Tax Tips Alert | September 2022

Omnibus Taxation Bill introduced to Parliament

The Government first introduced the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill ("the Bill") to Parliament on 30 August. The Bill attracted significant attention for its proposals relating to GST for managed funds, and the flow-on impact on KiwiSaver balances. The Bill was therefore withdrawn and subsequently reintroduced to Parliament on 8 September, without these proposals.

Without a doubt, the original proposal would have resulted in more costs for the underlying funds and less money in New Zealanders' pockets – and more tax revenue for the Government. Backtracking from the proposal is a win for KiwiSavers. But it does mean that after years of debate, we are back to the drawing board on how to treat many services in the managed fund industry from a GST perspective. This has been a difficult policy issue to resolve, and will involve trade-offs for managers, savers, and the tax system as a whole when it is eventually revisited.

In addition to the now scrapped proposal referred to above, the Bill includes a number of other significant tax changes. In this Tax Tips, we discuss the main proposals, including:

- Information collection and reporting for platform operators in the gig and sharing economy
- GST changes for platform operators in the gig and sharing economy
- Various changes relating to tax obligations for cross-border workers
- FBT exemption for public transport
- Changes relating to dual resident companies
- Various housing tax changes
- GST apportionment
- GST on legislative charges (such as levies)
- GST invoicing changes

Platform economy: information collection and reporting to start from 2024 calendar year

Generally, Inland Revenue has relied on information provided by employers and payers of investment income (e.g. banks) to determine the income and administer the tax system for a large portion of taxpayers. This information has been used to make sure that taxpayers are paying the right amount of tax and are receiving correct entitlements.

The Bill proposes to widen the collection of information to include digital platform operators. The basis of the proposed amendments incorporate the model rules developed by the Organisation for Economic Co-operation and Development (OECD), giving legislative effect to the OECD's information reporting and exchange framework.

We note that the Australian Government has also just reintroduced legislation to implement similar proposals in Australia. Please refer to PwC Australia's Tax Alert article for further details on those developments.

Who would be affected?

The proposed amendments would require **platform operators based in New Zealand** to collect and provide Inland Revenue with information about the income sellers receive from the following activities, provided through digital platforms:

- taxable property rentals (including commercial, short-stay, and visitor accommodation);
- personal services (including any time- or task-based work, such as ride-sharing, food and beverage delivery, and graphic and web design services); and
- the sale of goods, and vehicle rentals (if there are non-resident sellers on the platform).

Sellers on digital platforms would need to provide additional information to platform operators including their tax file number, country of tax residence, and other identifying information. New Zealand-based platform operators would then be required to report information to Inland Revenue about the income earned by sellers on their platform.

The Bill also proposes to introduce new civil penalties to the Tax Administration Act 1994 (TAA) that could apply to platform operators and sellers that fail to comply with their obligations under the reporting standards.

Inland Revenue would use information related to New Zealand tax residents for tax administration purposes – for example, pre-populating sellers' income tax returns. Information related to non-resident sellers may be shared with those non-resident sellers' tax authorities.

When are the rules effective from?

New Zealand-based reporting platform operators would be required to collect information on sellers that receive consideration from activities on their platforms from **1 January 2024**. Reporting platform operators would then need to report this information to Inland Revenue in early 2025, and Inland Revenue could exchange information with other tax authorities in early 2025.

PWC VIEW: The proposals will ensure that tax authorities have access to information about taxpayers that are directly relevant for tax administration purposes. The purpose of the OECD information and reporting framework was to standardise the collection and reporting rules as much as possible internationally, to mitigate the costs and difficulty associated with requiring multinational digital platforms to report to multiple tax authorities. It was therefore designed by the OECD to be consistent with rules being applied in Europe from 2023 that were developed by the European Commission. It is good to see New Zealand implementing the OECD framework, rather than a bespoke New Zealand regime.

The proposed timeframe for New Zealand to implement the information reporting and exchange framework is aligned with other jurisdictions, such as the United Kingdom. If the framework is not implemented in New Zealand, European tax authorities may seek information from New Zealand-based digital platforms about European tax resident sellers. By implementing these rules, New Zealand-based digital platforms should have the information ready to meet their obligations. Implementing this framework is consistent with how the rest of the world is moving to deal with the reporting requirements for digital platform operators.

Platform economy:
GST changes from 1 April 2024

What is proposed?

The Bill proposes, from 1 April 2024, to extend the current GST rules for electronic marketplaces (that currently apply to remote services and low value imported goods) to also apply to taxable accommodation, ride-sharing, and food and beverage delivery services that are provided through electronic marketplaces.

This means that electronic marketplace operators facilitating these services via their platform will be required to collect and return GST at the standard rate of 15% when they are performed, provided, or received in New Zealand. So, for example, electronic platforms facilitating short-stay/holiday accommodation rentals would be required to collect and return GST at 15% on New Zealand accommodation booked through the platform. The platform will become responsible for the GST, rather than the underlying provider of the accommodation – and the GST will be payable **even if the underlying provider is not GST registered**.

In summary, the proposed amendments would mean that, from 1 April 2024:

- Electronic marketplace operators would be considered the supplier of these services for the purposes of GST and be responsible for collection and return of GST to Inland Revenue.
- For the underlying supplier, the supply of listed services sold through electronic marketplaces would be considered as made to the electronic marketplace operator and zero-rated for GST.
- For the purposes of the GST recoverability of underlying suppliers:
    - Where the underlying supplier is already registered for GST, they would be able to deduct input tax on their expenses in the usual way.
    - Where the underlying supplier is not registered for GST, they would be subject to a flat-rate credit scheme intended to reduce compliance costs and receive a flat rate credit of 8.5% of the value of the supply.
- There are some possible exceptions to the above for underlying suppliers which are large commercial providers of accommodation, who would be able to ‘opt out’ of the proposal above by entering into agreements with marketplace operators that enable them to continue being responsible for their own GST obligations.

PWC VIEW: Digital platforms facilitate millions of dollars of sales in New Zealand through individual sellers – most of which are not currently subject to GST, due to the individual sellers being under the GST registration threshold. A competitive distortion has therefore arisen, as traditional suppliers who compete with digital platforms generally do charge GST. As the gig and sharing economy is expected to continue to grow, the proposals will put sellers in the sharing economy on a more level playing field with traditional suppliers.

Furthermore, the rationale for having the GST registration threshold is a compliance savings measure as the compliance costs associated with registration would outweigh the GST collected. However, where a single marketplace facilitates supplies made by all of those individual sellers, there is arguably less of a principled basis for not imposing GST. The current proposals do place a significant burden on the operators of those marketplaces. Extending the compliance burden on marketplaces is a continuing international trend.

A noticeable area not addressed in the Bill is the treatment of the facilitation fees to underlying suppliers by platform providers. It currently falls to platform providers to determine whether their services are standard rated, zero-rated, or non-taxable. Officials previously considered zero-rating facilitation fees, in light of the proposed increase in compliance requirements placed on platform providers from the extended marketplace rules. However, this is not proposed in the amendments or the commentary. Other countries like Canada have successfully legislated the position in relation to facilitation fees charged by accommodation platform operators to mitigate double taxation.

Cross-border workers

The Bill introduces a raft of changes in relation to "cross-border workers". These measures have been developed on the back of feedback gathered from Inland Revenue's 2021 officials' issues paper on cross-border workers tax issues. They attempt to find the balance between whether an ultimate tax liability exists in New Zealand, managing the risk of non-compliance, and using information to promote tax compliance. The Commentary to the Bill notes that the different circumstances of employees of non-resident employers may mean a different administrative approach is justified, compared to employees of resident employers, that reduces the cost of compliance with the rules.

PAYE, FBT, ESCT

While a strict application of employment tax rules is appropriate for domestic employees, this can be disproportionately complicated for cross-border employees. As such, the cost of compliance is high. These proposed amendments seek to reduce the cost of compliance by establishing a more flexible framework for Pay-As-You-Earn (PAYE), fringe benefit tax (FBT) and employer superannuation contribution tax (ESCT) where these rules are applied to cross-border employees. The proposed flexibility measures are supported by new rules to support the integrity of the sufficient presence test.

The proposals will generally apply from 1 April 2023. However, the proposals which introduce flexible PAYE measures (including the 60-day grace period and the repeal of the PAYE bond provision) will apply from 1 April 2024. We detail the key features of these proposals below.

Definition of a "cross-border employee"

The Bill proposes to include a new definition of "cross-border employee" as:

- an employee of a non-resident employer who provides services in New Zealand, or
- a New Zealand resident employee who provides services outside New Zealand.

The intention of providing a definition of a "cross-border employee" is to ensure that the flexibility measures included in this Bill are appropriately targeted, with a clear distinction for Inland Revenue to draw on in respect to enforcing the rules.

A 60-day grace period

The proposals would enable an employer to meet or correct their PAYE, FBT and ESCT obligations, for cross border employees, within a 60-day grace period where they have taken reasonable measures to manage their employment-related tax obligations, and the employee is present in New Zealand for a period during which the employee has:

- breached a threshold for the short-term visits exemption (e.g. where the person is present in New Zealand for more than 92 days in a 12-month period).
- breached a threshold for exemption under a relevant double taxation agreement, or
- received an extra pay.

The grace period would run from the earliest of the date of the breach or payment and the date on which the employer could reasonably foresee that the breach or payment will occur.

The proposed 60-day grace period provides more time for non-resident employers or "IR 56 taxpayers" (i.e. employees of foreign entities who are responsible for their own tax reporting) to gather the necessary information and ensure they meet their PAYE, FBT, and ESCT obligations once it is identified that an employee has breached the day count tests and is now subject to New Zealand tax obligations. If catch-up payments are made within 60 days from the earliest of the date of the breach or the date the employer could have reasonably foreseen that a breach has occurred, then no voluntary disclosure is required and penalties and interest will not be imposed.

Application for a bespoke PAYE arrangement

Where 'special circumstances' exist, this would enable an employer of a class of cross-border employees to apply to the Commissioner of Inland Revenue for an agreement that the tax due for a PAYE income payment may be made by 31 May following the end of the relevant tax year. That is, the tax could be paid on an annual basis rather than being paid regularly throughout the year as required under the ordinary rules. Inland Revenue will develop guidance to clarify the types of scenarios that would qualify for this arrangement.

Safe-harbour arrangements for non-resident employers

In addition to the proposals contained in the Bill, Inland Revenue recently published an Operational Statement "Non-resident employers' obligations to deduct PAYE, FBT and ESCT in cross-border employment situations" that introduced a "sufficient presence" test to determine when a non-resident employer has made themselves liable to New Zealand law. If the non-resident employer incorrectly assessed that they were not subject to New Zealand law and has not met their obligations under the rules, it would need to pay the tax as well as penalties and interest.

Under the current rules, if there is not a sufficient presence in New Zealand, the employee is required to pay the PAYE directly to Inland Revenue however no equivalent rule exists for FBT and ESCT.

The Bill proposes a safe harbour for non-resident employers who have incorrectly determined that they do not have New Zealand PAYE, FBT and ESCT obligations. A safe harbour would be available where the non-resident employer has:

- either two or fewer employees present in New Zealand at any point in the income year, or pays $500,000 or less of gross employment-related taxes in New Zealand for the income year, and
- arranged for their employment-related tax obligations to be met by another person or has communicated to the affected employee(s) that they must meet those obligations directly.

Where the conditions of the safe harbour are met, a non-resident employer who has incorrectly determined that they do not have a sufficient presence in New Zealand would be protected from penalties and interest on the unpaid tax.

Repeal of PAYE bond

Under current law, an employer or PAYE intermediary could apply to be released from a withholding obligation by providing a bond or other security. This provision is not used much in practice and has been repealed.

Transfer of obligations to an employee

The Bill also clarifies that where a non-resident employer does not have an obligation to pay PAYE, FBT and ESCT, the obligation transfers to the employee. This change ensures that employees are taxed equally on cash payments, fringe benefits and superannuation contributions, regardless of where their employer is based.

The proposed amendments would ensure employer contributions to a foreign superannuation scheme would be subject to PAYE as salary or wages, rather than FBT. This would include contributions to sickness, accident, or death benefit funds within the foreign superannuation scheme.

We also note that a related company of the employer could agree to take on the relevant employment tax obligations. This has been widely used in practice but has now been formalised by Inland Revenue.

Clarifying the status of non-resident entertainers

The proposed amendment would change the definition of "non-resident contractor" to exclude a "non-resident entertainer" and thereby clarify the provisions that apply to non-resident entertainers.

Non-resident contractor's tax (NRCT)

NRCT applies to contract payments paid to a non-resident who performs services in New Zealand or provides the use of (or the right to use) personal property (i.e. goods) or services. It is intended as an integrity measure, to ensure that tax is withheld at source given the potential "flight risk" of non-residents.

The Bill proposes a number of changes to the NRCT regime to provide a bit more flexibility to how the rules apply. We summarise the key changes below.

Grace period for certain circumstances

The Bill proposes a 60-day grace period for a NRCT payer to meet or correct their NRCT obligations where:

- the payer makes a schedular payment to a non-resident contractor;
- at the time the payment was made it was not clear that withholding would be required;
- some, or all, of the tax is underpaid at the tax due date; and
- the payer can demonstrate they have taken reasonable steps in relation to the tax obligations for the schedular payment.

The grace period would run from the earliest of the date of the breach and the date on which the employer could reasonably foresee a breach will occur.

A nominated taxpayer approach

The Bill proposes new rules which will allow a non-resident contractor to nominate a taxpayer to meet the non-resident contractor's New Zealand tax obligations on its behalf. Both parties would be jointly and severally liable for these tax obligations. This is intended to simplify NRCT obligations – particularly where delivery of a project involves multiple parties.

Schedular payment thresholds

The requirement to withhold NRCT is determined by whether certain thresholds are breached. Payers are not required to withhold NRCT if the payment is exempt under either of two schedular payment thresholds:

- the 92 days of presence rule, or
- the $15,000 de minimis rule.

Under current law, the payer looks at the thresholds from an "all circumstances" view, meaning that all of the non-resident contractor's activity in New Zealand is considered, including:

- days of presence unrelated to the contract (for example, holidays), or
- contract payments made to the contractor for all contract activities or services in New Zealand by other payers, that may be completely unrelated to that payer.

The Bill proposes to move to a "single payer" view, meaning that only the days and amounts relating to a particular contract are taken into account when determining whether a threshold has been breached.

For the 92-day test: the days on which the non-resident contractor is in New Zealand to perform the duties for the contract (from their arrival to their departure after completion of the contract). This would include weekends and holidays during the period of the contract but exclude days on which the contractor is present in New Zealand for purposes unrelated to the contract.

For the $15,000 test: the payments made to the contractor or another person on their behalf that are related to the contract.

Reporting requirements

The Bill proposes that payers of NRCT would have to provide information to Inland Revenue on the 15th day following the end of each calendar month, including:

- The names of the payer and payee
- The date on which the schedular payment is made
- Whether the schedular payment is paid during a grace period
- The contact addresses of the payer and payee, whether in New Zealand or otherwise
- The tax file number of the payee, or their foreign tax identification number
- The gross amount of the schedular payment
- The amount of tax withheld from the schedular payment
- Whether an exemption applies in relation to the schedular payment
- Whether a threshold applies in relation to the schedular payment
- The start and end dates of the contract under which the schedular payment is made.

NRCT exemptions to have retroactive effect

The Bill proposes exemptions from withholding NRCT to have retroactive effect, meaning that if the exemption is issued after the date of the first contract payment, the exemption can cover payments made before its issue date. This retroactive period would be limited to the 92 days before the person applied for the exemption.

Enabling associated New Zealand entities to form a basis for good compliance history

Using the nominated taxpayer approach, a proposed new rule would enable an associated New Zealand entity to establish a good compliance history for the purpose of obtaining exemption certificates for associated non-resident contractors.

PWC VIEW: The proposals to provide flexibility in the PAYE, FBT and ESCT rules are welcomed by both employers and tax advisors. The incidence of cross border workers is increasing as more employees choose to work remotely and these proposals should help to clarify reporting and tax obligations in such scenarios to encourage compliance whilst reducing compliance costs.

Non-resident employers still need to ensure they consider the sufficient presence test contained in Inland Revenue's Operational Statement to determine if they have obligations in New Zealand. The safe harbour threshold only provides protection from penalties and interest. It would be useful if Inland Revenue had provided more guidance and examples on what constitutes a "sufficient presence".

We also support the proposed NRCT changes, which will provide greater flexibility and more closely align with commercial practice.

FBT exemption for public transport

The Bill proposes a FBT exemption for public transport. FBT is meant to ensure non-cash benefits are not used in lieu of salary increases to sidestep income tax. However, the law has a range of exemptions, particularly for benefits used in the course of work such as work-related vehicles and employee car parks.

The proposals would exempt a public transport fare that an employer subsides mainly for the purposes of an employee travelling between their home and place of work, if the public transport service is by one or more of the following means:

- Bus
- Train
- Ferry
- Tram
- Cable car

PWC VIEW: The proposal is a positive one which aligns with recommendations previously made by the 2017 Tax Working Group. As outlined in their final report, currently employee car parks are largely not subject to fringe benefit tax while any contributions made to an employee's public transport costs are taxed. Reconciling the tax treatment of different transport modes is positive as it will ensure businesses are not incentivised to encourage the use of one transport mode over another. The proposal is a win for the environment and also businesses by removing tax barriers to providing alternative modes of transport. It is interesting that the proposed drafting is prescriptive as to the modes of public transport which will be exempt, and consideration should be given towards whether this is appropriate given the range of different modes of public transport used both now and in the future.

Dual resident companies

The Bill includes taxpayer-friendly changes that would ensure New Zealand companies affected by changes to Australia's corporate tax residence rules have uninterrupted access to certain New Zealand tax regimes. It also seeks to address perceived integrity issues involving New Zealand resident companies that are deemed to be tax resident of another country under a double tax agreement (DTA).

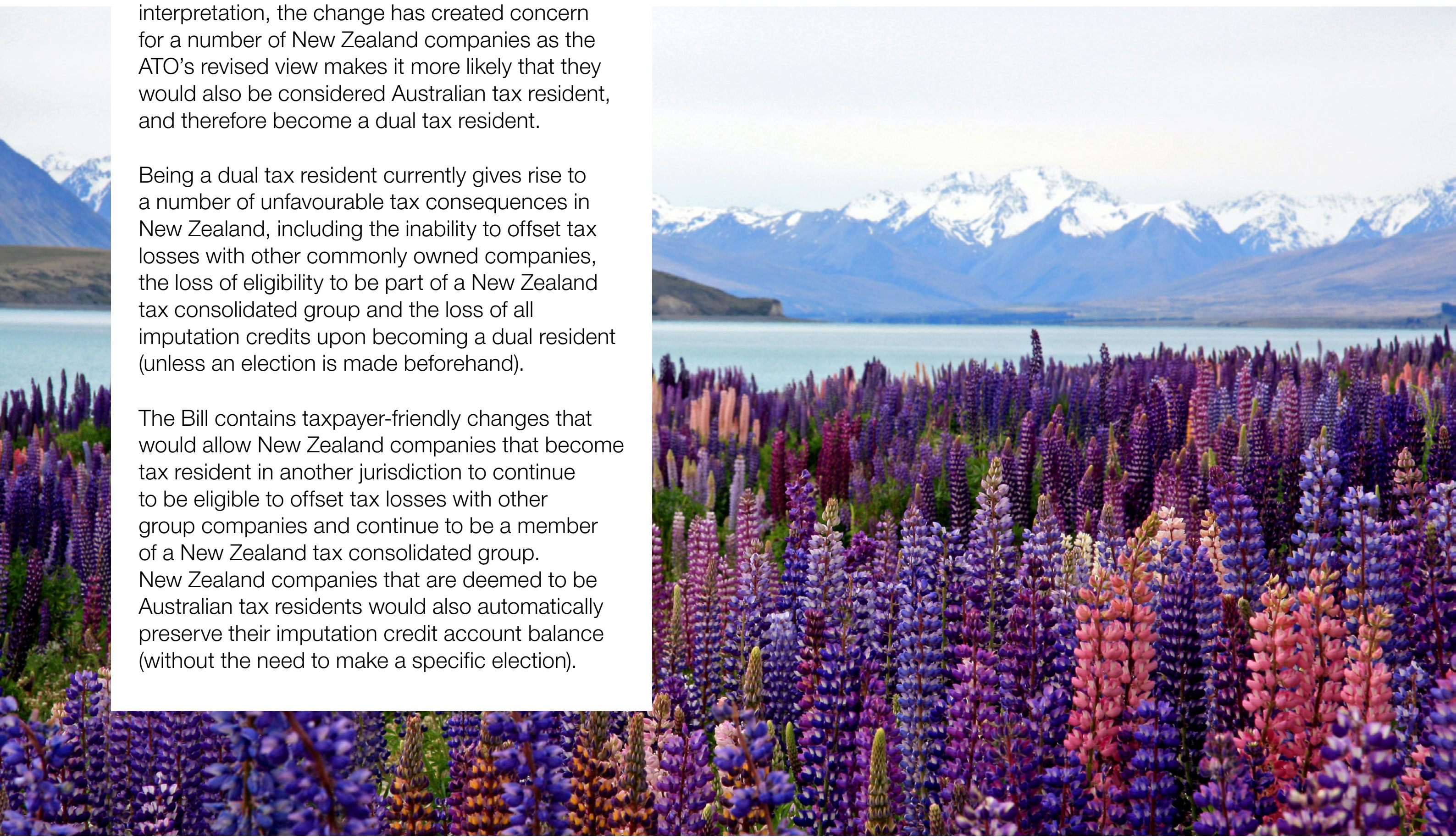
Loss grouping, consolidation and imputation credit changes

In 2019, the Australian Tax Office (ATO) issued a revised view on the Australian corporate tax residency rules off the back of an Australian High Court judgment (with the change applying retrospectively from 2017). While the Australian rules will potentially be returned to their original interpretation, the change has created concern for a number of New Zealand companies as the ATO's revised view makes it more likely that they would also be considered Australian tax resident, and therefore become a dual tax resident.

Being a dual tax resident currently gives rise to a number of unfavourable tax consequences in New Zealand, including the inability to offset tax losses with other commonly owned companies, the loss of eligibility to be part of a New Zealand tax consolidated group and the loss of all imputation credits upon becoming a dual resident (unless an election is made beforehand).

The Bill contains taxpayer-friendly changes that would allow New Zealand companies that become tax resident in another jurisdiction to continue to be eligible to offset tax losses with other group companies and continue to be a member of a New Zealand tax consolidated group. New Zealand companies that are deemed to be Australian tax residents would also automatically preserve their imputation credit account balance (without the need to make a specific election).

PWC VIEW: We welcome the proposed changes to allow dual resident companies greater access to these tax regimes, particularly given the underlying integrity is maintained. For example, there were previously concerns that allowing dual resident companies to offset tax losses or form part of a consolidated tax group would give rise to 'double dipping' i.e. claiming of the same expenses in more than one country. However, these concerns have been alleviated following the introduction of the anti-hybrid rules in 2018 (which apply to counteract the claiming of double deductions). Further, continuity requirements will remain in place with respect to the imputation credit account balances.



Integrity measures

The Bill proposes two integrity measures with respect to New Zealand companies that are deemed to be tax resident of another country under a DTA (referred to as being 'tie-broken' to another country).

It is noted that the proposed changes are in response to integrity issues that could give rise to situations where companies may derive income or pay dividends without the anticipated New Zealand income tax due to the change in tax residence and obtaining tax relief under a DTA.

The proposed integrity measure in the Bill would mean:

- Dividends paid to certain New Zealand companies that have been tie-broken to another country under a DTA would no longer benefit from the domestic dividend exemption (which generally applies such that dividends paid between members of a wholly owned group of New Zealand companies are treated as exempt income). Currently, the DTA may prevent the application of withholding because a dividend paid by a company tie-broken to a country outside of New Zealand is treated as being paid by a non-New Zealand resident under the DTA.
- The corporate migration rules would apply to deem a liquidation, disposal of assets and distribution to shareholders to have arisen for tax purposes when a New Zealand company tie-breaks to another country under a DTA.

Following some initial targeted consultation, the scope of the integrity measures has been limited slightly including allowing the New Zealand company a two-year period to rectify its tax residency status before the application of the measures is affected.

PWC VIEW: We acknowledge the issue of withholding tax leakage arising in the event of a dual resident New Zealand company accessing certain DTAs. However, we have concerns about the potential compliance and administration costs imposed on companies and Inland Revenue from the proposed integrity measures.

If the above changes are enacted, it would become important to confirm the tax residency of companies prior to paying a material dividend (to the extent that a ruling from the competent authority may be required to get comfortable with the tax treatment). Further, given the material tax liability that may arise if the corporate migration rules are triggered, annual confirmation that New Zealand tax residence has been maintained may be required for audit purposes (to provide evidence that a material tax liability does not exist in relation to corporate tax residence).

Such confirmations may generate additional compliance costs for affected companies, and additional administration costs for Inland Revenue and overseas jurisdictions' revenue authorities.

Housing tax changes – build-to-rent exemption

What is proposed

As previously announced by the Minister of Housing, the Bill contains an exemption from the interest limitation rules for build-to-rent developments. Build-to-rent properties are larger-scale residential property developments of at least 20 dwellings that offer tenants long-term accommodation with greater tenure than traditionally seen in rental accommodation. To qualify, tenants must be offered fixed term tenancies of up to 10 years at all times and these tenancies must have policies that allow the tenant to personalise the dwelling.

The key requirements of this exemption are listed below:

- The development must comprise of at least 20 dwellings in one or more buildings that comprise a single development, on either a single parcel of land or multiple contiguous parcels.
- The dwellings must be used, available for use, or being prepared or restored for use, as dwellings occupied under a residential tenancy to which the Residential Tenancies Act 1986 applies or would apply.
- The landlord or manager for the dwelling has offered any current tenants before 1 July 2023 a fixed term tenancy of no less than 10 years, and always offers prospective tenants such a tenancy going forward; and
- The tenancy allows, without penalty, tenant personalisations for the dwelling; and
- The tenancy provides that a tenant may cancel the tenancy with 56 days notice, without penalty.

In order for a development to qualify for the 'build-to-rent' exemption, the Chief Executive of Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (MHUD) must be satisfied that the development meets the definition of "build-to-rent land". The development would then be recorded on a register of assets that would be shared with Inland Revenue. Inland Revenue would then exempt the listed development from the interest limitation rules.

As noted, these requirements must be met at all times after the time the development first becomes eligible for the "build-to-rent" exemption in order to remain eligible for the exemption. Under the proposed rules, if the requirements are no longer met at any point in the future, the exemption is lost forever.

Existing developments can qualify for the build-to-rent exemption and have until 1 July 2023 to meet the definition of "build-to-rent land". Provided this definition is met before 1 July 2023, the development will be exempt from the interest limitation rules going forward.

The build-to-rent exemption will also apply to all new developments completed after 1 July 2023, once the development meets the definition of "build-to-rent land". It is important that for new developments, 10 year tenancies are always offered from day 1 in order to qualify for the exemption.

The build-to-rent exemption will only apply to the portion of the development that is "build-to-rent land", and whether interest can be deducted for the remaining portion of the land will depend on whether the interest limitation rules apply, whether any exemptions to the interest limitations rules apply (such as the "new build" exemption) and what purpose the land is used for.

For example, a development could include a mixture of:

- Build-to-rent dwellings
- Dwellings that are not "build-to-rent land" (e.g. rental apartments where a ten year tenancy is not offered)
- Other commercial premises (e.g. ground floor commercial premises)

Assuming the development includes at least 20 dwellings that meet the definition of "build-to-rent land", interest would remain deductible to the extent borrowed in relation to those dwellings. Interest that relates to dwellings that do not qualify for the exemption may be deductible depending on whether an exemption such as the "new build" exemption applies. Interest relating to a commercial premises that forms part of the overall build-to-rent development should be deductible provided ordinary tax principles of deductibility are met.

PWC VIEW: The build-to-rent changes are a positive move to remove barriers to increasing New Zealand's housing supply by encouraging investment in a "build-to-rent" asset class. Traditionally in New Zealand, there is not widespread use of tax incentives to encourage investment in particular asset classes, however arguably this exemption is required to mitigate the arbitrary side effects of the interest limitation rules.

The exemption is unusual in our self-assessment regime because owners of build-to-rent developments cannot qualify for the exemption based on their own assessment of whether they qualify for the build-to-rent exemption. Rather, they must satisfy the MHUD that they qualify for the exemption. A development could meet the definition of "build-to-rent land" but will only qualify for the exemption once the MHUD signs off. This is not crucial for new developments because these should qualify for the "new build" exemption, however existing developments that wish to qualify for this exemption should ensure they engage with the MHUD promptly to ensure they qualify for the exemption as soon as possible and prior to the deadline of 1 July 2023.

The consequences of not meeting the build-to-rent exemption at any time are also disproportionate in that a development could lose the exemption forever if they no longer meet the requirements at any time. However, the definition of "build-to rent land" does allow for situations where the number of dwellings rented out falls below 20 due to renovations or where a property is available to be rented, but is not currently rented out.

While one barrier to investing in build-to-rent developments has been removed, the unavailability of building depreciation for residential buildings could still be viewed as a barrier to investment in this asset class.

Housing remedial items

What is proposed

The Bill contains a number of remedial changes to current residential property tax rules. These primarily relate to the bright-line test, rollover relief from the bright-line test and the interest limitation rules for residential property.

Rollover relief provides relief from taxation under the bright-line test in certain circumstances where there has been no change in economic ownership of a residential property, such as where property is settled onto a family trust, a look-through company or partnership. Rollover relief is also intended to prevent the bright-line test start date resetting when a property is transferred.

Of particular note, the tweaks to bright-line rollover relief are designed to ensure that rollover relief works as intended in family trust scenarios when there has been no change in economic ownership. This includes situations where residential property has been settled onto a family trust, transferred back to the principal settlor of the trust or when a resettlement of an existing family trust occurs.

The Bill also includes an important amendment that ensures that when a transfer of residential property is eligible for rollover relief, the bright-line test period is based on the date the original owner acquired an interest in the land. This ensures when land is transferred that is eligible for rollover relief, the bright-line period does not reset to ten years from the original purchase date. For example, a property acquired in 2019 should have a five year bright line period, and the transfer of that property to a family trust that meets the requirements for rollover relief should not reset the bright-line period to ten years for that property.

Finally, the Bill also includes welcome amendments that ensure the allocation of subdivided land among co-owners does not result in a disposal under the land sale rules, where the co-owners' share of the resulting land matches their proportionate economic ownership prior to the transfer or other change of ownership.

PWC VIEW: It is no surprise that further refinements are needed to the bright-line test, rollover relief and interest limitation rules given the sheer complexity of these rules. It is also unsurprising that some further remedial tweaks are required to the rollover relief rules given their last minute introduction via a supplementary order paper to the previous omnibus tax legislation.

The introduction of rollover relief from the bright-line test also highlights that there is much greater rollover relief available under the bright-line test than the limited rollover available under the other land sale provisions.

While this seems appropriate given the prescriptive nature of the bright-line test, it is arguable that rollover relief should apply more broadly to other land sale rules when there has been no change in the economic ownership of the property.

Overall, these remedial changes further highlight the sheer complexity of our current property tax rules, where a hodgepodge of different tax rules can apply. Residential property has become a particularly complex area for tax professionals (let alone "mum and dad" investors), who now need to consider some or all of the recently introduced tax rules – loss ring-fencing, interest limitations, bright-line test and potential rollover relief.

GST apportionment

Special GST rules apply to assets that are used partly for making taxable supplies and partly for making non-taxable supplies. The initial input tax claim is apportioned based on the intended taxable use of that asset and ongoing adjustments are then required.

Common examples of when apportionment and adjustments are relevant include:

- Businesses which make a mix of taxable and exempt supplies such as financial services providers (e.g. banks) or residential accommodation providers (e.g. retirement villages)
- Assets used partly for business and private purposes – e.g. a home office in someone's home; or a bach or holiday home which is partly rented out and partly used privately by the owner.

The apportionment and adjustment rules are complex and difficult to apply in practice. They impose heavy compliance costs on taxpayers.

Inland Revenue initially consulted on measures to simplify the apportionment and adjustment rules in its March 2020 GST policy issues paper. This was followed by further consultation on specific proposals in the March 2022 officials' issues paper on GST apportionment and adjustment issues. The two rounds of consultation give an indication of the complexity of trying to reform and simplify the rules. Based on feedback received from the second round of consultation, the following proposals have made their way into this Bill (with other proposals in the March 2022 officials' issues paper being dropped):

1. An "all or nothing" principal purpose test for goods and services acquired for $10,000 or less
2. GST-registered persons may elect to treat certain goods with a minority taxable use as outside of the "GST net" (i.e. no GST deductions, but no GST on sale of that asset)

The measures are intended to reduce the number of taxpayers who need to make an apportionment or adjustments. We elaborate on both proposals below.

Principal purpose test

Low value purchases which only have a small or incidental amount of non-taxable use are subject to the apportionment rules under current law, and the adjustment rules currently apply to assets of more than $5,000 (excluding GST). The Bill proposes that goods or services acquired for $10,000 or less (excluding GST) will not be subject to the apportionment or adjustment rules.

Instead, if the use of those goods or services is mainly for taxable purposes, a full input tax deduction will be allowed. If they are mainly used for non-taxable purposes (i.e. 50% or more), then no input tax deduction will be allowed.

This would cover revenue expenditure and smaller value assets such as computers, phones, and tools. It would apply from 1 April 2023.

Election to treat as exempt

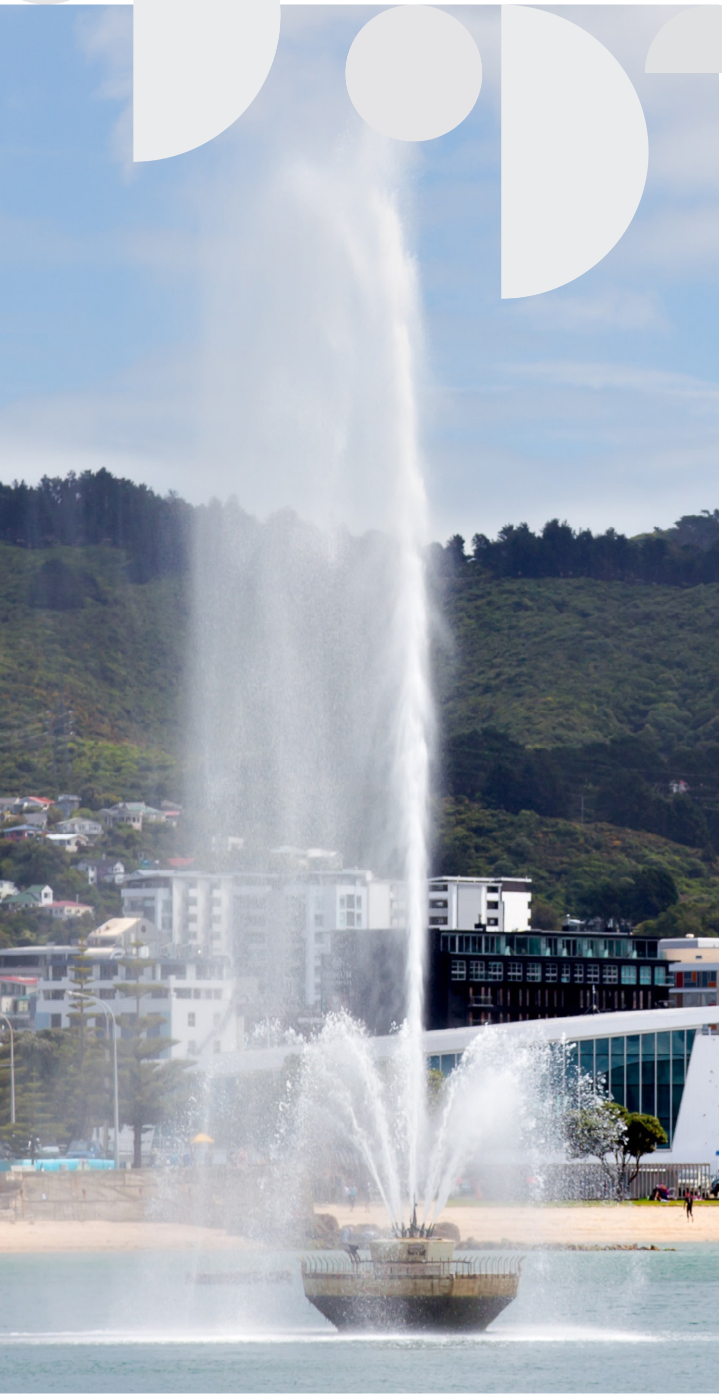
Under Inland Revenue's interpretation of the current law, the disposal of an asset which has a small percentage of taxable use (e.g. a dwelling with a home office) is treated as a taxable supply and GST applies at 15%. This can result in large and unexpected GST liabilities when the asset is sold.

The Bill proposes that GST registered persons be able to elect to treat the supply of goods that were not acquired or used for the principal purpose of making taxable supplies as exempt. The proposed exemption would be limited to tangible assets, such as land, dwellings or vehicles, (i.e. goods) which are likely to have a minor amount of use in making taxable supplies. Services are excluded, as it was not considered that they are likely to have part use in the same way that tangible assets are.

To qualify for the exemption, the following requirements must be met:

- no previous deductions claimed for the goods;
- the goods were not used or acquired for the principal purpose of making taxable supplies; and
- the goods were not acquired as zero-rated supplies under the compulsory zero-rating of land rules.

The proposal to elect to treat assets as exempt would generally apply retrospectively, from 1 April 2011.



PWC VIEW: The **all or nothing / principal purpose test** for purchases of $10,000 or less is intended as a simplification measure. It will mean that in some cases, where an (apportioned) input tax deduction is currently claimed, no input tax deduction will be allowed once the new rules are in force (1 April 2023). Although we (and taxpayers) generally appreciate simplification, there will be some winners, and some losers, and for businesses who currently apportion, systems changes will be required.

It's also important to note that the current apportionment rules, introduced in 2011, replaced the previous "principal purpose" test. This proposal involves a move back to the "principal purpose" test, but just for lower value purchases – but it essentially means a hybrid of the old and new rules. That brings its own complexity.

We appreciate and commend the **proposals to treat certain principally non-taxable assets as exempt**. There is currently significant uncertainty regarding the impact of a minor taxable use of an asset when it exits the GST net. Most taxpayers would find it illogical that a minor taxable use may mean the asset is fully taxable on sale (albeit with certain adjustments, such as those brought in by omnibus tax legislation last year). Many taxpayers would logically believe that if they don't claim GST deductions for an asset, even if it has a minor taxable use, that it shouldn't be taxed on sale – and this proposal is intended to facilitate that outcome.

However, we believe that there are many wider issues with the current apportionment rules (and Inland Revenue's views on how they apply), which need to be considered more fully from a policy perspective. Our preference has been for Inland Revenue to undertake a holistic first principles review of the apportionment and adjustment rules, including consideration of the appropriate output tax position for assets that have been subject to apportionment. Some of these issues will remain unresolved with the proposed changes.

As part of a first principles review, we should consider whether the adjustment rules should return to the previous principal purpose approach (which is what the proposals are doing for lower value purchases). While there would be a tradeoff to consider between the accuracy of the final position, we consider that this approach would have benefits in terms of certainty, simplicity, and reduced compliance costs for taxpayers.

GST on legislative charges

Under current law, the GST treatment of legislative charges (e.g. levies) is generally determined according to ordinary GST principles. This requires an analysis of what the charge is paid for, to determine whether there is a sufficient link between the payment of the charge and a supply of goods or services (and therefore subject to GST at 15%). There are some exceptions to this treatment, where over time certain levies were deemed by the Goods and Services Tax Act 1985 ("GST Act") to be subject to GST e.g. GST applies to the fire services levy and regional fuel tax.

Some other levies (or charges) have been recognised by the Courts as attracting GST. These cases involved particular fact scenarios where there was seen to be a direct connection between the payment of the levy and the services provided by the supplier, on the basis that failure to make payment could result in being excluded from a benefit which is supplied to those who do make payment (See *Rotorua Regional Airport Limited v Commissioner of Inland Revenue* (2010) 24 NZTC 23,979). On the other hand, Inland Revenue rulings have concluded that other levies are **not** consideration for the supply of goods or services, and are therefore not subject to GST.

Under the current law there is no clear or discernable pattern as to why some levies or charges are deemed by the GST Act to be subject to GST. Some of the inclusions reflect historical compromises. Others are hard to justify on first principles of GST e.g. regional fuel tax. Finally, some of the legislative solutions were designed to resolve other longstanding unresolved GST issues e.g. whether a body corporate carries on a taxable activity (the bodies corporate levy rule gives the option for bodies corporate to register for GST).

What is proposed

The Bill proposes to bring consistency to the GST treatment of legislative charges by deeming all such charges (as defined) to be subject to GST as consideration for a supply of goods or services. The term "charge" is not defined but is described in the Commentary to the Bill as a liability to pay money and is intended to be broad-ranging. However, it does **not** include penalties, fines, interest, or general taxes (e.g. income tax).

The new rule will apply in relation to any new legislative charges which come into force on or after 1 July 2023, and to existing legislative charges from 1 July 2026.

The existing deeming provisions in the GST Act for specific levies will be repealed.

PWC VIEW: We appreciate the legislative certainty provided to the GST treatment of legislative charges provided by the proposals. Under current law, the hodgepodge of levies deemed to be subject to GST by the GST Act, Inland Revenue rulings, and Court decisions can make the GST position unclear and give rise to inconsistent GST outcomes. However, whenever the GST Act overrides ordinary GST principles, care should be taken to ensure that the resulting GST position does not give rise to unintended consequences.

Further, to the extent that the proposals depart from the current GST position taken by taxpayers, consideration should be given to ensuring that this does not give rise to excessive compliance cost (e.g. through systems changes). To that end, it is positive that there is a long lead-in time to the changes.

Changes to the GST tax invoice rules

The Government enacted changes to the GST invoicing and record-keeping requirements earlier this year, to apply from 1 April 2023. The GST invoicing rules have largely been unchanged since the introduction of GST in 1986. The changes enacted earlier this year were intended to reflect modern business practices (such as digitised business systems and the expected introduction of wider use of e-invoicing). The main change was to remove the requirement to issue and hold a single prescribed "tax invoice" document. Rather, the GST requirements would be met if specified GST information is provided and held, regardless of the source(s) (e.g. commercial invoices, supply agreements, or other business records).

Unfortunately, the drafting of the new rules was overly complex and added new requirements which did not exist under current law. Although the policy intent was to allow businesses to continue issuing tax invoices and credit/debit notes which complied with the current requirements, this was not achieved under the current law. A number of important remedial amendments have been included in this Bill to try and bring the new rules closer to the original policy intent of providing greater flexibility to businesses. However, businesses should still consider whether their systems will inadvertently reject invoices which are compliant under the new rules but not compliant under current law (as the new requirements are more permissive, and less information is required to be provided in some cases).

PWC VIEW: The remedial amendments are a positive development, demonstrating the value of consultation and an extended lead-in time before the rules come into effect. The GST invoicing requirements are embedded into business systems and there has been a clear, established set of requirements which have been in place for some time. It was perhaps not appreciated when the proposals were initially introduced that what may appear to be minor or inconsequential changes to business systems could result in significant compliance costs due to the difficulties associated with making changes to billing and ERP systems.

Although the drafting has improved, it will still be important to monitor the impact of any quirks in the new law having unintended impacts on business' current invoicing and record-keeping processes.

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