chooses to account for GST on the supplies according to the normal rules (that is, it accounts for GST in the taxable period in which time of supply occurred, being the earlier of when a payment was received, or an invoice was issued for the supply).

As part of normal record-keeping requirements, Hotel Co will need to keep sufficient records to show which rule it applied for supplies (the normal timing rules or the optional rule).

Parties involved in supply can account for GST at different times

In situations when more than two parties are involved in a supply of taxable accommodation made through an electronic marketplace (that is, when a listing intermediary is involved), there would be no requirement for all parties to apply this optional rule consistently. The effect of this is that a marketplace operator would be able to choose to account for output tax according to their normal accounting basis, while a listing intermediary could, for example, deduct input tax for the flat-rate credit upon completion of the performance of the services (or vice versa – the marketplace operator could account for output tax using the optional rule, and the listing intermediary could deduct input tax for the flat-rate credit according to their normal accounting basis).

Example 27: Listing intermediary involved chooses to use optional rule

Jared provides short-term rental accommodation in a property he owns through an electronic marketplace. Jared is not registered for GST and is therefore eligible for the

flat-rate credit. He engages the services of Kylie, a listing intermediary, to manage his property and list it on the electronic marketplace for him.

Kylie is responsible for deducting input tax for the flat-rate credit for Jared. She is not responsible for returning output tax on any of the supplies made through the electronic marketplaces. Guests booking Jared's property always pay the marketplace operator directly, and Kylie receives payments from the marketplace operator a week before the guests check in to the property.

Kylie chooses to take an input tax deduction for the flat-rate credit based on the optional rule. Because the optional rule allows Kylie to deduct input tax for the flat-rate credit at any time before the performance of the services is completed, she chooses to take the deduction in her GST return for the taxable period that includes the date that is a week before the check-in date. It does not matter whether the marketplace operator has chosen to apply the optional rule or the normal timing rules.

Input tax deductions for taxpayers using accommodation in their taxable activities

As outlined above, if a marketplace operator, listing intermediary, or underlying supplier of accommodation chooses to apply the proposed optional rule, this would not affect time of supply. This means a GST-registered person purchasing taxable accommodation for use in their taxable activity would still be entitled to deduct input tax on the supply at the normal time. This also means the usual rules for taxable supply information and supply correction information, including the timing of when this information must be provided to the recipient of the supply, would still apply.

When a marketplace operator or a listing intermediary is responsible for providing taxable supply information, they would still be required to provide it for a supply that has taken place under the GST Act (as determined by the time of supply rules) without the need for a request by the recipient of the supply.

If the underlying supplier of the accommodation is responsible for providing taxable supply information, they would still need to provide it within 28 days of a request for it by the recipient.

Example 28: GST-registered business traveller using taxable accommodation made through electronic marketplace for taxable activity

Todd is travelling to Auckland for a business conference. Todd books accommodation for three nights through Stephen's Stays Ltd, the operator of an electronic marketplace,

and pays a 10% deposit on the accommodation at the time of the booking. Todd is registered for GST and is using the accommodation for his taxable activity. He has elected to account for GST on the invoice basis.

Stephen's Stays Ltd chooses to use the optional rule by accounting for GST on the supply when the performance of the services is completed (at Todd's check-out date). Stephens Stays Ltd is still required to issue taxable supply information to Todd, without the need for a request.

Stephen's Stays Ltd emails a booking confirmation to Todd, which includes the taxable supply information. Todd takes a full input tax deduction for the accommodation in his GST return for the taxable period in which he paid the deposit.

Example 29: GST-registered business traveller shortens booking

Assume the same facts as in Example 28. A few months later, Todd decides to shorten his stay to two nights because the final day of the business conference is cancelled. Todd contacts Stephen's Stays Ltd to change his booking to two nights.

Stephen's Stays Ltd issues supply correction information to Todd, as per the existing rules. Todd then uses the supply correction information to return the excess input tax deducted (for the extra day of accommodation) as output tax in his next GST return.

Stephen's Stays Ltd has opted to use the optional rule (and has therefore not yet accounted for GST) so they do not need to adjust their GST position.

Flat-rate credit and deductions for income tax purposes

Clauses 14, 23, and 29

Summary of proposed amendments

The proposed amendments would provide certain underlying suppliers who make supplies of listed services through an electronic marketplace the option to include the flat-rate credit as assessable income in their income tax returns. This would allow them to deduct their expenditure for income tax purposes on a GST-inclusive basis without the need for apportionment.

Effective date

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

Background

GST rules for supplies of "listed services" [23] came into effect on 1 April 2024. Included in these rules is a flat-rate credit scheme to ensure underlying suppliers of listed services who are not registered for GST do not have their supplies over-taxed. The flat-rate credit scheme achieves this by providing a "credit" of 8.5% of GST charged on supplies of listed services to underlying suppliers who are not registered for GST. The credit is a proxy for the input tax that the underlying supplier would be able to recover as a GST deduction if they were registered for GST. For this reason, it is treated as excluded income for income tax purposes.

If an underlying supplier who is not registered for GST incurs expenditure related to sales and income made from both an online marketplace and through another source (for example, sales they make directly through their own website), they will have to deduct their expenditure for income tax purposes:

- on a GST-exclusive basis for expenditure attributable to income derived from sales on an electronic marketplace because the GST component of their expenses will have already been accounted for in the flat-rate credit scheme, and

[23] Listed services are ride-sharing/ride-hailing, short-term rental accommodation, and delivery services for food and beverages.

- on a GST-inclusive basis for expenditure attributable to income derived from other activities, consistent with the normal deduction rules in the Income Tax Act 2007 (ITA) for persons who are not registered for GST.

This requires the underlying supplier to apportion their expenditure to determine their GST-inclusive and GST-exclusive deductions for income tax purposes. It has been suggested that these rules are complex and place high compliance costs on these underlying suppliers.

Detailed analysis

Proposed new section CH 5B of the ITA would provide underlying suppliers with the ability to treat the flat-rate credit as income for the income year in which the underlying supplier receives the flat-rate credit. If the underlying supplier includes the flat-rate credit as income, they would be able to take GST-inclusive income tax deductions on all their expenditure (including expenditure attributable to sales on an electronic marketplace).

The proposed new section would only apply to underlying suppliers who have received a flat-rate credit for an income year and who are not required to make an output tax adjustment for the credit. This would mean that underlying suppliers who were not registered for GST at the time they received the flat-rate credit would be eligible to use this rule.

Corresponding changes to sections CX 1B and DB 2(2B)

Proposed amendments to section CX 1B of the ITA (which treats the flat-rate credit as excluded income) would no longer treat the flat-rate credit as excluded income for income tax purposes if the underlying supplier (who is not registered for GST) chose to include it in their assessable income under proposed new section CH 5B.

Section DB 2(2B) of the ITA currently treats unregistered persons as if they are registered for GST when determining income tax deductions for expenditure attributable to supplies of listed services made through an electronic marketplace. The proposed amendments to section DB 2(2B) would mean that underlying suppliers who chose to treat the flat-rate credit as assessable income would not be treated as registered for GST for their expenditure related to listed services. This would effectively allow them to take GST-inclusive income tax deductions on expenditure attributable to supplies of listed services made through an electronic marketplace.

Example 30: Including the flat-rate credit as assessable income to claim GST-inclusive deductions

In the 2024–25 tax year, Warren receives income from sales of short-term rental accommodation he provides through an electronic marketplace and through his own website (which is not an electronic marketplace). He is not registered, or required to be registered, for GST.

Warren receives the flat-rate credit for his sales made through the electronic marketplace. Warren incurs expenses, inclusive of GST, for commissions charged by the electronic marketplace, local council rates, and house and contents insurance. These expenses are attributable to Warren's income derived both through the electronic marketplace and through his own website.

Under current rules, Warren is required to apportion his expenditure between the GST-inclusive and GST-exclusive amounts of his rates and insurance for income tax purposes. Warren is also required to claim the full GST-exclusive amount of commissions charged by the electronic marketplace.

Under the proposed amendments, Warren can choose to include the flat-rate credit he receives as income in his 2024–25 income tax return. If Warren makes this choice, he will not need to apportion his expenditure between GST-inclusive and GST-exclusive amounts. Instead, Warren will be able to claim income tax deductions on the full GST-inclusive amounts of his commissions, rates and insurance.

Technical amendments related to platform economy

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

Summary of proposed amendments

The proposed amendments to the GST rules for listed services would ensure the rules work as intended and would address minor issues with the rules that were not anticipated at the time of their introduction. The proposed amendments are mostly technical in nature and relate to the new rules for listing intermediaries.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The proposed amendments would take effect on 1 April 2024, except for the proposed amendment to section 60H(3), which would take effect on the day after the date the Bill receives the Royal assent.

Background

New GST rules applying to supplies of listed services through electronic marketplaces took effect on 1 April 2024. "Listed services" refers to:

- accommodation, other than accommodation that is an exempt supply under the GST Act, (referred to as "taxable accommodation")
- ride-sharing and ride-hailing services
- delivery services for food, beverages, or both,

provided that these services are performed, provided, or received in New Zealand.

The new rules generally treat the operator of the electronic marketplace through which a supply of listed services is made as having supplied the services to the recipient, meaning the operator is liable to return and pay GST on the supply to Inland Revenue.

Provision of taxable supply information

When a supply of listed services is treated as being made by an operator of an electronic marketplace, taxable supply information and supply correction information, as applicable, must be provided by the marketplace operator to the recipient of the supply without the

need for a request. Notably, this rule governing the provision of taxable supply information and supply correction information also applies when a listing intermediary[24] is instead liable for output tax on a supply of taxable accommodation through an electronic marketplace.

This current rule is inflexible because it requires operators of electronic marketplaces to provide taxable supply information and supply correction information in all circumstances, except when the underlying supplier of the accommodation has opted out of the electronic marketplace rules. Accordingly, when a listing intermediary is liable for output tax on a supply of taxable accommodation, the marketplace operator must provide the required information about the supply to the recipient of the accommodation (even though the listing intermediary is treated as the supplier of the services for all other purposes of the GST Act). The marketplace operator is also required to include their own details (such as their name and GST registration number) on taxable supply information and supply correction information, including when a listing intermediary is liable for output tax on the supply.

In some situations, it might be more appropriate for the listing intermediary to instead issue this information and to issue it in their own name with their own GST registration number (and other applicable details) included. The Bill proposes amendments to enable this arrangement, provided certain conditions are met.

Requirements on underlying suppliers to notify certain information

Section 60H sets out the requirements on underlying suppliers of listed services to notify operators of electronic marketplaces of certain information. The notification requirements generally apply for the purposes of administering either the flat-rate credit scheme or "opt-outs" by GST-registered underlying suppliers who are entitled to unilaterally opt out of the electronic marketplace rules.[25]

When a listing intermediary is interposed between an underlying supplier of taxable accommodation and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier is required to treat the listing intermediary as if they were the marketplace operator for the purposes of most of the notification requirements in section 60H. For example, this means the underlying supplier must provide the listing intermediary (not the marketplace operator) with their name, tax file

[24] A listing intermediary is a registered person who lists taxable accommodation on an electronic marketplace on behalf of an underlying supplier who makes those supplies through the marketplace. The definition of "listing intermediary" requires that the person enters into an agreement with the operator of the electronic marketplace to list or advertise the accommodation provided by the underlying supplier.

[25] Underlying suppliers that are not eligible for a six-month taxable period because their taxable supplies in a 12-month period exceed the threshold in section 15(2)(a) (currently $500,000) can unilaterally opt out of the electronic marketplace rules by notifying the marketplace operator that they choose to remain liable for GST on supplies they make.

number, and GST registration status and notify the listing intermediary if their GST registration status changes.

However, an omitted cross-reference in the rule requiring the underlying supplier to treat the listing intermediary as if they were the marketplace operator may be read as suggesting that the underlying supplier should not notify the listing intermediary when the underlying supplier unilaterally opts out of the electronic marketplace rules to remain liable for GST on supplies they make, and that the underlying supplier is still required to notify the marketplace operator. However, because the listing intermediary provisions (in section 60CB) treat the listing intermediary as the marketplace operator for the purposes of section 60H more generally, arguably there may already be a requirement for the underlying supplier to treat the listing intermediary as though they were the marketplace operator for the purposes of the relevant notification rule (meaning the underlying supplier should notify the listing intermediary if they are unilaterally opting out of the electronic marketplace rules).

While there might arguably be a requirement for the underlying supplier to notify the listing intermediary that they are opting out, there is no explicit requirement for the listing intermediary to pass that information on to the marketplace operator, including when passing the information on to the marketplace operator is necessary for the opt-out rules to work effectively. That is, if the marketplace operator would ordinarily be liable for output tax on the supplies of accommodation, the marketplace operator will need to know if the underlying supplier is opting out. Therefore, the absence of a requirement for the listing intermediary to notify the marketplace operator that the underlying supplier has opted out does not appear to be consistent with the policy intention.

Detailed analysis

Enabling listing intermediaries to issue taxable supply information

Proposed new section 60CB(7B) would apply when a listing intermediary is liable under section 60CB(7) for output tax on supplies of taxable accommodation that they list on an electronic marketplace. A listing intermediary is liable for output tax on a supply of taxable accommodation under section 60CB(7) when the listing intermediary:

- is a tax resident of New Zealand
- enters into agreements with more than one operator of an electronic marketplace to list or advertise taxable accommodation provided by underlying suppliers on those marketplaces
- enables or facilitates the supply of the accommodation through an electronic system that can automatically facilitate and manage the bookings made by recipients of the accommodation, and

- has agreed in writing with the operator of the electronic marketplace that the listing intermediary is liable for the payment of GST on supplies of taxable accommodation on that electronic marketplace.

If section 60CB(7) applies, proposed new section 60CB(7B) would allow the listing intermediary and the operator of the electronic marketplace to agree that the listing intermediary is responsible for issuing taxable supply information and supply correction information (as applicable) to the recipient of the accommodation. This agreement must be recorded in a document. If the parties agree to this arrangement, the "supplier's details" included in the information must be those of the listing intermediary, not the marketplace operator.

Notification requirements for unilateral underlying supplier opt-outs

A proposed amendment to section 60H(1B) would insert a cross-reference to subsection (3). This is to clarify that when a listing intermediary is interposed between an underlying supplier of taxable accommodation (who is eligible to unilaterally opt out of the electronic marketplace rules and wishes to do so) and the operator of the electronic marketplace through which the accommodation is supplied, the underlying supplier is required to notify the listing intermediary they are opting out of the marketplace rules.

When an underlying supplier notifies a listing intermediary that they are opting out, a proposed amendment to section 60H(3) would in some cases require the listing intermediary to notify the marketplace operator that the underlying supplier has opted out. This would apply if the marketplace operator (not the listing intermediary) would have been liable for output tax on the supplies of taxable accommodation if the underlying supplier had not opted out.

Other minor amendments

The following minor amendments are also proposed:

- Ensuring that section 60(1D), which creates three separate deemed supplies, only applies when a listing intermediary is involved in the supply of accommodation through an electronic marketplace, but the marketplace operator remains liable for output tax on the supply (as per the default rules for listing intermediaries).
- Amending section 11A(1)(jc) to ensure that a deemed supply by a GST-registered underlying supplier to a listing intermediary under section 60(1C)(a) is zero-rated.
- Amending section 60CB(4) to clarify that a zero-rated supply from an underlying supplier to a listing intermediary described in section 60CB(2)(a) does not create a requirement for the underlying supplier to provide taxable supply information to the listing intermediary.

- Correcting the terminology used in section 60(1C) (replacing the words "a supplier" with "an underlying supplier").
- Deleting the word "also" in section 60H(1B). This is to clarify that, when a listing intermediary is interposed between an underlying supplier of taxable accommodation and an operator of an electronic marketplace, the underlying supplier only needs to provide the information referred to in section 60H to the listing intermediary (instead of being required to provide the information to the marketplace operator and "also" to the listing intermediary).
- Adding "listing intermediary", as defined in section 60CB(8), to the defined terms in section 2(1).

Distributions made by GST-registered unit title body corporate to members

Clauses 157(6) and 170(2)

Summary of proposed amendments

The proposed amendments would provide that if a GST-registered unit title body corporate distributes funds to its members it will be able to claim an input tax deduction on the GST fraction of the distribution.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they will be required to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

Effective date

The proposed amendment would take effect from the day after the date the Bill receives the Royal assent.

Background

Unit titles are a common ownership model for apartment complexes. While a unit title body corporate will typically have a taxable activity for GST purposes, it will generally not become liable to register for GST. This is because the value of supplies it makes to its members is not counted towards the $60,000 GST registration threshold. For this reason, only a small number of unit title bodies corporate are registered for GST.

A GST-registered unit title body corporate must account for output tax on levies it receives from its members (refer section 5(8A) of the Goods and Services Tax Act 1985 (GST Act)). However, the GST Act does not specify how a GST-registered unit title body corporate should account for any distributions it may make to its members.

Key features

Proposed new section 20(3)(j) of the GST Act will allow the GST-registered unit title body corporate to claim an input tax deduction if it makes a monetary distribution to its members to reimburse them. The input tax deduction is equal to an amount of output tax that the unit title body corporate has previously charged or returned on a corresponding monetary amount for which it is reimbursing its members. This will most commonly be output tax that the unit title body corporate charged on a levy or other amount paid by the members due to

section 5(8A). It may also include an amount of money for which the unit title body corporate returned output tax because section 5(8AB) applied to its funds on the day it registered for GST.

For example, a GST-registered unit title body corporate may implement an additional levy on its members to pay for repairs to a unit title development while it is awaiting an insurance payout to help fund those repairs. The unit title body corporate is required to return output tax on the initially levied funds and on the subsequent insurance payment. Once the insurance payout is received, the unit title body corporate will use the insurance payout to reimburse the additional levy amounts that it had previously charged its members.

In these circumstances, the proposed amendment would allow the unit title body corporate to claim an input tax deduction when it pays the distribution to its members that will offset the output tax it previously charged or returned when it collected the additional levy.

If the member who receives the distribution from the GST-registered unit title body corporate is also a GST-registered person, they would be required under proposed new section 5(13C) and (13D) to account for output tax on the distribution to the extent to which they are using the unit to make taxable supplies.

Example 31: Unit title body corporate distribution to members

A unit title property comprises a café and 20 apartment units. Due to earthquake damage, the property requires extensive repairs. The unit title body corporate submits an insurance claim but is told by its insurer it will take months to process the claim, so it seeks funding from its members for the cost of the repairs.

The unit title body corporate collects payments totalling $2.3 million and decides to register for GST. It is required to return output tax of $0.3 million on the $2.3 million of funds it holds at the time it registers for GST. When it pays a GST-registered builder to complete the repairs, it can claim input tax deductions for these costs. Six months later, the unit title body corporate receives an insurance payout for the $2.3 million cost of the repairs on which it is required to return output tax of $0.3 million. The unit title body corporate uses the insurance proceeds to reimburse its members for the $2.3 million it had previously collected from them. It would be able to claim an input tax deduction for $0.3 million, which would offset the $0.3 million of output tax it returned when it registered for GST.

One of the members is a GST-registered commercial landlord for the café. This member would be required to return output tax of $15,000 on the $115,000 distribution that they receive from the unit title body corporate.

Election to zero-rate B2B financial services – removing requirement to notify Commissioner

Clause 171

Summary of proposed amendment

The proposed amendment would remove the requirement for a financial service supplier to notify the Commissioner of Inland Revenue of their election to zero-rate business-to-business supplies of financial services.

Effective date

The proposed amendment would be effective for taxable periods starting on or after 1 April 2025.

Background

Section 20F of the Goods and Services Tax Act 1985 (GST Act) currently requires the registered person to notify the Commissioner to zero-rate business-to-business supplies of financial services.

The proposed amendment would allow GST-registered financial service providers to elect to zero-rate by simply taking the relevant GST position in a GST return. This would be consistent with the general approach to self-assessment, other elections in the GST Act, and other types of zero-rated supplies (when there is no notification process).

The proposed change would reduce compliance costs for GST-registered financial service providers and administration costs for Inland Revenue.

Professional board member appointed by Governor-General

Clause 158(1) and (3)

Summary of proposed amendment

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

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Section 6(4) of the Goods and Services Tax Act 1985 applies when a person, such as a director of a company or a board member, is paid a fee in relation to their engagement or occupation for which they are required to account to their employer (such as their professional services company). The rule treats the fee as consideration for a supply of services by the person's employer to the organisation that paid the fee.

This ensures a GST-registered organisation acquiring the person's services as a director or board member can deduct input tax on the fees payable. This is because the person's employer, if registered for GST for a taxable activity of providing professional services, will be required to account for output tax on the fees even without the rule in section 6(4).

The rule achieves the intended outcome for most professional directors and board members who provide their services to other organisations through professional services companies. However, an omitted cross-reference in section 6(4) means the rule does not extend to appointments made by the Governor-General or the Governor-General in Council (such as, for example, the board members of independent Crown entities).

The proposed amendment would insert a cross-reference to section 6(3)(c)(iia) into section 6(4). This would ensure the rule in section 6(4) applies to professional board members (operating through a professional services company) who are appointed to that position by the Governor-General or the Governor-General in Council, meaning that the organisation acquiring their services can claim back the GST charged by the board member's professional services company.

Deemed supply of emissions units on deregistration

Clause 157(1)

Summary of proposed amendment

The proposed amendment would ensure that a deemed supply of an emissions unit when deregistering from GST is zero-rated instead of standard rated.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

An "emissions unit" for the purposes of the Goods and Services Tax Act 1985 (the GST Act) is a "unit" as defined in section 4(1) of the Climate Change Response Act 2002.

The supply of an emissions unit is almost always zero-rated under the GST Act.[26] However, there is a minor technical error with the interaction between one of the deregistration provisions in the GST Act and the zero-rating rules.

The relevant deregistration provision treats all remaining assets of a registered person's taxable activity as having been supplied by the person in the course of their taxable activity immediately before they deregister. This deemed supply is treated as occurring for market value (meaning that GST is paid on the market value of the assets when the person deregisters).

The current law appears to provide the unintended outcome that a deemed supply of an emissions unit is standard rated when a registered person holding the unit for their taxable activity ceases their taxable activity and deregisters from GST. This is because the zero-rating rule only applies if a supply of an emissions unit is by way of a transfer of that unit.

The proposed amendment to section 5(3C) would provide that, for a deemed supply of an emissions unit under the deregistration provision in section 5(3), the person is treated as making the supply by way of a transfer of the unit. This would ensure the deemed supply is zero-rated under section 11A(1)(s).

[26] The only exceptions are two very specific situations when the Crown transfers an emissions unit.

Quarterly filing for certain non-resident suppliers

Clause 160(3)

Summary of proposed amendment

The proposed amendment would provide that a non-resident supplier must have a three-month taxable period if its only supplies in New Zealand are of remote services to which section 8(3)(c) of the Goods and Services Tax Act 1985 (GST Act) applies, distantly taxable goods, and/or listed services referred to in section 8C.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Non-resident suppliers of remote services, distantly taxable goods, and/or listed services generally must have taxable periods based on quarters in the year (that is, three-month taxable periods). The policy rationale for this is to align these non-resident suppliers' taxable periods with the typical VAT/GST reporting cycle in many overseas jurisdictions, including in the European Union member states. This is on the basis that providing consistency between these non-resident businesses' taxable periods for New Zealand GST purposes with VAT/GST reporting periods overseas may minimise their costs of complying with New Zealand's GST rules.

To qualify for quarterly filing, section 15(6) of the GST Act requires that these three specific types of supplies (remote services, distantly taxable goods and listed services) are the "only" supplies the non-resident makes. Otherwise, the non-resident must have a one-month, two-month or six-month taxable period like most other GST-registered businesses.

The problem with the wording of section 15(6) is that virtually all non-resident suppliers make some supplies that are not included in the three categories referred to above – one example being supplies of goods or services to other non-residents that are not in any way imported into or consumed in New Zealand. Therefore, on a literal reading, it is likely that no non-resident supplier would qualify for a three-month taxable period, which is contrary to the policy intention of the quarterly filing rule.

Key features

The proposed amendment to section 15(6) would provide the outcome that a non-resident supplier must have a three-month taxable period if its only supplies **in New Zealand** are of:

- remote services to which section 8(3)(c) applies
- distantly taxable goods, and/or
- listed services referred to in section 8C.

Qualifying the "only supplies" wording in section 15(6) so that this specifically refers to supplies in New Zealand would ensure that any supplies outside New Zealand that the non-resident supplier makes do not disqualify them from having a three-month taxable period. This means a non-resident supplier would only be disqualified from having a quarterly taxable period when they supply:

- goods (that are not distantly taxable goods)[27] that are in New Zealand at the time of supply, if the supply is to an unregistered person
- goods (that are not distantly taxable goods) that are in New Zealand at the time of supply, if the supply is to a GST-registered business that intends to use the goods for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the goods as supplied in New Zealand (meaning that GST applies to the supply)
- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to an unregistered person
- services (that are not listed services) that are physically performed in New Zealand by a person who is in New Zealand at the time the services are performed, if the supply is to a GST-registered business that intends to use the services for making taxable supplies and the non-resident supplier and business recipient have agreed to treat the services as supplied in New Zealand.

[27] While distantly taxable goods are usually goods that are outside New Zealand at the time of supply that are subsequently imported into New Zealand, and goods that are in New Zealand at the time of supply would not normally meet the definition of "distantly taxable goods", low-value goods that are in New Zealand at the time of supply are distantly taxable goods in one specific circumstance. This is when the goods are supplied by a non-resident underlying supplier through an electronic marketplace and either the underlying supplier or the marketplace operator delivers the goods (or arranges or assists the delivery of the goods) to the recipient at a place in New Zealand.

Non-residents and definition of "percentage actual use" in adjustment rules

Clause 174

Summary of proposed amendment

The proposed amendment would amend the definition of "percentage actual use" in the adjustment rules so that GST-registered non-residents measure taxable supplies and total supplies by treating all their supplies as if they were made and received in New Zealand.

Effective date

The proposed amendment would take effect on 1 April 2020.

Background

Non-resident businesses may be required to register for GST (for example, because they supply remote services or low value imported goods). In other cases, they may choose to register to claim back the 15% GST charged by Customs New Zealand on imported goods or on services received by their staff in New Zealand.

In most cases, these non-residents will not have purchased any long-lasting New Zealand inputs. In cases when they have acquired New Zealand inputs, they can claim input tax deductions for these inputs by treating all their supplies as though they were made or received in New Zealand – see section 20(3L) of the Goods and Services Tax Act 1985.

If they are still using the New Zealand input at their next balance date, the registered non-resident will be required to make an adjustment based on their "percentage actual use" of the input to make their taxable supplies.

Supplies made outside New Zealand by registered non-residents are not taxable supplies so would not currently count as "actual use", even though they would be taxable supplies if they had been supplied in New Zealand. The proposed amendment would amend the definition of "percentage actual use" in section 21G(1)(a) of the adjustment rules to address this issue. It would take effect on 1 April 2020 to align with GST positions previously taken by the affected non-resident businesses.

Adjustments when GST paid twice on imported goods

Clause 170(1)

Summary of proposed amendment

The proposed amendment would reinstate a rule that previously allowed a supplier to reduce their GST liability by an amount they were required to refund to a customer when imported goods were taxed twice.

All legislative references are to the Goods and Services Tax Act 1985 (GST Act).

Effective date

The proposed amendment would take effect on 30 March 2022.

Background

GST applies to the supply of "distantly taxable goods" (generally low-value[28] imported goods supplied by a non-resident) to consumers. Special rules provide consumers with relief from double taxation on these goods when GST is charged on the supply of the goods under section 8(1) (and the supplier of the goods collects this GST), and GST is collected again by the New Zealand Customs Service when the goods are imported into New Zealand.

Essentially, double taxation on a supply of imported goods may occur in two scenarios:

- When the supplier incorrectly treats the supply as a supply of distantly taxable goods subject to GST at the standard rate of 15% (for example, a non-resident supplier incorrectly charges GST on a supply to a GST-registered business) and GST is collected on the goods again when they are imported into New Zealand.
- When the supplier correctly collects GST on a supply of distantly taxable goods (such as a supply of low-value imported goods to a consumer) and GST is incorrectly collected again when the goods are imported into New Zealand (despite GST already having been collected by the supplier).[29]

[28] "Low-value goods" in this context means goods that are individually valued at or below $1,000.

[29] Suppliers must take reasonable steps to ensure GST information is included on relevant import documents so the New Zealand Customs Service can identify when GST has already been paid on imported goods. However, circumstances outside the supplier's control may mean this information is not included on import documents.

When double taxation occurs on a supply to a consumer, the consumer's only recourse is to obtain a refund of the GST collected at the point of sale from the supplier. If the consumer requests a refund from the supplier and provides a declaration that GST was paid on importation, the supplier must refund the GST they collected.

When a supplier has filed a return incorrectly treating a supply as a taxable supply of distantly taxable goods, the supplier must make an adjustment under section 25(2) for the taxable period in which it becomes apparent that the output tax returned is incorrect.

However, in situations when the supplier correctly collected GST on the supply (because the goods are distantly taxable goods and the supply is to a consumer, for instance), the supplier is still required to account for output tax on the supply because there is no rule "switching off" their output tax liability when double taxation occurs.

Previously, a specific rule allowed a supplier in this situation to make an adjustment by deducting the amount of GST they refunded to the consumer from their output tax in their GST return. However, an unintended consequence of the 2022 changes to section 25(1) was that the supplier might not be entitled to an adjustment of their GST liability for the amount refunded to the consumer.

Section 25(1) now applies when a registered person makes a GST return for a taxable period containing an "inaccuracy". This means an adjustment is technically not available to the supplier under section 25(2) if they correctly collected GST on the supply of the goods and subsequently provided a refund of the GST to the consumer because double taxation occurred.

Key features

Proposed new section 20(3)(df) would apply when a supply of distantly taxable goods to which section 8(1) applies is taxed twice, first at the point of sale and again when the goods are imported into New Zealand. The proposed new rule would not apply in the scenario when the supplier incorrectly charged GST because the rules currently in section 25 already deal with that scenario.

The proposed new rule provides that the supplier of the goods would be entitled to an adjustment reducing their GST liability if:

- the supplier receives a declaration from the recipient of the supply, or other confirmation, that the amount of GST charged under section 12 on the importation of the goods into New Zealand was paid when the goods were imported, and
- the supplier reimburses the recipient for the amount of GST included in the consideration for the supply.

If the above conditions are met, the supplier would make the adjustment for the taxable period in which they reimbursed the recipient as a deduction from their output tax under section 20(3). The amount of the adjustment would be the amount of GST that was included in the consideration for the supply that the supplier reimbursed to the recipient (being 3/23 of the consideration for the supply).

Because a supplier in this situation (who correctly collected GST) is still required to return and pay the output tax on the supply if they have not already done so, it is necessary that they can take a deduction from their output tax in the taxable period in which they reimburse the recipient, even if they have not yet filed a return including the output tax on the supply. Therefore, for the supplier to be entitled to make the adjustment, there would be no requirement that they had already accounted for the output tax on the supply in a previous return.

The proposed amendment would take effect on 30 March 2022, the date the former credit note and debit note provisions in section 25(1) were replaced in their entirety, which inadvertently repealed the adjustment rule that previously applied

Supply correction information and time bar

Clause 168

Summary of proposed amendment

The proposed amendment would clarify that supply correction information cannot be issued to correct supplies in all circumstances when that supply is subject to the time bar.

Effective date

The proposed amendment would be effective for taxable periods commencing on or after 1 April 2023.

Background

In a GST setting, supply correction information (previously known as credit or debit notes) is issued to reflect that the payment for a good or service may have been incorrect. When the payment amount is incorrect, supply correction information can be issued to ensure that GST is correctly accounted for on the supply of the good or service. Some examples of when supply correction information may be issued include if an incorrect amount of GST is charged or if some of the goods are returned to the seller. Adjustments to GST positions as a result of supply correction information being issued are reflected in the current GST return period, rather than applying to the previous return period in which the incorrect supply occurred.

Under current law, supply correction information cannot be issued for a supply that is subject to the time bar (which generally applies four years from the end of the taxable period in which the return was filed). For supplies that give rise to an overpayment of tax, recently added section 19N(7)(b) of the Goods and Services Tax Act 1985 (the GST Act) provides an additional four-year period to issue supply correction information, provided the Commissioner of Inland Revenue is satisfied that the registered person took due care to avoid errors in the taxable supply information. This additional four-year period is meant to align with the refund provisions that apply to overpayments of tax.

The issue is that when the tax invoicing rules were replaced with the new taxable supply information rules by the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022, new section 19N(7)(b) applied the incorrect test to supplies that give rise to an overpayment of tax.

It is therefore proposed that section 19N(7)(b) is amended to align with the test as set out in the refund rules, which provides for an additional four-year period to issue a refund if the overpayment of tax is a result of a clear mistake or simple oversight by the person.

It is important that this language remains consistent to ensure that the refund rules are aligned with the supply correction information provisions. This is because the current wording has generated some confusion as to whether supply correction information could be issued to generate a refund for otherwise time-barred returns in certain circumstances, which would be contrary to the policy intent.

Supply correction information amends the current return period and, therefore, without proper alignment, the time bar provisions alone are not sufficient in preventing the tax position from being changed (this is because the time bar applies to the previous return periods).

The proposed amendment to section 19N(7)(b) would make it clear that supply correction information cannot be issued to correct supplies that would be subject to the time bar in section 45(4) of the GST Act (which applies a time bar to overpayments of tax resulting from a clear mistake or simple oversight by the person). The proposed amendment would take effect on 1 April 2023, the date when section 19N originally took effect.

Pharmac rebates

Clause 175(2) and (3)

Summary of proposed amendment

The proposed amendment would clarify that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment.

Effective date

The proposed amendment would take effect on 1 April 2023.

Background

Before 1 April 2023, an agreed amount of consideration for the supply of a pharmaceutical was not altered if part of that consideration was rebated to Pharmac. This ensured that when Pharmac refunded part of the price of drugs purchased by medical institutions in a business context neither party had to make a GST adjustment to account for the rebated amount. This helped to minimise compliance costs for these entities.

However, this was inadvertently altered as part of the reforms to modernise the rules for tax invoices (now known as taxable supply information). As part of those reforms, the previous provision in section 25(1B) of the Goods and Services Tax Act 1985 was replaced with new section 19N(4). Although section 19N(4) provides that supply correction information does not need to be issued for a supply when part of the consideration is rebated to Pharmac, it provides for a narrower outcome. This is because it no longer specifically provides that the consideration amount is not altered if part of that consideration is rebated to Pharmac.

The proposed amendment would therefore clarify that a Pharmac rebate does not alter the agreed consideration amount for a supply and therefore does not trigger the need for an adjustment. The proposed amendment would take effect on 1 April 2023, the date the position was inadvertently altered.

Minor amendments to grouping rules

Clause 180(1) and (2)

Summary of proposed amendments

The proposed amendments to the GST grouping rules would ensure the grouping rules reflect the policy intent and rectify minor drafting errors.

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Background

The GST grouping rules allow multiple GST-registered entities to group together for GST purposes as a compliance cost-saving measure. Under the grouping rules, the group is treated as a single entity for GST purposes, and a "representative member" files one GST return on behalf of the group. Taxable supplies between group members are also disregarded for GST purposes because the amount of output tax returned by the representative member would equal the amount of input tax deducted.

Key features

The proposed amendment to section 55(1AF) of the Goods and Services Tax Act 1985 would clarify that a non-taxable supply by a non-registered GST group member is treated as a supply by the representative member as a registered person and is therefore a taxable supply.

It is also proposed to repeal section 55(1AC)(b) because it is a redundant provision.

Taxable and non-taxable government grants and subsidies

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

Summary of proposed amendments

The proposed amendments would revoke the Goods and Services Tax (Grants and Subsidies) Order 1992 (the Order) and shift its contents into the Goods and Services Tax Act 1985 (the GST Act).

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Detailed analysis

The schedule to the Order sets out the list of non-taxable grants and subsidies for the purposes of section 5(6D) of the GST Act, which deems government grants and subsidies to be consideration for a supply of goods and services. The proposed amendments would shift all the payments on that schedule to a new schedule to be inserted into the GST Act. No payments would be added or removed. The Order would be revoked.

Section 89 of the GST Act would also be repealed. This provision treated certain COVID-19-related payments made by the Ministry of Social Development between 17 March 2020 and 24 March 2020 as non-taxable government grants and subsidies. The effect of this provision would be moved into clause 8 of proposed new schedule 2 of the GST Act.

Minor changes are also proposed to section 5(6E) of the GST Act to reflect that Orders in Council could be made to add government grants and subsidies to the proposed new schedule 2. Consequential amendments would also be made to section 5(6EB) and (6ED) to reflect the proposed new schedule.

Trustee tax rate remedials

Tax rate for minor and corporate beneficiary rules

Clauses 59(1) and (3) and 60

Summary of proposed amendments

The proposed amendments to sections HC 35 and HC 38 of the Income Tax Act 2007 (ITA) would clarify that income subject to the minor or corporate beneficiary rules is subject to a 39% tax rate, regardless of whether the trust is eligible for an exclusion from the 39% trustee tax rate.

Effective date

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

Background

The trustee tax rate was aligned with the top personal tax rate of 39% for the 2024–25 and later income years. There are specific rules that tax certain amounts of beneficiary income earned from trusts by minors or certain companies at the 39% tax rate:

- *The minor beneficiary rule* in section HC 35 of the ITA limits the tax benefits that could otherwise be achieved by distributing the income of a trust to a minor beneficiary (likely to be on the lowest marginal tax rate).
- *The corporate beneficiary rule* in section HC 38 ensures that trustees cannot shelter income from the 39% trustee tax rate in a company as a beneficiary (which otherwise would be taxed at 28%).

Alongside the increase of the trustee tax rate to 39% for the 2024–25 and later income years, exclusions from the 39% rate were introduced for:

- trusts with no more than $10,000 net income in an income year
- deceased estates (for the first four income years)
- energy consumer trusts
- disabled beneficiary trusts, and
- legacy superannuation funds.

Eligible trusts are instead subject to a 33% tax rate on trustee income (28% for legacy superannuation funds).

Disabled beneficiaries and minor beneficiary rule

Clause 59(2) and (3)

Summary of proposed amendment

The proposed amendment to section HC 35 of the Income Tax Act 2007 (ITA) would ensure that beneficiary income derived from a disabled beneficiary trust by a minor is not subject to the minor beneficiary rule.

Effective date

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

Background

Disabled beneficiary trusts are excluded from the 39% trustee tax rate under section HC 39 of the ITA and are subject to a 33% tax rate on trustee income. To qualify, all the beneficiaries must derive an eligible government support payment for the relevant income year. A minor can satisfy the disabled beneficiary definition if they derive the child disability allowance or the disability allowance.

The minor beneficiary rule in section HC 35 is an integrity measure that ensures that certain amounts of beneficiary income earned from trusts by minors are taxed at the 39% trustee tax rate. There is an existing exclusion for children that derive the child disability allowance, but not the disability allowance.

Corporate beneficiary income and ACDA

Clause 10

Summary of proposed amendment

The proposed amendment would clarify that when a company derives beneficiary income subject to the corporate beneficiary rule, the capital gain amount included in the calculation of the company's available capital distribution amount (ACDA) is the after-tax amount.

Effective date

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

Background

Generally, a transfer of value from a company to its shareholders is taxable as a dividend. However, certain amounts can be distributed to shareholders tax free when a company is liquidated. This is the company's ACDA, which is calculated under section CD 44 of the Income Tax Act 2007 (ITA).

The "corporate beneficiary rule" in section HC 38 of the ITA provides that certain amounts of beneficiary income derived by a company are subject to a 39% tax rate. Beneficiary income subject to the corporate beneficiary rule is treated as a "capital gain amount" when calculating a company's ACDA. This recognises that it has already been subject to tax at 39% and should be able to be distributed tax free on liquidation.

The legislation is currently unclear whether the capital gain amount included in the company's ACDA is the after-tax, rather than pre-tax, amount of beneficiary income.

Key features

The proposed amendment to section CD 44 would clarify that when a company derives income subject to the corporate beneficiary rule, the relevant capital gain amount that is included in the calculation of the company's ACDA is the after-tax amount of beneficiary income they receive. This aligns with the policy intent that the capital gain amount reflects an amount that has already been subject to tax at 39%.

Energy consumer trust exclusion

Clause 105(18) and (40)

Summary of proposed amendment

The proposed amendment would ensure that trusts that no longer hold shares in electricity distribution companies but continue to have the same class of beneficiaries for which the trust was established also qualify as energy consumer trusts. Trusts that meet the current definition would not be affected by this amendment.

Effective date

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

Background

Lines trusts (or energy consumer trusts) are trusts that hold shares in electricity distribution companies. The definition of a "lines trust" in section YA 1 of the Income Tax Act 2007 (ITA) requires that a trust has had specified shares allocated, transferred to, or vested in it. The trust must also continue to hold these shares.

Energy consumer trusts are excluded from the 39% trustee tax rate and are instead subject to a 33% tax rate on their taxable income (see schedule 1, part A, clause 6B(c) of the ITA). This is because they faced an increased risk of over-taxation.

The exclusion is currently too narrow because the lines trust definition does not include trusts that no longer hold the specified shares that were once allocated, transferred to, or vested in it but that continue to have the same class of beneficiaries for which the trusts were established. This means they are subject to the 39% trustee tax rate.

Key features

The proposed amendment to the "lines trust" definition in section YA 1 would ensure that it includes a trust that previously held the specified shares and continues to have the same class of beneficiaries for which the trust was established. Such a trust would be subject to a 33% tax rate on its taxable income.

Partnership remedials

RWT-exempt status, AIL eligibility and other matters relating to partnerships

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

Summary of proposed amendments

The proposed amendments address a number of remedial issues raised by the Tax Counsel Office in response to their Public Advice Project on the taxation of partnership income.

Effective date

The proposed amendments have differing effective dates. Some amendments would take effect on 1 April 2008 (the date of the introduction of the limited partnership rules) and others would take effect on the day after the date the Bill receives the Royal assent.

Background

Inland Revenue's Tax Counsel Office has identified issues with the legislative provisions concerning partnerships. These are either misalignments between the legislation and current practice or alternatively the provisions produce unnecessary compliance costs for taxpayers.

Key features

The proposed amendments would:

- allow limited partnerships to apply for RWT-exempt status under the name of the limited partnership
- allow non-resident partners of limited partnerships to access the approved issuer levy (AIL) when there is a resident partner in the limited partnership, and
- address other minor technical issues relating to non-resident income tax filing, basis calculation errors, balance dates, and other wording issues.

Detailed analysis

RWT-exempt status for limited partnerships

The proposed amendment would allow limited partnerships to apply for a RWT-exempt status at the partnership level, rather than each partner having to assess their eligibility for exemption.

AIL for limited partnerships

The proposed amendment would allow limited partnerships to access the AIL regime when the following requirements are met:

- the borrower/limited partnership is registered for AIL (under section 32M of the Tax Administration Act 1994 (TAA))
- the security is registered for AIL (under section 86H of the Stamp and Cheque Duties Act 1971)
- the requirements of section RF 12(1)(a)(ii) and (iv) of the Income Tax Act 2007 (ITA) are met, and
- the interest is derived by a non-resident limited partner as non-resident passive income.

To enable non-resident partners to access the AIL regime it would, in practice, be necessary for the limited partnership to be responsible for the deduction and payment of non-resident withholding tax (NRWT) or AIL on interest payments made to non-resident limited partners. The limited partnership would therefore be required to deduct NRWT or pay AIL as agent for the borrower.

The limited partnership would have a statutory right of recovery against the relevant non-resident limited partner for NRWT or AIL on interest derived by that non-resident limited partner, replicating the power in sections HD 5(2) and HD 20B of the ITA.

Other partnership remedial items

Interest derived by two or more persons jointly

The proposed amendment would clarify that “interest derived by 2 or more persons jointly” in section RF 12B of the ITA includes interest derived by partners of a partnership.

RWT-exempt status eligibility thresholds

The proposed amendment would clarify that the $2 million income amount, deduction, assessable income and credit amounts referred to in the RWT-exempt status eligibility criteria (sections 32E(2) and 32I(1) of the TAA) are determined on an aggregate basis (ie, the limited partnership is treated as a non-transparent entity for the purposes of this test).

Partnership or partner with non-standard balance date

The proposed amendment would allow partners who are part of a partnership with a non-standard balance date to include their share of the partnership income in the same corresponding income year as the partnership when filing their separate returns. An option would be included when the partner wishes to apportion the partnership income to the partner's income year. Such an election would be made by the partner in their tax return.

This would require the Commissioner to treat the partners as having the same non-standard balance date for this source of income so that partners do not have to reallocate the income based on their separate balance dates. However, a partner would need to continue returning their other income to 31 March or another relevant date (if the partner has a non-standard balance date for another business).

Example 32: Returning partnership income from different balance date

Dory has a 31 March balance date and is also a partner in the Nemo partnership, which has a late balance date of 30 June due to the nature of the partnership activities.

When Dory is completing her individual tax return for the 2024–25 income year ending 31 March 2025 she would:

- return her personal income (excluding partnership income) for the year 1 April 2024 to 31 March 2025, and
- either:
    - return her share of partnership income for the period 1 July 2024 to 30 June 2025 (ie, to match the 2024–25 income year), or
    - apportion the partnership income of those two partnership income years that fall within the partner's income year (ie, three months from 1 April 2024 to 30 June 2024 and nine months from 1 July 2024 to 31 March 2025 (to align the balances dates).

Non-resident partner income tax filling

The proposed amendment would allow a non-resident limited partner to forgo filing individual income tax returns if:

- they have no New Zealand-sourced income, or
- they meet **both** of the following criteria:
  - all their income is non-resident passive income, and
  - the NRWT withheld is a final tax (referred to in section RF 2(3) of the ITA).

The application of transparency rules for partnerships

The proposed amendment would clarify that partnerships are to be treated as opaque, not transparent, for the purposes of sections DC 3(2), DC 3(3) DC 4(2), FD 1(1)(a) and GC 5(2)(d) of the ITA.

RWT liability after retirement

The proposed amendment would clarify that a retired partner of a general partnership is not liable for RWT debt that has arisen after their retirement, but they are liable for RWT debt that arose when they were still a member.

Overrides in safe harbour provisions

The proposed amendment would clarify that, in sections HG 3 to HG 10 and in paragraph (h)(iii) in the definition of "dispose" in section YA 1 of the ITA, the safe harbour provisions apply unless the disposal occurs in the circumstances described in section HG 4(1).

Disposal of partner's interests – basis calculation

The proposed amendments would:

- clarify that section HG 5(2) of the ITA refers specifically to the market value of financial arrangements, and
- correct the spelling of "arrangements" in section HG 5(2)(c)(i).

Limitation on deductions by partners in limited partnerships

The proposed amendments would:

- amend section HG 11 to clarify that multiple instances of amounts should be aggregated
- amend section HG 11 so any repayment of debt would be accounted for in a partner's basis calculation

- amend section HG 11(5)(b) of the ITA so it includes "the assignment of partnership property" rather than "the assignment of capital contributions"
- amend section HG 11(5)(c) so the term "investments" includes "the secured amounts" only if they are not already accounted for under section HG 11(5)(b) by that partner or another partner in the partnership
- amend section HG 11(7) to clarify that amounts from both the current and previous years should be included
- repeal section HG 11(7)(c) and (8)(c) because these subsections are superfluous
- amend section HG 11(10) to allow partners to exclude the deductions accrued from the selling of their interests, when calculating their partner's basis in section HG 11(3).

Application of associated persons rules to certain structures involving limited partnerships

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

Summary of proposed amendments

The proposed amendments would provide that, in certain situations, a limited partnership would be treated as a company for the purpose of applying relevant associated persons tests in subpart YB of the Income Tax Act 2007 (ITA). This would ensure that including a chain of two or more limited partnerships (or a chain of entities including both limited partnerships and companies) in a structure would not result in a break in association between closely connected entities, which would not be consistent with the policy intent.

Effective date

The proposed amendments would take effect on the date of introduction of the Bill.

The exception to this is the proposed amendments to the definition of "company", "voting interest" and "market value interest" relating to the existing rule in section YB 14(4), which would take effect on 1 April 2010, with application from 6 October 2009 for the purposes of the land provisions and the 2010–11 and later income years for all other purposes. This is consistent with the dates that section YB 14(4) applies from.

Background

A person that is not a partner in a limited partnership (a non-partner) may be associated with a limited partnership because of their association with a partner in the limited partnership.

Association may occur under the tripartite test in section YB 14(1), which associates two persons if they are associated with the same third person under different associated persons tests. It may also occur under the limited partnership associated persons test in section YB 12(2) because of the limited partnership aggregation rules in section YB 12(3) and (4). (Under those rules, a non-partner is treated as holding anything held by a limited partner with whom they are associated under certain associated persons tests.)[30]

[30] Remedial amendments are also included in this Bill to clarify the effect of the limited partnership aggregation rules for non-partners. See commentary item Clarifying application of limited partnership and look-through company aggregation rules.

However, under the current law, including a chain of two or more limited partnerships in a structure may result in a break in association between a non-partner and a limited partnership they are closely connected with.

This can occur because:

- The tripartite test in section YB 14(1) will not apply in some situations involving limited partnerships. A limited partnership is treated as a company for the purpose of applying the tripartite test in section YB 14(1) (section YB 14(4)), meaning the tripartite test requirement that persons must be associated with the same third person under different associated persons tests may not be satisfied.
- The aggregation rules in section YB 12(3) and (4) will not result in association when an additional limited partnership is interposed between the partner the non-partner is associated with and the limited partnership. This is because, for the purposes of determining the non-partner's associates, the rule in section HG 2 of the ITA that a partnership is transparent does not apply[31] and each layer of limited partnership will be treated as opaque.

The outcome under the current law is not consistent with the policy intent of the associated persons rules because it means association may not occur between closely connected entities.

It also results in inconsistent treatment of limited partnerships and companies for the purpose of the associated persons rules. The corporate look-through rule in section YC 4 means a company with a voting interest or market value interest in another company can be "looked through". Therefore, if the structure involved companies rather than limited partnerships, association would occur (provided the association thresholds in section YB 2 were satisfied). From a policy perspective, the outcome should be the same irrespective of whether companies or limited partnerships are used.

Key features

Proposed new section YB 16B would mean, in certain circumstances, the two companies associated persons tests in section YB 2, together with the corporate look-through rule in section YC 4, would determine whether a company and a limited partnership or two limited partnerships were associated persons (instead of section YB 3 or YB 12(2)).

The proposed amendments would ensure a non-partner and a limited partnership that are closely connected would be associated when additional layers of limited partnerships, or a combination of limited partnerships and companies, are interposed.

[31] The application of section HG 2 in the context of the associated persons rules was considered by Inland Revenue's Tax Counsel Office in a recent Binding Ruling and as part of its Public Advice Project on the taxation of partnerships.

Detailed analysis

Proposed new section YB 16B would treat a limited partnership as a company for the purposes of the associated persons tests in sections YB 2, YB 3 and YB 12(2) to (4) and the corporate look-through rule in section YC 4, when:

- a company has a partnership share in a right, obligation, or other property status, or thing of the limited partnership
- the limited partnership has a partnership share in a right, obligation, or other property status, or thing of another limited partnership
- another limited partnership has a partnership share in a right, obligation, or other property, status, or thing of the limited partnership
- the limited partnership has a voting interest in a company or a market value interest in a company for which a market value circumstance exists.

This means proposed new section YB 16B would apply when a company is a limited partner in a limited partnership, a limited partnership is a limited partner in another limited partnership, or a limited partnership holds an interest in a company.

In the situations covered by proposed new section YB 16B, the two companies associated persons test (section YB 2) would determine whether a company and a limited partnership or two limited partnerships were associated, instead of the company and other person test (section YB 3) or the limited partner and limited partnership test (section YB 12(2)). It would also mean that, when a limited partnership is treated as a company because of proposed new section YB 16B, association between a limited partner that is not a company and the limited partnership would be tested under section YB 3 rather than section YB 12(2).

A limited partnership and a company or two limited partnerships would be associated under section YB 2(1) if a group of persons existed whose total “voting interest” in each entity was 50% or more. When a market value circumstance existed for a company, the company and limited partnership would be associated under section YB 2(2) if a group of persons existed whose total “market value interest” in each entity was 50% or more.

When proposed new section YB 16B applies, a limited partnership would also be treated as a company for the purpose of the corporate look-through rule in section YC 4. This would make it possible to look-through a chain of two or more limited partnerships, or a chain of entities including both limited partnerships and companies, for the purpose of establishing whether a company and a limited partnership or two limited partnerships were associated under section YB 2.

Amendments to definitions of "voting interest", "market value interest" and "company"

Amendments are proposed so that, when a limited partnership is treated as a company under proposed new section YB 16B or the existing rule in section YB 14(4) (which treats a limited partnership as a company for the tripartite test in section YB 14(1)), "voting interest" would include a partnership share in a limited partnership. "Market value interest" would include a partnership share in a limited partnership for the purpose of determining whether a limited partnership is associated with a company for which a market value circumstance exists under s YB 2(2). See proposed new paragraph (bb) of the definition of "voting interest" and proposed new paragraph (ab) of the definition of "market value interest" in section YA 1 of the ITA.

Amendments are also proposed to paragraph (ab) of the definition of "company" in section YA 1 to recognise that a limited partnership would be a company when section YB 14(4) or proposed new section YB 16B applies.

As discussed under Effective date above, the amendments would take effect either on 1 April 2010 for the purpose of the existing rule in section YB 14(4) or the date of introduction of this Bill for those related to proposed new section YB 16B.

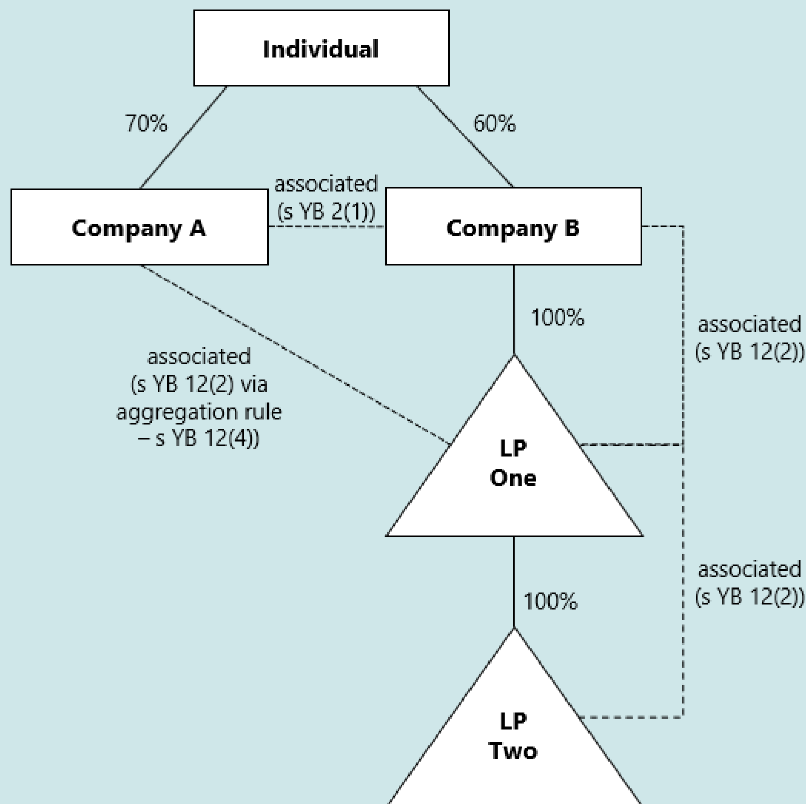
Consequential amendments

Consequential amendments are proposed to the definitions of "control group" and "related" in section FH 15 of the ITA, which apply for the purpose of the hybrid and branch mismatch rules. These provisions rely on the associated persons tests in subpart YB. The consequential amendments are to recognise that, because of the proposed amendments, a limited partnership may be treated as a company for the purpose of the associated persons tests.

Examples

The following two examples illustrate how the associated persons tests apply to a two-tier limited partnership structure under the current law and how the tests would apply with the proposed amendments.

Example 33: Two-tier limited partnership structure – outcome under current law



Company A wants to establish whether it is associated with LP Two, which is a land developer.

Although the Individual has a 70% direct interest in Company A and a 60% indirect interest in LP Two, under the current law Company A and LP Two are not associated.

Company A and LP One will be associated under the limited partnership association test in section YB 12(2). This is because Company A and Company B are associated (section YB 2(1)), so Company A is treated as holding Company B's 100% partnership share in LP One under the limited partnership aggregation rule in section YB 12(4).

However, Company A and LP Two are not associated under the tripartite test in section YB 14(1) even though they are associated with the same third person (LP One). This is because LP One and LP Two would be treated as companies for the purpose of applying the tripartite test (section YB 14(4)). As a result, the tripartite test requirement that persons must be associated under different associated persons tests would not be satisfied and the tripartite test would not apply.

Section HG 2 does not apply so the land development activity carried on by LP Two cannot be attributed to LP One (ie, LP Two's limited partner). For Company A to be

"tainted" by the land development activity carried on by LP Two, an association must be established between Company A and LP Two. Under the current law, no such association occurs.

Example 34: Dual limited partnership structure – outcome under proposed amendments

The proposed amendments would result in Company A and LP Two in the structure in Example 33 being associated.

Both LP One and LP Two would be treated as companies under proposed new section YB 16B. LP One would be treated as a company because a 100% partnership share in it is held by a company (Company B) and it holds a 100% partnership share in another limited partnership (LP Two). LP Two would be treated as a company because 100% of its partnership share is held by another limited partnership (LP One).

As a result of the proposed amendments, the corporate look-through rule in section YC 4 would also apply and the Individual would be treated as holding a 60% "voting interest" in LP Two (i.e., 60% x 100% x 100%, with the 100% partnership shares in LP One and LP Two treated as voting interests).

The Individual's voting interests in Company A and LP Two are more than 50% so Company A and LP Two would be associated under section YB 2(1).

Clarifying application of limited partnership and LTC aggregation rules

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

Summary of proposed amendments

The proposed amendments would clarify that:

- the application of the limited partnership aggregation rules enables association between a person that is associated with a limited partner but is not a limited partner themselves (a non-partner) and a limited partnership under section YB 12(2) of the Income Tax Act 2007 (ITA), and
- the application of the look-through company aggregation rules enables association between a person that is associated with an owner of an effective look-through interest but is not an owner of an effective look-through interest themselves and a look-through company under section YB 13(2) of the ITA.

Effective date

The proposed amendments to section YB 12 and the definition of "partnership share" in section YA 1 would take effect on 6 October 2009 for the purpose of the land provisions, and for all other purposes on 1 April 2010 for the 2010–11 and later income years.

The proposed amendments to section YB 13 would take effect on 1 April 2011 for income years beginning on or after 1 April 2011.

Background

Limited partnership aggregation rules

Section YB 12(3) and (4) includes aggregation rules applying for the purpose of the limited partnership associated person test in section YB 12(2). Under the aggregation rules, a person is treated as holding anything held by a person they are associated with under certain other associated persons tests.

The aggregation rules mean the interests of limited partners that are associated with one another will be combined for the purpose of determining whether a limited partner's partnership share meets the 25% association threshold in section YB 12(2).

Another intended effect of the aggregation rules is to enable association between a non-partner and a limited partnership when the non-partner is associated with a limited partner in the limited partnership. For example, if Spouse A is a limited partner with a 25% partnership share in a limited partnership, Spouse B (an associate of Spouse A under section YB 4(1)(b) of the ITA) should also be treated as holding this partnership share and associated with the limited partnership.

Section YB 12(2) associates a limited partnership and a "limited partner". While the aggregation rules mean a non-partner can be treated as holding a limited partner's partnership share in a limited partnership, the rules do not result in the non-partner being treated as a limited partner for the purpose of section YB 12(2). Therefore, the meaning of "limited partner" in section YB 12(2) currently needs to be stretched to achieve the policy intent of the aggregation rules in relation to non-partners.

This can be compared with the company and person other than a company association tests in section YB 3, which associate a company and a "person". The use of "person" makes it clearer that a person that does not hold voting interests or market value interests in a company may be associated with the company because of the aggregation rules in section YB 3(3) and (4) of the ITA.

Look-through company aggregation rules

A similar issue arises for the look-through company aggregation rules in section YB 13(3) and (4).

Section YB 13(2) associates a look-through company and an "owner" of an effective look-through interest. "Owner" is defined in section YB 13(1) as a person who has a look-through interest for the look-through company.

The use of "owner" creates uncertainty about whether the aggregation rules enable association between a person that is associated with an owner, but is not an owner themselves, and a look-through company under section YB 13(2).

Key features

Limited partnership aggregation rules

To clarify that the aggregation rules enable association between a non-partner and a limited partnership, the references to "limited partner" in section YB 12(2) and the definition of "partnership share" in section YA 1 would be replaced with "person".

Under the current law, association between a general partner and a limited partnership occurs under the partnership and partner association test in section YB 12(1). The proposed amendments would also result in a separate provision being applied to associate a limited

partnership and a general partner (proposed section YB 12(1B)). The effect under existing section YB 12(1) and proposed section YB 12(1B) would be the same.

Consequential amendments are also proposed to the headings in section YB 12.

The effective date of the amendments, set out above, are consistent with the dates that section YB 12 applies from. A savings provision is proposed for persons that have taken a tax position that is inconsistent with the proposed amendments before the date of introduction of this Bill.

Look-through company aggregation rules

To clarify that the aggregation rules enable association between a person that does not hold an effective look-through interest and a look-through company, the references to “owner” in section YB 13(2) would be replaced with “person”.

Consequential amendments are also proposed to remove the reference to “owner” from section YB 13(1) and from the headings in section YB 13 because the term is no longer used in the section.

The effective date of the amendments, set out above, are consistent with the date and income year section YB 13 applies from. A savings provision is proposed for persons that have taken a tax position that is inconsistent with the proposed amendments before the date of introduction of this Bill.

Land rules remedials

Bright-line start date when land partitioned or subdivided

Clause 16

Summary of proposed amendment

The proposed amendment would clarify that the bright-line period should not restart when land is allocated to each of the co-owners as part of a partition or subdivision arrangement.

Effective date

The proposed amendment would be effective for disposals of land as part of partition or subdivision transactions on or after 27 March 2021.

Background

A partitioning transaction is one when a group of people purchase land together as co-owners to pool resources and then subdivide the land and allocate the subdivided parcels to each of the co-owners based on their ownership interests in the original parcel. Section CW 3C of the Income Tax Act 2007 was introduced in 2023 (with effect on 27 March 2021) to ensure that these transactions would not give rise to tax.

In a partitioning scenario, each co-owner will have a new registration date for their subdivided parcel of land, which technically restarts the bright-line period for them. It was not intended for the bright-line period to restart when land is partitioned or subdivided in this way.

Key features

Section CW 3C would be amended to clarify that the bright-line start date for the co-owners after the partition or subdivision is completed is the bright-line start date for the co-owners when they originally acquired the undivided land.

Detailed analysis

Section CW 3C does not expressly state the date the land will be treated as being acquired by the co-owners, which is important for many of the land sales tax rules.

For most of the land sales tax rules (including the 10-year rules in sections CB 9 to CB 12), section CB 15B confirms that the date of acquisition of land is the date that the person first has an estate or interest in the land. In a partition or subdivision transaction, this will be the date the undivided land was acquired.

However, for the purposes of the bright-line test, the relevant date is the "bright-line start date" (also referred to in previous versions of the legislation as the "bright-line acquisition date"). This is usually the date on which the instrument to transfer the land to the person is registered on the title. In a partition or subdivision scenario, each co-owner will have a new registration date for their subdivided parcel of land, which technically restarts the bright-line period for them.

It was not intended for the bright-line period to restart when land is partitioned. Therefore, it is proposed that section CW 3C be amended to confirm that the bright-line start date (or bright-line acquisition date for land sold before 1 July 2024) is the date the undivided land was acquired.

For avoidance of doubt, this proposed new rule would only apply to the allocation of land to each of the co-owners as part of the partition or subdivision transaction. It would not apply to any subsequent transfer of land to third parties or among the co-owners.

Example 35: Bright-line start date for partition or subdivision transaction

Rob, Ruth, and Kevin jointly acquire a block of bare land with the intention of building three townhouses. After constructing the townhouses, they subdivide the property into three lots, which are transferred one each to Rob, Ruth, and Kevin.

For the purposes of the bright-line test, Rob, Ruth, and Kevin would be treated as having acquired each of their subdivided sections on the date they jointly acquired the block of bare land.

Inherited land and bright-line test

Clause 5

Summary of proposed amendment

The proposed amendment would reverse a drafting error that removed the exclusion from the bright-line test for disposals of land to a third party by an executor, administrator or beneficiary of an estate.

Effective date

The proposed amendment would take effect on1 July 2024.

Background

Disposals of residential land acquired by an executor, administrator or beneficiary of an estate following the death of a person have been specifically excluded from the bright-line test since it was originally introduced. This was achieved by section CB 6A(2B) of the Income Tax Act 2007 (ITA) for the 10-year and 5-year new build bright-line tests and section CZ 39(7) for the 5-year bright-line test.

When the bright-line test was rewritten to reduce it to two years in the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024, the provision excluding the transfer of land to a third party by an executor, administrator or beneficiary of an estate was unintentionally omitted.

Key features

The key features of the proposed amendment are:

- Section CB 6A(5) would be amended to include an exemption from the bright-line test for transfers of land to a third party by an executor, administrator or beneficiary of an estate.
- The amendment would take effect on 1 July 2024, which is the effective date for the new 2-year bright-line test.

Rollover relief for those in civil unions and de facto relationships

Clause 48(2) and (5)

Summary of proposed amendment

The proposed amendment would ensure the provisions providing rollover relief from the bright-line test apply to those in civil unions and de facto relationships, as well as those in marriages.

Effective date

The proposed amendment would be effective for a person's disposal of residential land if the bright-line end date for the land is on or after 1 July 2024.

Background

New subpart FD of the Income Tax Act 2007 was inserted by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 on 1 July 2024. The new subpart extends the rollover relief rules, which essentially allow a transfer of land between specified people to be ignored for the purposes of the bright-line test, to all transfers between associated persons, provided they have been associated for at least two years before the transfer. However, the provision currently refers only to marriage and does not include civil unions and de facto relationships. The proposed amendment would correct this.

Sale of subdivided land acquired from co-owner

Clause 6

Summary of proposed amendment

The proposed amendment would ensure that the rules that apply when land that was acquired on a subdivision between co-owners is subsequently disposed of operate as intended.

Effective date

The proposed amendment would take effect on 27 March 2021.

Background

Individuals can pool resources to purchase land, becoming co-owners. When co-owners subdivide land and keep a parcel each, each co-owner goes from owning a share in the whole of the undivided land to being the sole owner of the part of the land they obtain. While the share of the divided land they get may reflect the share they held as co-owner, they are considered to have disposed of their share in the parcel they did not keep to the other co-owner (or each other co-owner). These disposals by each co-owner may be taxable events because the land sale rules in the Income Tax Act 2007 (ITA) apply in certain situations to tax disposals of land.

The Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023 inserted section CW 3C into the ITA to ensure that no income tax is imposed when there is no substantive change of ownership following a subdivision. However, the intent of this provision could be defeated because a subsequent disposal of the land by the co-owner may be taxable under provisions that impose tax on land acquired from developers or associates in certain circumstances (the land sale rules). To remedy this, the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024 inserted section CB 15E to ensure that any income arising under the land sale rules, when land subdivided between co-owners is subsequently disposed of, is exempt to the extent to which the income on subdivision is exempt under section CW 3C.

However, two issues with section CB 15E require amendment as discussed below.

Extending the scope of the section

One of the requirements for the current section CB 15E to apply is that the person derives income under section CB 10(2) or CB 15(1). Both these sections involve an associated person, which means section CB 15E cannot apply if co-owners develop land in their personal names and do not set up an entity (which would be an associated person) to undertake the development.

Understated income amount

Section CB 15E(3) currently understates the amount of income a person should have when they have disposed of land that they acquired from a co-owner on a partition or subdivision while associated to a property developer and that acquisition was more than minor. Section CB 15E(3) reduces the person's income amount, but because they can still claim a full deduction, the person's net income is lower than it should be.

Key features

Extending the scope of the section

The Bill proposes to amend section CB 15E(1) to provide that the section also applies if the person derives income from the disposal of the land under section CB 10(1), provided the person was not carrying on a business of developing land or dividing land into lots at the time the person originally acquired their interest in the land that was partitioned or subdivided between the co-owners. Section CB 10(1) applies when the person themselves was engaged in the business of developing land or dividing it into lots at the time they acquired the land. This ensures that section CB 15E applies in a scenario when the co-owners develop the land in their personal capacities.

Understated income amount

The Bill proposes to amend section CB 15E(3) to provide that instead of reducing the person's income by the amount given by the formula, the income is exempt to the extent given by the formula. By designating an exempt income amount, the person is only able to claim a deduction to the extent they had assessable income. This ensures the person has the appropriate amount of net income.

Disposals of land to the Crown – repeal of income spreading rule

Clauses 36, 38, and 43

Summary of proposed amendments

The proposed amendments would repeal a concessionary rule that allows a person to spread income derived by them on disposal of land to the Crown over a four-year period.

Consequential amendments would provide a transitional provision for those persons currently applying the concessionary rule and would remove a cross-reference to the repealed rule.

Effective date

The proposed amendments would be effective for disposals of land to the Crown on or after the date of introduction of the Bill.

Background

Under current section EI 8 of the Income Tax Act 2007, a person who derives income from the disposal of their land to the Crown can apply to the Commissioner of Inland Revenue to spread that income (and corresponding deductions) over a four-year period.

This concession was likely enacted to reduce the impact of unexpected tax liabilities arising for taxpayers whose land was compulsorily acquired by the Crown. This was of greater concern when the rule was originally introduced in the mid-1950s because the top income tax rate was over 60%. Income tax rates are now significantly lower, and we do not consider there to be sufficient reason to depart from standard income timing rules. Income is generally allocated to the income year in which it is derived.

Inland Revenue
Te Tari Taake

Date: August 2024

International tax remedials

Thin capitalisation changes related to non-debt liabilities

Clauses 49, 50, and 105(16)

Summary of proposed amendments

The proposed amendments to the thin capitalisation rules relate to the calculation of non-debt liabilities and the debt percentage of the group. In broad terms the changes would:

- Exclude interest-free loans from a settlor of a trust in calculating the non-debt liabilities of the trust when the settlor has made one or more settlements on the trust totalling 10% or more of the value of the total settlements on the trust.
- Extend the exclusion from non-debt liabilities for interest-free loans provided by, and redeemable shares held by, members of the same wholly-owned group of companies to also include non-corporate members (such as a settlor of a trust, trustee of a trust, or individual).
- Correct the link between the calculation of group debt percentage and the requirement to adjust an excess debt entity's interest deduction to ensure that entities with non-debt liabilities greater than the total assets are required to reduce their total interest deductions.

Effective date

The first two proposed amendments would be effective for the 2025–26 and later income years.

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

Background

Non-debt liabilities –interest-free loans from settlor of trust

The thin capitalisation rules help protect the tax base by preventing the use of excessive debt to reduce the taxable profits in New Zealand for both inbound and outbound investment. In practice, the rules limit interest deductions by setting a maximum allowable debt percentage for the New Zealand group.

The debt percentage of a group was historically calculated based on its debt relative to its gross assets: that is, group debt ÷ group assets. This was amended in 2018 so that non-debt liabilities are now subtracted from group assets in calculating the debt percentage: that is, group debt ÷ (group assets − non-debt liabilities). The amendments strengthened the thin capitalisation rules by more accurately reflecting the group's true debt to asset position.

Interest-free loans from shareholders to companies are excluded from non-debt liabilities when they are proportional to shareholding or when the shareholder holds at least 10% of the voting interests in the company (see section FE 16B(1)(b) of the Income Tax Act 2007 (ITA)). This is because such loans are more akin to equity than debt, and so they should not reduce the group assets for thin capitalisation purposes.

Interest-free loans from a settlor to a trust are analogous in some respects to interest-free loans from a shareholder to a company.

The proposed amendment would extend the non-debt liabilities exclusion to include interest-free loans from a settlor that has made one or more settlements totalling at least 10% of the value of total settlements on the trust.

Non-debt liabilities – equity groups

Section FE 16B(1)(b) and (c) excludes interest-free shareholder loans and some redeemable shares from being non-debt liabilities for thin capitalisation purposes. This exclusion was extended in 2020 to cover situations when the loans are provided by, or the shares are held by, a member of the same wholly-owned group of companies as the shareholder (see section FE 16B(3)).

This extension covers companies within the same wholly-owned group, but there are analogous situations when a non-corporate person (such as a settlor of a trust, trustee of a trust, or individual) is the provider of the interest-free loans or holder of the redeemable shares.

To cater for these non-corporate person scenarios, there are separate proposed amendments to cover whether the shareholder is a company or a trust.

When a shareholder is a company, the proposed amendments would replace the "wholly-owned group" wording in section FE 16B(3) with the new term "equity group", which would:

- mean companies within the same wholly-owned group as the shareholder if the shareholder is a member of a wholly-owned group, or the shareholder company itself (when it is not a member of a wholly-owned group), and

- include:
  - a person (person A) who holds 100% of the voting interests in a member of the wholly-owned group or the shareholder company itself, for example, an individual or trustee of a trust, and
  - if person A is a trustee of a trust, a settlor of the trust if the settlor has made 100% of the settlements made on the trust.

The proposed amendments would cover various scenarios, such as when the shareholder is a foreign company wholly owned by a foreign trust with a settlor that has made 100% of the settlements on the trust and either the settlor or the trustee of the trust provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

It would also cover scenarios when the shareholder is a foreign company wholly owned by an individual and the individual provides interest-free loans directly to the company in the New Zealand thin capitalisation group.

In each of the above scenarios, the interest-free loan made to the company in the New Zealand thin capitalisation group would be excluded from non-debt liabilities.

When a shareholder is a trustee of a trust, the proposed amendments would mean that if there is a settlor that has made 100% of the settlements on the trust, then the trustee would be treated as the shareholder for all shares held by the settlor and the provider of all interest-free loans provided by the settlor for the purposes of section FE 16B(1)(b) and (c). This would provide an equivalent treatment to the scenario when the shareholder is a foreign company wholly owned by a foreign trust with a settlor that has made 100% of the settlements on the trust and the settlor provides interest-free loans directly to the company in the New Zealand thin capitalisation group. However, it would mean that the shareholder can be a trustee of a trust, rather than a foreign company wholly owned by a foreign trust.

Legislative link between debt percentage calculation and interest apportionment calculation formula

The debt percentage calculation in section FE 12(3) of the ITA was amended in 2021 so that the debt percentage is deemed to be zero when non-debt liabilities exceed assets. While not common, this can happen when an entity is insolvent.

The intended impact of the 2021 amendment to section FE 12(3) was that when non-debt liabilities exceed assets, it should generally result in the full denial of the interest deductions in New Zealand under section FE 6.

Section FE 6 only applies if section FE 5 requires the entity or person to apportion their interest expenditure. However, section FE 5 does not apply when the New Zealand group debt percentage is zero. Therefore, there is no clear legislative link to require the interest

apportionment calculation in section FE 6 to be undertaken when the New Zealand group debt percentage is calculated to be zero under section FE 12(3).

The proposed amendments to section FE 5 would ensure that entities that have a group debt percentage of zero because their non-debt liabilities are greater than their total assets are required to reduce their total interest deductions.

This change is proposed to have retrospective application to the effective date of the previous amendment to section FE 12(3) (ie, income years beginning on or after 1 July 2018). This is consistent with the clear policy intent of the thin capitalisation rules and how the rules are being applied in practice.

FIF cost method eligibility

Clause 39

Summary of proposed amendment

The proposed amendment would clarify that the eligibility to use the cost method to calculate foreign investment fund (FIF) income depends on whether a market value for the investment is readily available. Eligibility is not impacted by the valuation skills and experience of the investor. This is consistent with the policy intent and is not intended to change how the FIF cost method is being used in practice.

Effective date

The proposed amendment would be effective for income years beginning on or after 1 July 2011.

Background

A FIF is a type of offshore investment subject to special tax rules. There are five methods available to calculate FIF income, with restrictions placed on which method a person can choose. One of the methods is the cost method.

The cost method was designed as a back up to the fair dividend rate (FDR) method. It is intended to cater for situations when verifiable market values for the investments are not readily available, such as investments in foreign unlisted shares.

However, the existing provision may be interpreted to mean that the cost method cannot be used by investors possessing the skills, experience, and information needed to personally apply a commercially acceptable valuation method to determine the market value. This interpretation goes beyond the policy intent.

Foreign tax credit rules and trust rules

Clause 89

Summary of proposed amendment

The proposed amendment would fix an unintended interaction between the trust rules and the foreign tax credit (FTC) rules that can give taxpayers a larger FTC than they should get.

This amendment would require a trust beneficiary to take into account any deductions that relate to the relevant foreign-sourced income when calculating their foreign tax credit entitlement.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

When a New Zealand resident earns foreign-sourced income and pays foreign tax on that income, they usually get an FTC to offset against their New Zealand tax liability. This prevents tax being paid twice on the same income.

Under section LJ 5 of the Income Tax Act 2007 (ITA), the FTC is capped at the lower of:

- the foreign tax actually paid on that income, or
- the tax that would have been paid in New Zealand if not for the FTC, calculated on a net basis (ie, after subtracting deductions). This is known as the "notional liability" for the person.

However, when a trust incurs expenses, section DV 9 of the ITA requires deductions to be taken at the level of the trustee, even if the relevant income is distributed to the trust's beneficiaries. Since the beneficiaries are the ones with the taxable income, they get the FTC. However, because the deductions are removed from the calculation of the notional liability described above, the FTC cap can be higher than it should be.

Example 36: Higher foreign tax credit when foreign-sourced income distributed to beneficiary of trust

The Williams Family Trust (the trust) has a rental property in Country A.

In the 2022 income year, the trust derives $20,000 gross rental income from Country A and incurs $15,000 expenditure in deriving that income. The net foreign-sourced income of the trust is $5,000. It pays Country A tax at a rate of 40%, which equals $2,000. Note that the trust's $15,000 in expenditure could be deducted against other income, reducing the trust's overall tax liability.

If the trustees retain all foreign-sourced income such that it was taxed at 33%, New Zealand tax payable on the income would be $1,650. The foreign tax credit (FTC) under section LJ 2(2) would be capped at the notional New Zealand tax liability of $1,650. The FTC covers the full liability, so there is no further New Zealand tax to pay.

However, if the trustees distribute $20,000 as beneficiary income to Tane Williams, one of the beneficiaries of the trust, Tane can use the FTC associated with that foreign-sourced income. Tane also has employment income of $160,000.

To calculate the FTC allowed for Tane, follow the steps below:

1. Use section LJ 5(5) to find Tane's notional New Zealand tax liability – $49,277.
2. Use this notional liability to work out the New Zealand tax payable on the foreign-sourced income segment as per section LJ 5(2) – $5,475.
3. Now calculate the FTC allowed as per section LJ 2 – up to $2,000 of FTC allowed.

Because the Country A tax liability is less than the New Zealand tax payable ($5,475), this means that Tane can use the full $2,000 of FTC against the foreign-sourced income.

This is higher than if the foreign-sourced income were retained in the trust ($1,650).

The proposed amendment would ensure that relevant deductions taken at the trust level are accounted for when calculating Tane's FTC. Tane's FTC tax credit would then be capped at the same level as if it were retained in the trust.

Failure to withhold NRWT amount

Clause 100

Summary of proposed amendments

The proposed amendments would clarify the available options for rectifying cases when a person is required to withhold non-resident withholding tax (NRWT) for a payment of passive income but fails to do so.

Effective date

The proposed amendments would be effective for the 2008–09 and later income years.

Background

A person who makes a payment of non-resident passive income, such as interest or dividends, is required to withhold NRWT. When the payer fails to do so, the Income Tax Act 2004 contained provisions that confirmed the available options to rectify this. During the 2007 rewrite of the Income Tax Act, the references to persons in some of the provisions became unclear as to whether they refer to the payer or the recipient, and one provision was omitted. This creates undesirable uncertainty for taxpayers.

Key features

The proposed amendments would:

- confirm that the person referred to in section RF 6(2) of the Income Tax Act 2007 (ITA), who is obliged to pay the Commissioner of Inland Revenue the amount that should have been withheld, is the payer
- clarify that the persons mentioned in section RF 6(4), in relation to whom the Commissioner may take the steps the Commissioner deems fit to recover the amount, refer to the payer and the recipient, and
- provide a signpost to section 165 of the Tax Administration Act 1994 under subpart RF of the ITA to confirm the payer's right to recover from the recipient an amount of NRWT that the payer failed to withhold but must subsequently pay to the Commissioner.

Interaction between transfer pricing rule and deemed dividend rule

Clauses 55, 56, and 57

Summary of proposed amendments

The proposed amendments would:

- clarify that the transfer pricing and dividend rules apply concurrently regardless of whether the other party applies for a matching transfer pricing treatment under section GC 11 of the Income Tax Act 2007 (ITA), and
- align the four-year time bar that currently applies to *other adjustments* that flow from any adjustments under the transfer pricing rules in sections GC 6 to GC 14 of the ITA or the interest limitation rules in sections GC 15 to GC 19 of the ITA (such as the withholding requirements and tax loss carry forward or offset against other group members' net income) with the seven-year time bar that applies to the adjustments under sections GC 6 to GC 19, so that these adjustments are subject to the same seven-year time bar.

Effective date

The proposed amendments to confirm the concurrent application of the transfer pricing and deemed dividend rules would be effective for income years beginning on or after 1 July 2009.

The proposed amendment to align the time bar rules would be effective for an arrangement and income years beginning on or after 1 April 2025.

Background

The transfer pricing rules set out in sections GC 6 to GC 14 operate to substitute an arm's length consideration in the calculation of a taxpayer's net income if the taxpayer's net income is reduced by non-arm's length pricing in a cross-border arrangement with an associated person.

Under the dividend rules in subpart CD of the ITA, a transfer of value from a company to a person that has been caused by a shareholding will be treated as a dividend and taxed accordingly.

In many cases, the difference between the arm's length amount and the amount payable or receivable by the taxpayer under a transfer pricing arrangement constitutes a transfer of value from a company. Therefore, arrangements that require a transfer pricing adjustment also often give rise to a dividend for tax purposes. This dividend will be subject to non-resident withholding tax (NRWT) under Part R of the ITA.

Clarifying application of deemed dividend rules

Both the above rules are intended to apply concurrently. However, section GC 12, which sets out the interaction between these two regimes, could be interpreted to mean that the dividend rules do not apply when there is a transfer pricing adjustment unless the other party applies for a matching treatment under section GC 11. The proposed amendments would clarify that dividends can still be deemed to arise when transfer pricing adjustments are made, regardless of whether an application for matching treatment is made.

The amendments would also limit the application of section GC 11 to cases when the difference between the arm's length amount and the amount payable or receivable by the taxpayer under the transaction does not constitute a dividend. This is intended to further clarify that a matching treatment application under section GC 11 is not needed for arrangements that already give rise to deemed dividends under subpart CD.

Alignment of time bars

When an adjustment is required under the transfer pricing rules in sections GC 6 to GC 14 or the interest limitation rules in sections GC 15 to GC 19 (which apply to remove features not typically found in third party debt), there are often other related adjustments required to reflect the adjusted income or expenditure. These include:

- income tax offset adjustments if the adjustment reduces the taxpayer's net losses when those net losses have already been offset to the associated company and/or carried forward and utilised in future periods under Part I of the ITA — in this case, the relevant adjustments would be both to reduce the taxpayer's net losses and to increase the net income of the associated company against whom the disallowed net losses were offset
- determination of the amount of the deemed dividend under subpart CD and the taxpayer's ability to retrospectively attach imputation credits (under section OB 62) or repay the dividend (under section CD 42), and
- adjustments to the NRWT amounts under Part R if the arrangements involve payments of passive income.

Section 108 of the Tax Administration Act 1994 specifies a four-year time bar that applies generally to the amendments of assessments.

Section GC 13(6) of the ITA provides for an extension to this general time bar to allow the Commissioner of Inland Revenue to amend an assessment for a tax year to give effect to adjustments under sections GC 6 to GC 19 within seven tax years if the taxpayer is notified about an audit or investigation within four years after the tax year in which the return is assessed.

The proposed amendments would ensure that any adjustments that flow from an adjustment under sections GC 6 to GC 19 can still be made, even after the general four-year time bar for adjustments.

In particular, the amendment to section GC 13(6) would confirm that a notification to a taxpayer informing them about a commencement of a transfer pricing audit would be sufficient to trigger the seven-year time bar for the other party in the transfer pricing arrangement or the group company against whose net income the notified party's net losses were offset. A proposed new section GC 13(7) would also be added to ensure that the seven-year time bar would apply to other related adjustments listed above.

Other remedials

Inland Revenue
Te Tari Taake

Date: August 2024

R&D Tax Incentive: General approval application due date

Clause 134

Summary of proposed amendment

The proposed amendment would extend the due date for Research and Development Tax Incentive (RDTI) general approval applications for a given income year to the last day of the third month after the end of that year.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

Approximately 73% of businesses enrolled in the RDTI have an income year ending in March. For these businesses, the general approval application deadline for the year falls on 7 May. This is only a week away from the annual peak for filing supplementary returns for the previous year, which falls on 30 April for taxpayers with an extension of time. The proximity of these two dates causes a peak in RDTI filing, which creates a high compliance and administrative burden for businesses and scheme administrators alike.

Detailed analysis

The general approval due date in section 68CB(2) of the Tax Administration Act 1994 is currently the seventh day of the second month after the end of the income year. It is proposed to extend this date to the last day of the third month after the end of the income year.

Businesses can also apply to add to or vary an existing general approval. These applications must be also made by the due date for general approval applications for that year. Consequently, it is also proposed to extend the due dates for variation applications to:

- Section 68CB(7) – the last day of the third month after the end of the income year, for variations generally.
- Section 68CB(7B) – the last day of the 15th month after the end of the income year, for variations relating to supporting R&D activities conducted in the year immediately after the year of the corresponding core R&D activity.

R&D Tax Incentive: ICAs and shareholder continuity breaches

Clause 92

Summary of proposed amendment

The proposed amendment would ensure that when a company's shareholder continuity is breached between the time a company files its income tax return and the time it is refunded a Research and Development Tax Incentive (RDTI) tax credit, the imputation credit account (ICA) incurs only one imputation debit corresponding to the imputation credit.

Effective date

The proposed amendment would be effective for the 2019–20 and later income years.

Background

Filing for an RDTI tax credit gives rise to an imputation credit in the ICA. If this tax credit is approved, the ICA then has an equal imputation debit should the tax credit be refunded to the company.

When shareholder continuity is lost, an ICA has an imputation debit equal to a credit balance in the account. If this breach happens after a company has filed its income tax return (the ICA has already been credited), but before the company may be refunded an RDTI tax credit (the ICA has not yet been debited), then the subsequent refund will result in two ICA debits overall, corresponding to one credit for the RDTI amount.

Ordinarily, when a refundable tax credit is paid out, the imputation debit that results from the breach of shareholder continuity is reduced by the amount of the refundable tax credit. This avoids the double debit. However, while RDTI credits are refundable, they are not listed as a defined refundable tax credit under section LA 6(1) of the Income Tax Act 2007 (ITA). Under current law, this means that the imputation debit resulting from a shareholder continuity breach cannot be reduced, which effectively means the business must incur both debits described above.

Key features

The proposed amendment would ensure that when an RDTI credit is refunded to a business that has previously incurred an ICA debit for a breach in shareholder continuity, two ICA debits are not incurred in relation to one ICA credit.

Detailed analysis

Section OB 37(1)(b) of the ITA sets out that an ICA company has an imputation debit for the amount of a refundable tax credit that is refunded to the company. Section OB 37(1C) sets out that an imputation debit for a refundable tax credit that arises in a tax year after a debit has been incurred in relation to a breach in shareholder continuity under section OB 41 of the ITA is reduced by the lesser of:

- the debit incurred under section OB 41, or
- the amount by which the refundable tax credit exceeds the total credits to the company's ICA.

Section OB 37(1C) would be amended to ensure that it would operate to reduce an imputation debit that arises for an RDTI tax credit by the amount debited to the ICA under section OB 41 at the time of the continuity breach.

Portfolio investment entity eligibility requirements

Clauses 70, 71, 72, 73, and 105(17)

Summary of proposed amendments

The proposed amendments would improve clarity around an important portfolio investment entity (PIE) eligibility requirement – a PIE must have the majority of its assets employed in deriving eligible income, which is typically known as passive income (the income-type requirement).

The amendments would clarify that:

- a person in the business of borrowing and lending money cannot be a PIE, and
- income cannot generally be channelled into a PIE by way of interest payments from an associated person that is not eligible to be a PIE.

Effective date

The proposed amendments would take effect on 1 April 2025.

Background

A PIE is a collective investment vehicle that must have, as its principal activity, the provision of investment and savings services (as defined by the proportion of its underlying assets that are used to derive specified investment income).[32] The intention of the PIE regime is to encourage investors to invest through collective investment vehicles by providing the same tax outcomes that would have occurred if they had invested directly.

The PIE rules contain certain beneficial tax settings for savings and investment. Therefore, the PIE rules contain strict eligibility requirements. The PIE eligibility criteria are designed to distinguish genuine savings and investment vehicles from other entities, and they are broadly designed to replicate the situation of the vast majority of individuals who invest directly (the alternative to investing via a managed fund). The officials' report on the Bill, when the income-type requirement was originally introduced, is clear that an important eligibility requirement is that a PIE must have the majority of its assets employed in deriving

[32] Commentary on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (May 2006), page 4.

what is typically known as passive income (such as income from trading shares, dividends, land and rents).[33]

It has become apparent that there is some uncertainty around the scope of the income-type requirement. Therefore, amendments are proposed to provide more certainty.

Key features

- Proposed new section HM 10B of the Income Tax Act 2007 (ITA) would exclude a "licenced deposit taker", as defined in the Deposit Takers Act 2023 (DT Act), from the PIE rules. Until the relevant parts of the DT Act come into force, proposed new section HM 10B would exclude a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" (non-bank deposit taker) as defined in the Non-bank Deposit Takers Act 2013.
- A proposed amendment to section HM 12(1)(b)(iii) would clarify that eligible PIE income does not include "excluded interest". Excluded interest would be defined in proposed new section HM 12(1B) as being interest derived from a person associated with the PIE, unless:
  - the interest is received from a licenced deposit taker (or registered bank or licensed NBDT until the "licenced deposit taker" definition comes into force)
  - the interest is received from an entity that is a PIE or eligible to be a PIE, or
  - the interest received is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties.

Detailed analysis

The requirements that must be satisfied for an entity to be a PIE are set out in section HM 7 of the ITA. In particular, section HM 7 requires that the entity meet, and continue to meet, the PIE eligibility requirements (contained in sections HM 8 to HM 20, as applicable).

Relevant to the proposed amendments, section HM 11 requires that at least 90% of a PIE's investments must be in listed types of investments (being land, financial arrangements or excepted financial arrangements). Section HM 12 requires that at least 90% of the PIE's income be listed types of income (the income-type requirement).

[33] Officials' Report to the Finance and Expenditure Committee on Submissions on the Taxation (Annual Rates, Savings Investment, and Miscellaneous Provisions) Bill (8 November 2006), Volume 4, page 14.

Deposit takers

It was not intended that a deposit taker (such as a bank or finance company) could become a PIE. This is because, while the income derived by a deposit taker is technically interest income similar to a passive investment (for example by a managed fund), the income is, in substance, profit derived from carrying on an active business of borrowing and lending.

To provide clarity on this issue, proposed new section HM 10B would exclude a "licenced deposit taker", as defined in the DT Act, from the PIE rules. The DT Act defines a "licenced deposit taker" as a person that holds a licence.[34] Every person who carries on business as a deposit taker must hold a licence.[35] The term "deposit taker" is defined as, essentially, a person carrying on a business in New Zealand of borrowing and lending money.[36] As part of implementing the DT Act, the Reserve Bank of New Zealand will provide further guidance on the deposit taker definition in due course.

The relevant provisions in the DT Act are not expected to come into effect until approximately 2028. Therefore, during the transitional period until the relevant parts of the DT Act come into force, an interim proposed new section HM 10B would exclude a "registered bank" as defined in the Banking (Prudential Supervision) Act 1989 and a "licensed NBDT" as defined in the Non-bank Deposit Takers Act 2013 from being a PIE. These are both existing definitions within section YA 1 of the ITA used for other purposes. Upon the relevant sections of the DT Act coming into force by Order in Council under section 2(2) of that Act, the interim proposed new section HM 10B of the ITA would be replaced to reflect the new definition.

This proposal is not intended to prevent cash PIEs, KiwiSaver schemes, or other managed funds offered by registered banks from being PIEs. These PIEs will not meet the definition of "deposit taker" in the DT Act.

This proposal would also not prevent mortgage lending by a KiwiSaver scheme or other fund that was funded by shares or other equity because such an entity would have a business of lending but not borrowing and lending, which would be required to meet the definition under the DT Act.

This amendment would take effect on 1 April 2025.

Interest from associated persons

In 2009, section HM 12(1)(b)(iv) was amended to ensure that income received from leasing land to an associated person would not be eligible PIE income. The intention was to ensure

[34] Section 6 of the Deposit Takers Act 2023.

[35] Section 10 of the Deposit Takers Act 2023.

[36] Schedule 2, clause 2 of the Deposit Takers Act 2023.

that active business income could not be channelled into a PIE by an associated person because this was inconsistent with the policy for the PIE rules.

The same result can be achieved by a PIE lending to an associated person carrying on an active business and receiving interest income from that associated person that is essentially a transfer of active income into the PIE. The Commissioner's view is that this type of arrangement would not be within Parliament's contemplation given the express amendment made for associated rental income. The Commissioner's view is consistent with the policy intent. However, to provide greater clarity on this point, it is proposed that a similar amendment be made to section HM 12(1)(b)(iii) to confirm that interest income derived from an associated person would not be eligible PIE income.

Some PIEs have arrangements with associated parties that are not for the purpose of transferring active income into a PIE. It is not intended that these arrangements would be covered by this proposal. Therefore, it is proposed that interest income derived by a PIE from an associated party would continue to be eligible income in the following circumstances:

- When the PIE and the entity paying the interest are associated but only because a group of persons exists who control both companies by any other means (section YB 2(3)). This is intended to reduce the compliance costs of entities that do not have the same owners but may be controlled by the same people, for example, potentially a cash PIE operated by a bank.
- When the interest is received from a licenced deposit taker (and, during the transitional period until the relevant parts of the DT Act come into force, a registered bank or licenced NBDT). This will ensure that a PIE, for example a cash PIE, can continue to derive passive interest income from a related bank in the same way as from an unrelated bank.
- When the interest is received from an entity that is also a PIE or is eligible to be a PIE. In these circumstances no active income can been transferred into a PIE because neither entity is able to derive more than 10% non-eligible income.
- When the interest is for funds that were originally borrowed by the entity from third parties and on-lent at the same interest rate or the weighted average of the interest rates charged on all active loans the entity has from third parties. This will allow a PIE to continue to act as a financing intermediary rather than associated entities having to borrow separately. The proposed legislation does not cover lending at different maturities or when there is a different interest rate, for example, because the two entities have a different credit risk. This was an intentional decision that reduces the complexity of the proposed legislation. On-lending at different interest rates and maturities requires more active management than on-lending under the same terms.

This amendment would take effect on 1 April 2025. However, a transitional provision is proposed to allow existing PIEs to continue to apply the current law (should they wish to

dispute the Commissioner's current position) until 31 March 2030 in relation to interest income from a loan that was most recently entered into, renewed, extended or renegotiated before 1 April 2025. Inland Revenue officials' view is that the proposed law is consistent with the existing law so the later effective date will not widen the scope of the eligibility criteria during the transitional period. However, it will provide certainty that no existing PIEs will be removed from the regime as a result of outstanding borrowing under the proposed changes during the transitional period.

Example 37: Transfer of active income

Company A and Listed PIE A are stapled together so a person owning a share in Company A must also own a share in Listed PIE A. Company A is a retailer that has earnings before tax and interest of $1 million per year. However, Company A has borrowed $10 million from Listed PIE A at an interest rate of 10%. Therefore, Company A has nil taxable income. Listed PIE A has no debt and no other activities, so has $1 million of taxable income. Company A has effectively transferred its income from a normal company into a PIE.

The Commissioner considers that Listed PIE A would be ineligible to be a PIE under the existing law. However, under the proposed amendment, a specific provision will confirm that Listed PIE A will derive 100% non-eligible income so will not be able to have PIE status.

Share-lending arrangements

Clause 34

Summary of proposed amendment

The proposed amendment would allocate income from a sale of shares as part of a share-lending arrangement to the year the replacement shares are purchased if that occurs in the following income year.

Effective date

The proposed amendment would be effective for share sales under a share-lending arrangement entered into on or after the day after the date the Bill receives the Royal assent.

Background

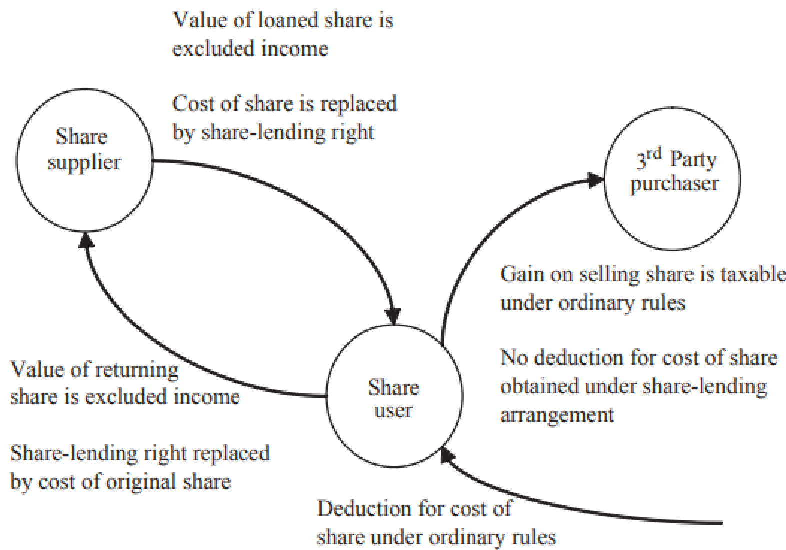
The share-lending rules were introduced by the Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 and explained in *Tax Information Bulletin* Vol 18, No 5 (June 2006) (the TIB).[37]

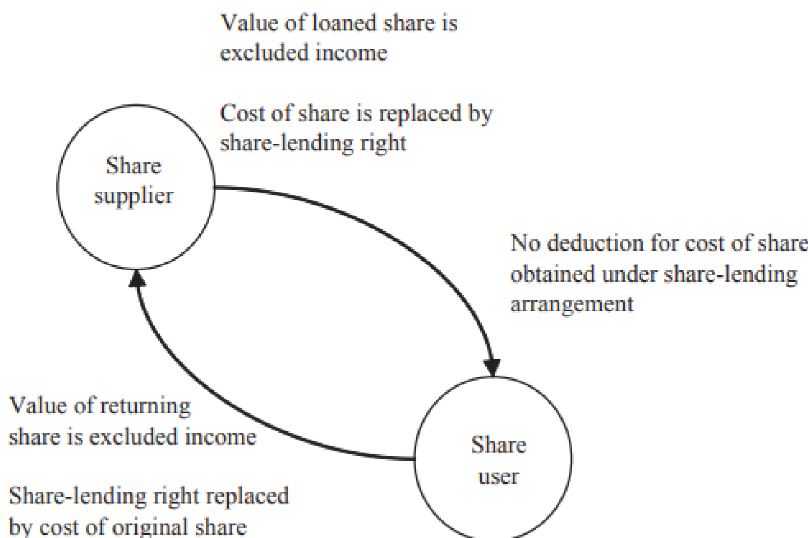
Legally, a share-lending transaction is a sale of shares from the share supplier to the share user that is unwound through a further sale from the share user back to the share supplier. However, for tax purposes the share-lending rules effectively ignore these sales. The treatment under the share-lending rules includes:

- Lending the shares to the share user is excluded income.
- The share user has taxable income under ordinary concepts from selling the shares to a third party – no deductions are available, so the entire sale proceeds are taxable income.
- The share user has a deduction under ordinary concepts from purchasing identical shares from a third party – there is no income at this stage, so the entire purchase cost is deductible.
- Returning the identical shares to the share supplier is excluded income.

These were explained in the following diagrams in the TIB.

[37] https://www.taxtechnical.ird.govt.nz/new-legislation/act-articles/taxation-depreciation-payment-dates-alignment-fbt-and-miscellaneous-provisions-act-2006-2006-no-3-/taxation-of-share-lending-transactions





While a share-lending arrangement must have a term of one year or less[38], there is no legislative requirement that the arrangement must end within the same income year. However, when the arrangement crosses the share user's balance date, the income from selling the original share will be derived one year before the deduction from acquiring the identical share is incurred. This can incur the high cash cost of paying tax in the first year and

[38] Section YA 1 definition of a "share-lending arrangement", paragraph (a).

providing a deduction in the second year when there may be insufficient income to offset the deduction. Officials understand this generally prevents a share user from entering into a share-lending arrangement that crosses a balance date.

Key features

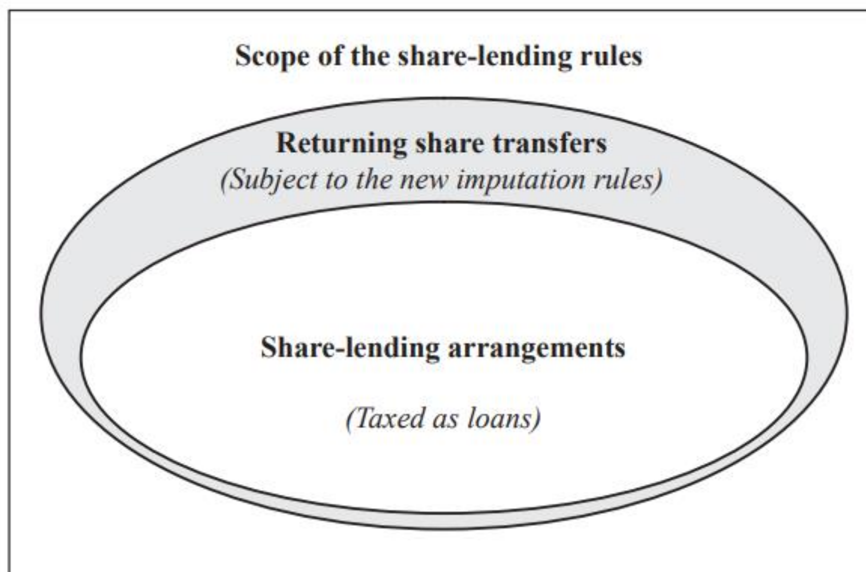
Proposed new section EA 5 would allocate income from disposal of an original share under a share-lending arrangement to the following income year if the identical share is acquired during that later income year.

Income from the sale of an original share when the identical share is acquired within the same income year would continue to be taxable under ordinary concepts in the year it was sold.

Detailed analysis

Ceasing to qualify

A share-lending arrangement is a subset of a returning share transfer as shown in the following diagram from the TIB:



The proposed amendment would apply only to share-lending arrangements and will not apply to returning share transfers that are not share-lending arrangements.

Taxpayers are required to determine whether a transaction qualifies as a share-lending arrangement at the start of the transaction.

If an arrangement fails to qualify at some point during its term (for example, because an identical share is no longer available) then it fails to qualify from the start of the transaction and the normal tax rules must be applied.

Taxpayers entering share-lending transactions are subject to the normal self-assessment rules. Therefore, if a taxpayer mistakenly treats a transaction as qualifying for the share-lending rules when they should not have done so, they will need to restate the tax treatment of the transaction. Use of money interest and penalties could apply depending on the circumstances that gave rise to an incorrect treatment being adopted.

Debt funding special purpose vehicle eligibility

Clauses 74, 75, 76, 77, 78, 80, 81, and 105(25)

Summary of proposed amendments

The proposed amendments would expand the eligibility of the securitisation regime in the Income Tax Act 2007 (ITA) to allow debt funding special purpose vehicles (SPVs) to elect into the regime if they have an originator that is a trust in certain situations.

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Background

A securitisation is a funding mechanism that involves issuing marketable securities that are backed by the expected cash flows from specific assets. Securitisations can have some commercial benefits when compared with other funding mechanisms, such as risk management and lower cost of funding.

New Zealand businesses with assets, such as large books of trade credits or other receivables, may wish to raise funds through a securitisation. To undertake a securitisation, a company (referred to as the originator) that owns income-producing assets transfers those assets to an SPV. The SPV (typically a trust in New Zealand) is usually structured to be bankruptcy remote from the originator, which means that the SPV's assets cannot be accessed by the originator's creditors. The SPV then borrows from third parties on the strength of the assets that have been transferred to it and remits the borrowed funds to the originator as the purchase price for those assets.

The ITA contains an elective securitisation regime (sections HR 9 to HR 10A) that makes the SPV transparent, so that its assets and liabilities are treated as held by the originator for tax purposes. This means that the transfer of assets to the SPV by the originator is ignored, and the SPV itself is not subject to tax (with any tax on its activities being payable by the originator instead).

Currently, an originator is required to be a person that "is a member of the same wholly-owned group of companies as all other persons who have transferred some or all of their assets to the debt funding special purpose vehicle". This effectively means that an originator must be a company because a trust cannot be a member of a wholly-owned group.

Therefore, if a trust transfers assets to an SPV, the SPV is not eligible to elect into the securitisation regime in the ITA.

Key features

The proposed amendments would expand the eligibility of the securitisation regime to allow SPVs that have received assets from a trust to be eligible to elect into the regime, provided that a beneficiary or shareholder of the SPV is either:

- treated as holding those assets for financial reporting purposes, or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets.

The proposed changes would reduce compliance costs by ensuring that taxpayers do not need to transfer assets from a trust to a company and then to an SPV to be eligible for the securitisation regime.

Detailed analysis

Definition of an originator

Proposed new section HR 9BAA would replace the definition of "originator" in section YA 1.

When assets transferred to SPV by company

The proposed amendments would reproduce the existing definition of "originator" in proposed new section HR 9BAA(1)(a) and (2).

When assets transferred to SPV by trust

The proposed amendments would introduce new criteria for SPVs that hold assets transferred from a trust. In these situations, a person would be an originator of the SPV if they are a beneficiary or shareholder of the SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) and they are either:

- treated as holding those assets for financial reporting purposes (proposed new section HR 9BAA(3)(a)), or
- a member of a wholly-owned group of companies that includes a person who prepares consolidated financial statements that include those assets (proposed new section HR 9BAA(3)(b)).

The effect of these new rules is that if a trust transfers assets to an SPV but is still treated for financial reporting purposes as holding those assets, then the trust would be the originator

of the SPV. If the trust elects into the securitisation regime, the SPV would be transparent for the purposes of the Inland Revenue Acts and the trust would be liable for any tax payable on the SPV's activities.

There may be situations when the trust that transfers assets to an SPV is not the person that is treated as holding the SPV's assets for financial purposes. An SPV may have received assets from another SPV trust, and it would be unnecessarily complex for taxpayers to trace through a chain of multiple tax transparent transferors to the original source of assets to determine the tax treatment of an SPV. Proposed new section HR 9BAA(3)(b) would ensure that a beneficiary or shareholder of the SPV (or a member of the same wholly-owned group as a beneficiary or shareholder) can be the originator, despite not being the person that transferred the assets to the SPV, provided that they are either treated as holding the assets for financial reporting purposes or are a member of a wholly-owned group that includes a person that is treated as holding those assets.

Throughout the proposed amendments, the assets described in the above situations are referred to as "attributed assets".

Group members

Proposed new section HR 9BAA(4) would clarify that for the purposes of assets transferred from a trust to an SPV, a beneficiary or shareholder includes a member of the same wholly-owned group of companies as a beneficiary or shareholder.

Consequential amendments

Currently, the securitisation regime provides rules for the tax treatment of "transferred assets" in relation to SPVs. The proposed amendments include consequential changes that would ensure the rules refer to both transferred assets and attributed assets.

Elections to treat debt funding SPVs as transparent

The proposed amendment to section HR 9BA(2)(b) would ensure that an election to treat a debt funding SPV as transparent has effect from either the date on which the originator first transferred an asset to the SPV or the date on which an asset first becomes an attributed asset for the originator.

Proposed new section HR 9BA(2B) would clarify that there cannot be two originators in relation to the same asset. If an originator makes an election in relation to an attributed asset, no other originator may make an election in relation to that asset.

Ceasing to be originator

Proposed new section HR 10B would provide rules for when a person ceases to be an originator of an SPV at a particular date (the breach date). This section would override the

rule in proposed new section HR 9BA(2B) that there cannot be two originators in relation to the same asset.

Proposed new section HR 10B would apply if another person is (or becomes) a beneficiary or shareholder of the SPV, they are a member of the same wholly-owned group of companies both before and after the breach date, and immediately after the breach date they hold the assets of the first originator as attributed assets.

This second originator would be treated, for the purposes of determining the income tax liability of the SPV and the second originator, as if:

- they acquired and held the same assets on the same basis as the first originator (and the first originator would be treated as not having acquired or held the assets), and
- they paid (or received) the amount of consideration originally paid (or received) by the first originator for, or under, an asset that is a financial arrangement or excepted financial arrangement of the first originator.

For an SPV and an asset referred to in proposed new section HR 9(1)(a), for the income year that includes the breach date, the first originator would be treated as a party that is not required to calculate a base price adjustment despite section EW 29.

Proposed new section HR 10B would override the limitation in section HR 9BA(2B) that provides that only one originator can make an election in relation to an asset.

Existing debt funding SPVs

The proposed amendments would replace section HZ 9(1) to ensure that debt funding SPVs that exist before the Bill receives the Royal assent are able to elect into the look-through regime in section HR 9.

Restrictive covenant payments – Sale of business exclusion

Clause 12

Summary of proposed amendment

The proposed amendment would ensure that the sale of business exclusion for restrictive covenant payments applies when a person sells all their shares in a company carrying on a business, despite the other shareholders not selling their shares.

Effective date

The proposed amendment would be effective for amounts derived on or after the day after the date the Bill receives the Royal assent.

Background

A restrictive covenant payment is the consideration (or payment) given for a restriction on a person's ability to perform services. Broadly, a restrictive covenant payment is subject to income tax under section CE 9 of the Income Tax Act 2007 to ensure that these payments are not used as a substitute for taxable personal services income (such as salary or wages).

However, under section CE 9(3) a restrictive covenant payment is not subject to taxation when the payment is received by a person when they sell a business. This recognises that payments received on the sale of a business are part of a larger capital receipt (ie, the purchase price of a business) and are less likely to be substituted for taxable income from services.

The sale of business exclusion currently only applies when all the shares in a company carrying on the business are sold. It does not apply when a person sells all their shares in a company despite other shareholders not selling their shares. This is inconsistent with the intent of the existing exclusion.

The proposed amendment to section CE 9 would ensure that the sale of business exclusion applies when a person sells all their shares in a company carrying on a business despite the other shareholders not selling their shares.

Revised introductory wording for livestock valuation

Clause 35

Summary of proposed amendment

The proposed amendment would clarify what livestock needs to be valued under subpart EC of the Income Tax Act 2007 (ITA) for tax purposes. These are land and sea animals that are farmed commercially.

A savings provision is also proposed to ensure the revised wording does not impact on past tax positions taken, in the unlikely event that some taxpayers have not previously valued their livestock correctly due to any current uncertainty.

Effective date

The proposed amendment would take effect on 1 April 2008.

Background

Trading stock (ie, items held for sale or exchange) that is on hand at the end of each income year is valued and included as income for tax purposes to ensure that the cost of sales for the year is not overstated. That value is deducted at the beginning of the following income year. This approach also applies to livestock, even though not all livestock is held as trading stock. For example, livestock can be held to produce products such as milk and wool, and/or to breed replacement livestock.

The current wording of section EC 1(1) (the introductory section of the ITA's livestock valuation provisions) is problematic because in using the phrase "…holds livestock for the purposes of sale or exchange in the ordinary course of carrying on a business", it seemingly excludes livestock held for other income-generating purposes. Such an exclusion is clearly not the intent, and taxpayers and their tax advisers generally understand this. Nevertheless, this inaccurate wording can create confusion and could potentially result in some businesses valuing their livestock incorrectly or simply not valuing them, leading to an inaccurate assessment of income.

Detailed analysis

The proposed amendment to the wording in section EC 1(1) would ensure that the valuation provisions in subpart EC apply to a person when they own or carry on a farming business,

other than a livestock dealing business, and hold the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business.

This is intended to include both land and sea animals that are farmed.

The proposed wording “hold(s) the livestock for the purposes of farming that livestock in the ordinary course of carrying on the farming business” would exclude animals on the farm that are not farmed, such as working dogs and horses that are simply used in a farming business, as well as feral animals that are not farmed.

Following enactment, the Commissioner of Inland Revenue intends to publish an operational statement on livestock valuation that, among other things, will include a more detailed explanation of the impact of the reworded section EC 1.

Inland Revenue
Te Tari Taake

Date: August 2024

Challenging civil penalties unrelated to tax

Clause 142

Summary of proposed amendment

The proposed amendment would clarify the process a person must follow to initiate challenge proceedings for a penalty that has been assessed by the Commissioner of Inland Revenue that does not relate to tax.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

The Tax Administration Act 1994 (TAA) enables the Commissioner to assess a range of different civil penalties. Many of these civil penalties relate to tax (such as income tax and goods and services tax) and are also challengeable in the same way that the tax to which the penalty relates is challengeable. The process for initiating challenge proceedings for these penalties is set out in the TAA.

However, the Commissioner is also able to assess civil penalties that are unrelated to tax. These types of penalties have become more common in the last several years. Examples include penalties for:

- financial institutions that do not provide information required of them by the Common Reporting Standard
- operators of digital platforms that do not provide information required of them by the Organisation for Economic Co-operation and Development's model reporting rules for digital platforms, and
- trustees of foreign exemption trusts that do not register with, or provide information to, the Commissioner as required by the TAA.

These penalties are assessed by the Commissioner, but they do not relate to tax that is assessed. It is therefore arguably unclear how the penalties, when assessed, would be challenged under the challenge provisions in Part 8A of the TAA.

Detailed analysis

Section 138L of the TAA currently sets out the process for challenging civil penalties assessed by the Commissioner. This requires that taxpayers assessed by the Commissioner for a civil penalty may initiate challenge proceedings in the same way as the taxpayer can challenge the assessment of tax to which the penalty relates. It is silent on how a taxpayer may initiate challenge proceedings for civil penalties that are unrelated to an assessment of tax.

The proposed amendment to section 138L would provide that, for penalties unrelated to an assessment of tax, a taxpayer can challenge the civil penalty by following the process set out in section 138B(3). This is the process that taxpayers follow to initiate challenge proceedings for assessments of tax. Broadly, these rules require a taxpayer to initiate challenge proceedings by filing proceedings in accordance with the Taxation Review Authorities Regulations 1998 or the High Court Rules 2016 within two months of the Commissioner issuing a challenge notice.

Minor amendments are also proposed to section 138L to change references from “taxpayer” to “person”.

Inland Revenue
Te Tari Taake

Date: August 2024

Taxation treatment of Veterans' Affairs backdated lump sum payments

Clauses 97, 105(31), and 113(1)

Summary of proposed amendment

The proposed amendment would apply an alternative tax treatment for backdated Veterans' Affairs lump sum payments, when the backdated lump sum payment would be taxed at the recipient's average tax rate for the four years prior to the year they receive the payment.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Backdated lump sum payments are a category of payments made by government departments to affected taxpayers. These payments are often compensatory in nature and can relate to more than one prior tax year. However, when made as a single payment, the taxation of these amounts can occur at a higher rate than if the components of the payment had been spread over the years to which they relate.

The taxation of Veterans' Affairs backdated lump sum payments presents a similar issue to Accident Compensation Corporation (ACC) and Ministry of Social Development (MSD) backdated lump sum payments. When a taxpayer receives a large lump sum payment amount, it can "artificially" push the taxpayer into a higher income tax bracket. By contrast, if delays or disputes did not take place, the backdated lump sum payment would have been spread over the tax years to which it applied, and the taxpayer would have had a lower tax liability.

The proposed amendment to section RD 20B(1) of the Income Tax Act 2007 includes Veterans' Affairs lump sum support payments made over multiple years under the current treatment of payments of accident compensation for periods of more than one year.

Note, the amendment does not apply to the payments listed in section RD 20B(1)(c)(i) and (ii) because these are exempt income.

Note also, two minor consequential amendments are proposed to be made to reflect the proposed change to the title of section RD 20B.

Clarifying date company nominated as agent for imputation group

Clause 52

Summary of proposed amendment

The proposed amendment would clarify that the date of nomination for another company to become the nominated company for an imputation group is prospective.

Effective date

The proposed amendment would take effect on the day after the date the Bill receives the Royal assent.

Background

Groups of companies can choose to form an imputation group if they meet certain criteria. However, under section FN 6 of the Income Tax Act 2007 (ITA), the group must select a nominated company that will have responsibility for group return filing and act as the point of contact for Inland Revenue. The nominated company may notify the Commissioner of Inland Revenue at a "particular date" when the company will no longer be acting as the agent for the group and that another company will take its place.

A change in nominated company applies from 30 days after the Commissioner receives notice. When the "particular date" given is less than 30 days from the date of notice, as outlined in section FN 6(5), the notice will not have effect until the 30 days' notice period has passed.

However, the definition of "particular date" is ambiguous and could allow the relevant section to be interpreted as allowing for a retrospective date of nomination. For example, it is possible that a company could argue it ceased to be the "nominated company" on a particular date six months prior. Once a month has passed from that particular date, the company could give notice to the Commissioner with the effect that the change would take effect six months in the past.

The proposed amendment would amend section FN 6(4) of the ITA to clarify that the "particular date" provided by a nominated company to the Commissioner as to when it will no longer be acting as the agent for an imputation group is prospective.

Inland Revenue
Te Tari Taake

Date: August 2024

Commissioner fails to respond to taxpayer statement of position

Clause 136

Summary of proposed amendment

The proposed amendment would make "deemed acceptance" the consequence of the Commissioner of Inland Revenue failing to respond to a taxpayer's statement of position within the required two-month response period.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

During the disputes process, a taxpayer can issue the following forms to Inland Revenue:

- A notice of proposed adjustment (NOPA), which allows the taxpayer to formally dispute one or more tax assessments.
- A statement of position (SOP), which allows a taxpayer to finalise their argument in a dispute after they receive a disclosure notice from Inland Revenue.

There are specific timeframes that govern when the taxpayer is required to send the relevant form and similarly when the Commissioner is required to respond to the taxpayer.

When the Commissioner fails to respond to a NOPA issued by a taxpayer within two months or issue a challenge notice within four years, the Commissioner is deemed to have accepted the taxpayer's position.

However, when a taxpayer issues an SOP and the Commissioner fails to respond within the required two-month response period, there is no consequence for the Commissioner.

Including an additional consequence within the dispute process that includes "deemed acceptance" for the Commissioner failing to respond to an SOP would ensure the taxpayer's dispute is resolved. Additionally, it would provide an incentive for the Commissioner to engage with the taxpayer's issue.

Additional criterion for Commissioner to make assessment

Clause 135(1)

Summary of proposed amendment

The proposed amendment would insert an additional criterion to allow the Commissioner of Inland Revenue to make a new assessment without the need to issue a notice of proposed adjustment (NOPA). The proposed criterion is a required response period of two months for the taxpayer to respond to the Commissioner's queries.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

During the disputes process, the Commissioner must issue a NOPA prior to issuing an assessment when they disagree with a tax position taken by a taxpayer.

There are exceptions to this rule that allow an assessment to be issued without first issuing a NOPA. For example, in cases when there is flight risk, a simple error, or fraudulent activity.

When a taxpayer has entered information into an individual tax return, such as claiming expenses, Inland Revenue will query these with the taxpayer. In many cases the taxpayer fails to respond to this request for additional information. This leaves the Commissioner with no ability to issue an assessment and resolve the case without issuing a NOPA, which can be problematic due to the lack of information.

Allowing the Commissioner to issue an assessment without the need for a NOPA when the taxpayer fails to respond to a request for information will help resolve these cases.

The proposed change would not alter the taxpayers' right of appeal. If they disagree with the assessment, they can issue a NOPA in response to dispute it.

Motor vehicle used wholly and exclusively for business purposes

Clause 105(7) and (37) and 200

Summary of proposed amendment

The proposed amendment would clarify that the business use of a vehicle must involve travel wholly and exclusively for business purposes.

Effective date

The proposed amendment would take effect on 1 April 2005.

Background

Motor vehicle expenses are generally deductible for income tax purposes if the vehicle is used to help earn income for the business. A person can claim a deduction for expenditure that they incur for business use of a vehicle.[39] Business use is currently defined as travel undertaken by the vehicle wholly in deriving the person's income.[40]

The definition of "business use" was amended during the rewrite of the Income Tax Act in 2004. Previously, the Income Tax Act defined business use (and business purposes) to be travel undertaken "wholly and exclusively" in deriving the person's income.

Removal of the word "exclusively" was not intended to change the definition, but it has led to an arguable widening of the business use deduction. The proposed amendment would reinsert the term "exclusively" in line with the original definition to correct the unintended change. The proposed amendment would take effect on 1 April 2005, the date the Income Tax Act 2004 came into force.

[39] Section DE 2 of the Income Tax Act 2007

[40] Section YA 1 of the Income Tax Act 2007

Employer-funded flu vaccinations

Clause 19

Summary of proposed amendment

Proposed new section CW 17D would ensure that employers are not worse off if they reimburse an employee for an influenza (flu) vaccination rather than providing it on their premises or by voucher.

Effective date

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

Background

Flu vaccinations are a common benefit provided to employees. They will generally not be subject to fringe benefit tax (FBT) when an employer:

- arranges a vaccine clinic on their premises, or
- provides a flu vaccine voucher to employees to get their vaccination done at their doctor or other clinic.

These benefits are exempt because they fall under the health and safety exemption for FBT under section CX 24 of the Income Tax Act 2007 (ITA), in that they are targeting a specific health and safety risk in the workplace.

If an employee instead pays for their own flu vaccination and is later reimbursed by their employer, the cash payment is currently subject to PAYE. The reimbursement would not be exempt income of the employee under section CW 17 of the ITA due to the private limitation under section DA 2 because health-related expenditure is generally seen as private in nature.

Proposed new section CW 17D would provide that an amount an employer pays to or on behalf of an employee for a flu vaccination is exempt income of the employee. This would ensure that employers are not worse off if they reimburse an employee for a flu vaccination rather than providing it on their premises or by voucher.

Taxation of extra pay when employment ends

Clause 96

Summary of proposed amendment

The proposed amendment would clarify that employers can apply the same tax treatment to amounts of extra pay that are paid together when one of the amounts of extra pay arises from the ending of an employee's employment.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

Section RD 17 of the Income Tax Act 2007 was recently amended by the Taxation (Annual Rates for 2023–24, Multinational Tax, and Remedial Matters) Act 2024. This recent amendment changed the way employers determine the taxation of extra pay when the extra pay arises from the ending of an employee's employment.

Previously, the taxation of extra pay was, in all cases, determined with reference to the amount of the extra pay and the annualised value of all PAYE income payments made to the employee over the four-week period beginning before the date of the payment of the extra pay.

The recent amendment created an exception to this rule and provides that, in the specific case when the extra pay arises from the ending of employment, employers must determine the taxation of that extra pay with reference to the amount of the extra pay and the annualised amount of PAYE income payments received over the last two pay periods. This amendment is designed to promote greater accuracy in the taxation of extra pay by increasing the likelihood the marginal rate applied to the employee's extra pay reflects the employee's actual marginal rate. The new rule will take effect from 1 April 2025.

However, discussions with stakeholders have since identified that an unintended consequence of this recent change is to require employers to apply differing tax treatments to amounts of extra pay when one amount arises from the ending of employment and another amount does not, despite the amounts being paid together.

This was not an intended outcome of the recent change and presents compliance costs for employers so the Bill proposes an amendment whereby employers would be permitted to apply the same tax treatment to amounts of extra pay when they are paid together.

In practice, this would mean that an amount of extra pay could be taxed in the same way as an amount of extra pay arising from the ending of employment if it is paid together with an amount of extra pay arising from the ending of an employee's employment. This would simplify the application of the new rule when it comes into force on 1 April 2025.

Filing obligations of charities and non-profits

Clauses 129

Summary of proposed amendment

The proposed amendment would ensure that entities that only derive exempt income, such as charities, do not need to file a return of income.

Effective date

The proposed amendment would take effect on 1 April 2025.

Background

Section 33(1) of the Tax Administration Act 1994 provides that a person must file a return of income for a tax year. This has been interpreted as requiring charities and other entities that only derive exempt income to file a return of income because a charity or other exempt entity is a person for tax purposes and “return of income” is not defined, so could include a return of “no income”.

It is therefore proposed to amend section 33(1) so that the requirement to file a return of income does not apply to a person who derives only exempt income. This means that a charity or other exempt entity will not be required to file a return of income but can still choose to file one.

Record-keeping requirements for gift-exempt bodies

Clause 125

Summary of proposed amendments

The proposed amendments would clarify that gift-exempt bodies must keep relevant records for at least seven years after the income year to which they relate. The amendments would also allow records to be kept in te reo Māori.

Effective date

The proposed amendments would take effect on the day after the date the Bill receives the Royal assent.

Background

Gift-exempt bodies are required to keep certain records. This allows the Commissioner of Inland Revenue to determine the source of donations received by these bodies and how they apply those donations.

Other record-keeping provisions in the Tax Administration Act 1994 have minimum retention times and allow records to be kept in English or te reo Māori. The record-keeping requirements for gift-exempt bodies do not include a minimum length of time for the retention of these records. The requirements also state that records must be kept exclusively in English unless authorised by the Commissioner.

The proposed amendments would correct this.

Maintenance amendments

Summary of proposed amendments

The proposed amendments in the table below reflect minor technical maintenance items arising from both the rewrite of income tax legislation and subsequent changes.

Effective date

Effective dates for the proposed amendments are outlined in the table.

Minor maintenance items

The proposed amendments in the table would correct any of the following:

- ambiguities
- compilation issues
- cross-references
- drafting consistency, including readers' aids – for example, the defined terms lists
- grammar
- consequential amendments arising from substantive rewrite amendments, and
- inconsistent use of terminology and definitions.

Clause	Section	Act	Amendment	Effective Date
7	CB 23B	ITA 07[41]	Inserting cross heading and correcting cross-reference	Day after Royal assent
9	CD 43(2)(c)	ITA 07	Correcting cross-references	1 April 2008
15(1)	CQ 5(1)(c)(viib)	ITA 07	Inserting cross-reference	1 April 2008
15(2)	CQ 5(1)(c)(ix), (x)	ITA 07	Removing redundant references	Day after Royal assent

[41] Income Tax Act 2007

Clause	Section	Act	Amendment	Effective Date
15(3)	CQ 5(1)(c)(xiva)	ITA 07	Inserting cross-reference	1 April 2014
15(4)	CQ 5 (list of defined terms)	ITA 07	Adding defined term	1 April 2014
22	CW 55BAB(2)	ITA 07	Inserting subsection heading	Day after Royal assent
24	CX 63B	ITA 07	Including reference within subpart CX	1 April 2011
25	CX 65	ITA 07	Including reference within subpart CX	1 April 2008
26	CZ 25D(1)(d)(ii)	ITA 07	Correcting cross-reference	1 April 2022
27(2)	CZ 29B(7)	ITA 07	Including secondary legislation reference	8 January 2023
33(1)	DN 6(1)(c)(viib)	ITA 07	Inserting cross-reference	1 April 2008
33(2)	DN 6(1)(c)(ix), (x)	ITA 07	Removing redundant references	Day after Royal assent
33(3)	DN 6(1)(c)(xiva)	ITA 07	Inserting cross-reference	1 April 2014
33(4)	DN 6 (list of defined terms)	ITA 07	Adding defined term	1 April 2014
37	EX 20B(3)(a)(vi)	ITA 07	Removing redundant provision	Day after Royal assent
40	EX 48(1)(b)	ITA 07	Inserting cross-reference	1 July 2018
41(1)	EX 63(1) (heading)	ITA 07	Correcting terminology	Day after Royal assent
41(2)	EX 63(1)(b)	ITA 07	Removing redundant terminology	Day after Royal assent

Clause	Section	Act	Amendment	Effective Date
41(3)	EX 63 (list of defined terms)	ITA 07	Removing defined term	Day after Royal assent
42	EX 72(1)(b)	ITA 07	Correcting cross-reference	18 March 2019
46	FB 3A(3)	ITA 07	Correcting terminology	Day after Royal assent
48(1)	FD 1(1)(a)	ITA 07	Ensuring drafting consistency	Day after Royal assent
58	HC 33(1B)(c)(ii)	ITA 07	Correcting terminology	1 April 2023
79	HR 12(3)(a)(ii)	ITA 07	Correcting terminology	1 April 2024
82	IA 7(6)	ITA 07	Removing redundant provision	Day after Royal assent
83	IE 4(1)(c)	ITA 07	Removing redundant provision	Day after Royal assent
84	IE 5(b), (c)	ITA 07	Removing redundant provision	Day after Royal assent
85	IQ 6(5)(b)	ITA 07	Removing redundant provision	Day after Royal assent
86	IQ 7(2)(b)	ITA 07	Removing redundant provision	Day after Royal assent
88	LE 4B(1)	ITA 07	Correcting terminology	Day after Royal assent
90	LY 9	ITA 07	Correcting terminology	27 November 2023
91	LY 10	ITA 07	Correcting terminology	27 November 2023
95(2)	RA 15(3)(b)	ITA 07	Correcting cross-reference	1 April 2008
103	RF 15(2)	ITA 07	Correcting cross-reference	1 April 2008

Clause	Section	Act	Amendment	Effective Date
105(3), (37)	YA 1 (ancillary tax)	ITA 07	Correcting cross-reference	1 April 2008
105(5)	YA 1 (building)	ITA 07	Ensuring drafting consistency	Day after Royal assent
105(6)	YA 1 (business premises)	ITA 07	Ensuring drafting consistency	Day after Royal assent
105(14)	YA 1 (employer)	ITA 07	Correcting cross-references	1 April 2015
105(23), (37)	YA 1 (non-listed horticultural plant)	ITA 07	Correcting cross-reference	1 April 2008
105(28)	YA 1 (qualifying resident foreign trustee)	ITA 07	Removing redundant terminology	Day after Royal assent
106(1)	YB 1(3)(j)	ITA 07	Correcting cross-reference	1 April 2011
106(2)	YB 1 (list of defined terms)	ITA 07	Adding and removing defined terms	Day after Royal assent
107	YB 2(4), (5)	ITA 07	Correcting cross-references	Day after Royal assent
108	YB 3(3), (4)	ITA 07	Correcting cross-references	Day after Royal assent
109(4), (5)	YB 12(3), (4)	ITA 07	Correcting cross-references	Day after Royal assent
109(6)	YB 12 (list of defined terms)	ITA 07	Adding defined terms	Day after Royal assent
110(4), (5)	YB 13(3), (4)	ITA 07	Correcting cross-references	Day after Royal assent

Clause	Section	Act	Amendment	Effective Date
110(6)	YB 13 (list of defined terms)	ITA 07	Adding a defined term	Day after Royal assent
112	YC 4(4)	ITA 07	Correcting a minor fault of expression	1 April 2008
114	Sch 25	ITA 07	Correcting shoulder references	Day after Royal assent
130	41(6)	TAA[42]	Correcting terminology	Day after Royal assent
132	46C(3B)	TAA	Removing redundant provision	Day after Royal assent
143	139AB(1)(a)	TAA	Correcting cross-reference	18 March 2019
146	157(10) (amount payable)	TAA	Removing redundant provision	Day after Royal assent
155(2), (3), (5)	2(1)	GSTA[43]	Removing redundant terminology	1 April 2023
157(5)	5(11GA)	GSTA	Correcting cross-reference	1 December 2019
157(7)	5(15)	GSTA	Correcting terminology	Day after Royal assent
159(3)	11A(7)	GSTA	Correcting cross-reference	1 April 2023
170(4)	20(4C)	GSTA	Correcting cross-reference	1 April 2023
175(1)	25(1)	GSTA	Correcting terminology	1 April 2023
176	25AA(1)(a)(v)	GSTA	Correcting cross-reference	1 April 2023

[42] Tax Administration Act 1994

[43] Goods and Services Tax Act 1985

Clause	Section	Act	Amendment	Effective Date
177	43(1) (amount payable)	GSTA	Removing redundant provisions	Day after Royal assent
180(3), (4)	55(1AO)(b)(i)	GSTA	Correcting cross-reference	1 April 2023
184	75(8)	GSTA	Removing redundant provision	1 April 2023
193	12B (gaming machine operator)	GDA[44]	Removing redundant reference	Day after Royal assent
194	12FA(b)	GDA	Removing redundant provision	Day after Royal assent
195	12G(1)	GDA	Removing redundant reference	Day after Royal assent
196(1)	12R (heading)	GDA	Correcting terminology	Day after Royal assent
196(2)	12R(bb)	GDA	Correcting terminology cross-reference	20 December 1991
196(3)	12R(e)	GDA	Removing redundant provision	Day after Royal assent
202	276(2)	CSA[45]	Updating references	Day after Royal assent
203	Sch 9, cl 6	LGA[46]	Updating cross-references	Day after Royal assent

[44] Gaming Duties Act 1971
[45] Child Support Act 1991
[46] Local Government Act 2002