# Tax Tips Alert | April 2023

The past few months have seen tax issues featured in the media – perhaps portending that the upcoming 2023 general election will feature tax policy as a key battleground issue. Meanwhile, a number of other recent tax developments, which have not attracted the same level of media attention, will have significant impacts for businesses across a range of sectors.

**In this edition of Tax Tips, we discuss all of these latest developments, including:**

- High-wealth individuals research project report released by the Government
- New tax legislation enacted
- Various new rules and proposals relating to tax information reporting
- New Inland Revenue guidance on the GST treatment of directors' fees

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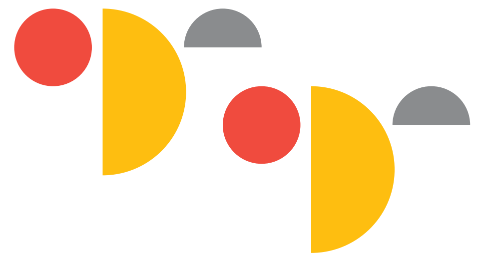


# High wealth individuals report

Does New Zealand have a "fair" tax system? It's a difficult question to answer because many people will have a different idea of what "fairness" means in the context of tax. The Government has hinted that it believes New Zealand's tax system is unfair. Yesterday, Inland Revenue released a report which attempts to provide an evidentiary basis upon which to have that debate.

The 2019 Tax Working Group (TWG) identified that there is a lack of evidence available to policymakers to evaluate the impact of current tax settings on the progressivity of New Zealand's tax system (i.e. the notion that those with a greater ability to pay should bear a higher tax burden). Based on the TWG's recommendations, the Government enacted new information gathering powers and set aside $5 million of funding in the 2021 Budget for Inland Revenue to collect and analyse information on the level of tax paid by high-wealth individuals (HWIs), their families, and their related entities. The purpose of collecting this information was to inform future tax policy development.

The information gathering powers were passed into law by Parliament under urgency, without undergoing the scrutiny of a public consultation process. The resulting powers were broad, and many impacted HWIs have commented on the intrusive nature of the questions asked of them.

The culmination of the controversial "HWI project" is the release of Inland Revenue's High-Wealth Individuals Research Project Report (the "Report"). The headline news is that the median HWI family paid 8.9% of their economic income in tax. In this edition of Tax Tips, we explain Inland Revenue's methodology, the Report's findings, and what this could mean for tax policy in New Zealand.

## Methodology

### Information collection

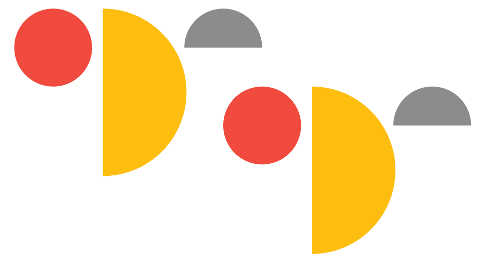
At a very high level, the approach taken to measuring the amount of tax paid by HWIs is relatively simple to understand – the total amount of tax paid by HWIs is divided by their economic income. This exercise was undertaken by reference to a combination of:

- income information already held by Inland Revenue;
- publicly available information like share registers or property registers; and
- private information provided by HWIs under Inland Revenue's information gathering powers.

Inland Revenue identified several hundred HWIs with an estimated net worth of either over $50 million, or over $20 million where they meet other factors such as having a controlling interest in a significant enterprise. These HWIs and their families were then sent a number of surveys to complete – the first survey requested family information of HWIs (i.e. who are their partners and dependent children), another survey sought to understand what those HWIs own (individually and as a family unit), and subsequent surveys requested financial information in relation to those holdings.

Only New Zealand tax residents were included in the sample, and the requested information related to a five year period from 1 April 2015 to 31 March 2021 (the "Project Period") (although some information requests relating to gifts and inheritances went back up to 50 years).

Through the surveys, Inland Revenue identified 350 HWIs and their families who met the net worth and residence requirements. Of these, 311 HWIs and their families responded, and the analysis contained in the Report is based on information received from these HWIs.



### Economic income

The concept of "economic income" is broader than what is treated as "income" under New Zealand's tax system. This is because the tax system only treats things like wages, salaries, business profits, and some kinds of investment income as a person's taxable income. Economic income includes various forms of income which are not taxed – most notably, capital gains from things like shares and real property. At a very academic level, "economic income" is understood to be a person's consumption plus their changes in net worth. For the purposes of the Report, Inland Revenue draws on this definition of economic income with some slight variances due to the practical difficulties of measuring economic income in this academically "pure" way.

- HWIs' economic income for the purposes of the Report is made up of the following:
- Annual net income or loss (i.e. HWIs' personal income)
- Realised capital gains (for assets sold during the Project Period)
- Accrued capital gains (for assets not sold during the Project Period)
- Non-taxed distributions from companies and trading trusts
- Trustee taxable income (and capital gains on the assets in trusts)
- Taxable income of "land-rich entities" (in addition to the capital gains on real property)
- Imputed rental on owner-occupied housing. Imputed rent refers to the benefit that an owner-occupier derives from home ownership.

Gifts were excluded from the definition of economic income for the purposes of the Report.

The inclusion of unrealised capital gains has been questioned by some commentators. Inland Revenue explains that their data has suggested that HWIs are able to spend more than what their level of taxable income may suggest, and this expenditure is likely to be supported by their stock of assets. In Inland Revenue's view, this "demonstrates that high-wealth families have considerable resources beyond their taxable income".

Based on this methodology, Inland Revenue concluded that the average estimated net worth of HWIs is $276 million and the median net worth is $106 million.

### Effective tax rate

Having determined HWIs' economic income, Inland Revenue used its own tax administration information to work out how much tax was paid by those HWIs. Personal income tax, corporate income tax, trustee tax, and GST paid by HWIs were included to determine the amount of tax paid. The amount of GST paid by HWIs on their purchases was estimated based on HWIs' consumption in the Project Period.

Excise duties, fringe benefit tax, local authority rates, and ACC levies were not included in the amount of tax paid by HWIs.

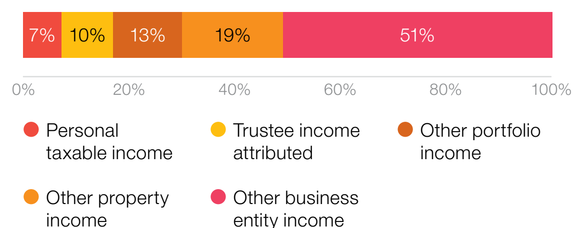
## Key findings

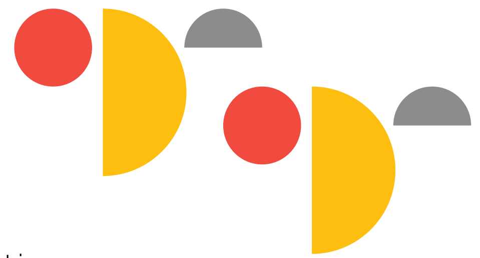
- The effective tax rate of HWIs on their personal taxable income was 32.1%. This is broadly in line with the top marginal tax rate during the Project Period of 33%.
- However, HWIs' overall effective tax rate when all sources of income and tax are included (but excluding GST) is 8.9%.
- Including GST and the value of imputed rent into HWIs' total tax and economic income (respectively) only slightly increases their effective tax rate.

The key driver for the above findings is the amount of HWIs' economic income which is derived from non-taxable sources. Only 17% of HWIs' economic income is taxed as personal income or trustee income. The graph below illustrates the breakdown of HWIs' economic income from various sources:

**Personal taxable income and other income for Project population**

1 April 2015 to 31 March 2021

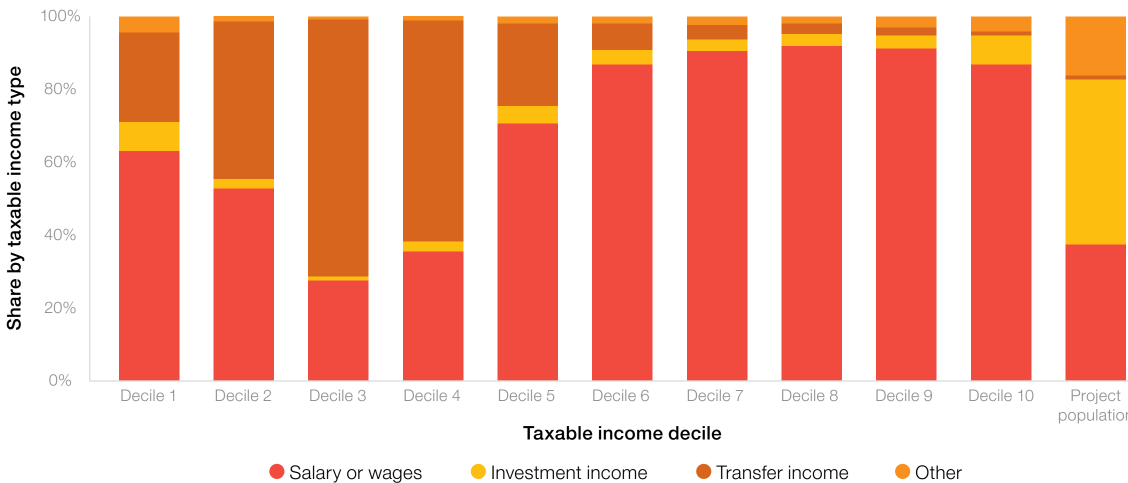




HWIs derive a disproportionately higher share of their economic income from investment income, much of which could be untaxed capital gains. This is in contrast to the amount of economic income derived from salary or wages (which are taxed) by all other segments of society:

**Comparison of composition of taxable income for general population vs Project population**

1 April 2015 to 31 March 2021




While gifts and inheritances were not included in HWIs' economic income for the purposes of their effective tax rate calculation, the Report did find that a total of $411 million was reported as being received within the Project Period (an average of $6.2 million received by each HWI family) across the last 50 years.

The Report was primarily intended to illustrate the "fairness" or progressivity of the tax system. However, Inland Revenue also noted that failing to tax some forms of economic income could have wider economic impacts, by distorting investment decisions (i.e. HWIs are incentivised by the tax system to invest in certain forms of activity or assets over others), which can give rise to economic costs.

## What about other reports?

Alongside the release of the Report, the Treasury simultaneously released a number of other reports which also looked at the progressivity of New Zealand's tax and transfer systems. The Treasury report analysed information from the Household Economic Survey (HES) conducted by Statistics New Zealand. However, the Report notes that the HES suffers from a low response rate from HWIs. As such, the HES tends to underestimate the wealth of HWIs. Therefore, while the Report draws on the Treasury report's findings to compare HWIs' economic income and effective tax rates against the wider population, the Report uses information collected using Inland Revenue's information gathering powers to supplement the HES information for the HWI segment. For example, in contrast with the economic income of HWIs as determined by Inland Revenue, the Treasury report found that the poorest 50% of households collectively hold around 6% of New Zealand's net worth.

Pre-empting the release of the Report, tax consultancy firm OliverShaw commissioned its own research into the progressivity of New Zealand's tax system, conducted by the Sapere Research Group (the "Sapere Report"). The Sapere Report's key findings were as follows:

- The wealthy pay most of the tax collected in New Zealand
- Effective tax rates are generally less than the statutory rates, across all income levels
- Average effective tax rates increase as economic incomes increase

At face value, the conclusions contained in the Report and the Sapere Report appear to be in direct conflict with each other. The Sapere Report concludes that the New Zealand tax system is broadly fair, whereas the Report paints the opposite picture. Inland Revenue specifically refers to the findings of the Sapere Report in its own Report, and noted that the Sapere Report assumed that most income is taxable whereas the Report's formulation of economic income is much broader and captures many forms of untaxed investment income.

On a closer reading, the different conclusions drawn by the two reports also illustrate the subjectivity of what it means for a tax system to be "fair". For some, the fact that the wealthy pay the most tax in New Zealand in absolute terms (and as a proportion of the overall tax take) shows that the tax system is "fair". However, others would argue that the Report demonstrates that the wealthiest New Zealanders have the ability to pay more tax, but a much higher proportion of their economic income is currently untaxed compared to the rest of New Zealand (and some would argue that this is "unfair").

**PWC VIEW:** The overall conclusions contained in the Report are unsurprising. Many commentators predicted that the report would find that HWIs have a relatively low effective tax rate if the measure is against the broader measure of economic income. This is based on the understanding that a large proportion of HWIs' economic income is likely to be derived from capital gains and the New Zealand tax system, by design, does not comprehensively tax capital gains. In this respect, the Report does not fundamentally disrupt any of our previous assumptions.

However, the headline numbers are eye-catching – in particular, the overall assertion that the rate of tax paid by HWIs is, by this measure, less than half the effective tax rate of average middle-income New Zealanders. It is also the first time that this level of data has been collected for rigorous analysis (although we have previously expressed concerns regarding the process through which the data was collected by Inland Revenue).

We expect the Report could have potential ramifications for the upcoming general election. The obvious question on everyone's minds is whether the Government will give serious consideration to introducing a capital gains tax, given the cause of low effective tax rates being attributed to the lack of a capital gains tax in New Zealand. The previous Prime Minister (Jacinda Ardern) famously ruled out a capital gains tax as long as she remained Prime Minister. Of course, current Prime Minister, Chris Hipkins is not bound to that promise.

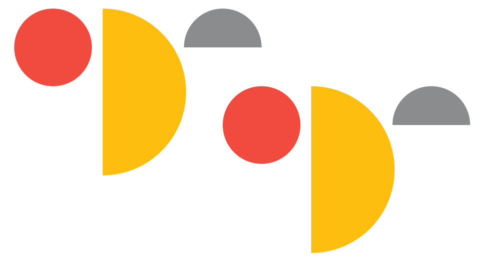
However, it would be surprising to see a full fledged capital gains tax being announced as part of Labour's election policy (the Prime Minister has already ruled out a capital gains tax or wealth tax being introduced in the upcoming Budget). Prime Minister Hipkins has prioritised paring back the Government's ambitious work programme through the Government's recent "policy reset". Although the TWG has already done a lot of the groundwork of designing a capital gains tax, introducing a capital gains tax in its next term of Government is likely to require significant policy resources to be devoted to it. What's more, successive leaders of the Labour Party (dating back to Phil Goff in 2011) have suffered at the polls arguably in some part due the party's position on capital gains tax.

Other policy responses which could come into the political debate include wealth taxes, inheritance taxes or land taxes. However, these were not favoured by the TWG, and of the political parties likely to be in Parliament after the next election, only the Green Party of Aotearoa New Zealand supports a wealth tax (The Opportunities Party supports a land value tax, but based on current polling it appears unlikely to make it into Parliament).

Raising the top personal tax rate to 45% has also been rumoured as a potential policy lever to respond to the findings of the Report. From a policy perspective, we do not consider that this would have a material impact on the "unfairness" the Report refers to, given that only 7% of HWIs' economic income is derived from taxable personal income.

One technical change which could come out of the Report is increasing the trustee tax rate to 39% to align with the top marginal tax rate. This would plug the 6% difference in tax paid (i.e. 33% current trustee rate vs. the 39% top personal rate) in relation to 10% of HWIs' economic income. While this is also unlikely to have a material impact on the progressivity of the tax system (nor bring in a significant amount of tax revenue by itself), there is some policy rationale to aligning the tax rates applied to income derived in different business structures as evenly as possible – i.e. removing distortions to the choice of investment vehicles.

While technical tax policy matters are not always the most compelling topic of discussion for the wider electorate, the Report relates to more fundamental political issues around how much tax New Zealanders are and should be paying, and the overall fairness of the tax system. Even if the Government does not propose any fundamental tax reform in response to the findings of the Report, its findings are likely to feature prominently in the debate and discourse surrounding the upcoming election.



# New tax legislation enacted

Already an important day in the tax calendar, 31 March had special significance this year, being the day when the Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Act 2023 (the "Platforms Act") received Royal assent to become law. When it was first introduced to Parliament in August last year, it initially drew significant media attention and political scrutiny for its proposals relating to GST and managed funds, and the flow-on impact on KiwiSaver balances. However, the Platforms Act contains a raft of other important tax changes – notably the new GST rules for platform operators in the gig and sharing economy, which the National Party has pledged to repeal if it is elected into Government later this year.

We discuss the key changes arising from the select committee process to the Platforms Act since it was introduced, including:

- GST on platform operators
- GST apportionment
- Tax obligations for cross-border workers

## Information reporting for platform operators

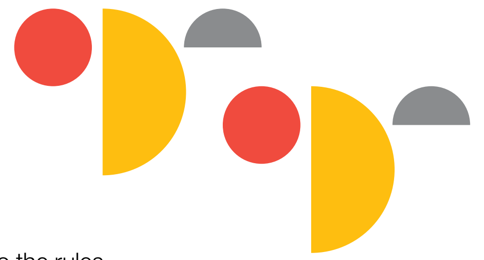
The Platforms Act introduces a new information reporting requirement for platform operators based in New Zealand. At a high level, the new rules will require platform operators to provide Inland Revenue with information about sellers who provide goods or services through digital platforms (details on the key features of the proposals were covered in our September 2022 Tax Tips). These are based on model rules developed by the Organisation for Economic Co-operation and Development (OECD), which are incorporated into New Zealand domestic law.

There are two sets of rules developed by the OECD. The first set of rules apply to platform operators involved in the provision of rental accommodation and personal services (which includes any time or task based work, such as ride-sharing and food and beverage delivery services) (the OECD Model Rules). In addition, the OECD also developed an additional set of rules which could apply to operators of digital platforms that facilitate the sale of goods and vehicle rentals (the OECD Extended Model Reporting Rules).

The Platforms Act attracted submissions from a number of impacted platforms which argued that the additional rules in relation to the sale of goods and vehicle rentals would give rise to a significant increase in compliance costs. In particular, many submitters noted that there are likely to be significantly more businesses which are potentially impacted by the OECD Extended Model Reporting rules, because there are several digital platforms in New Zealand which facilitate the sale of goods. As originally proposed, the rules tried to reduce compliance costs for New Zealand-based digital platforms that facilitate the sale of goods through a number of different measures.

However, feedback from submitters was that even these well-intentioned measures could give rise to increased compliance costs for New Zealand based platform operators. Based on this feedback, the Government has decided to defer the implementation of the OECD Extended Model Reporting Rules. The rules are now proposed to come into force by an Order in Council within three years after the Platform Act's commencement (i.e. by 31 March 2026) and the Government will consult further with affected digital platforms. The OECD Model Rules will still apply from 1 January 2024 as originally proposed.

In addition, the deadline for platform operators to report once the rules come into force has been extended. It was originally proposed that platform operators have one month to report (i.e. report to Inland Revenue by 31 January for a period ending 31 December). This has been extended to 7 February to reflect the Christmas/New Year holiday period.



## GST proposals for platform operators

The Platforms Act will bring in new GST rules from 1 April 2024, which will require some platform operators to collect GST in relation to all sales made through their platform. These rules would apply to platforms which provide certain "listed services" which include short-stay accommodation, ride-sharing, and food and beverage delivery services. This will mean that the responsibility for collecting GST passes from the underlying supplier (e.g. the driver or accommodation provider) to the platform operator, and GST may be charged even if the underlying supplier is not GST registered (if the platform operator is registered or liable to be registered for GST).

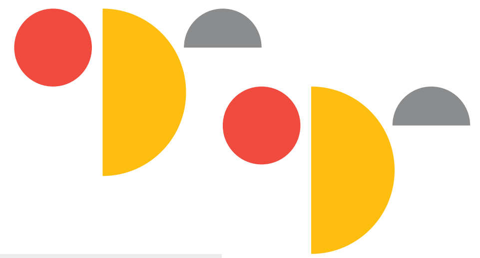
These proposals have attracted the most attention since the Platforms Act was introduced, with the National Party announcing that they plan to repeal these rules if they are elected as the next Government.

Although the new rules are extensions of existing rules which apply to platform operators who facilitate the supply of remote services or low-value imported goods by non-resident underlying suppliers, there are additional complexities associated with these new rules because the underlying suppliers are New Zealand residents (unlike the existing rules, which largely only applies to non-residents). Due to these characteristics, complex rules were introduced which provide a "flat rate credit" to non-GST registered underlying suppliers, to compensate them for the average amount of GST that they would have been able to recover as input tax (8.5%) if they were registered for GST. There are also rules allowing some platforms to opt-out of the rules if the underlying suppliers are large commercial enterprises which provide accommodation (e.g. hotels).

As with the new information reporting requirements for platform operators, the new GST rules will give rise to increased compliance costs for platform operators who will be required to build or update their accounting systems to apply the new rules. There was also uncertainty as to how the new rules (in particular the flat rate credit scheme) would apply to the various legal arrangements through which platform operators and underlying suppliers market and sell their services.

Several changes were made to the rules intended to address these issues which were raised by submitters:

- Submitters raised concerns that the requirement to enter into a written opt-out agreement with electronic marketplace operators could increase compliance costs and create significant disruption should the marketplace operators refuse to enter into the opt-out agreement. Changes were therefore made to the rules so that "large" (e.g. $500,000 or more in total revenue in any 12 month period) underlying suppliers such as hotels can unilaterally opt out of the new marketplace rules, without needing a written agreement with the electronic marketplace operator. They would just need to notify the electronic marketplace operator of their decision to continue being liable for their own GST obligations.
- Submitter also highlighted the range of varied and complex legal arrangements through which some platforms and underlying suppliers deliver their services. The rules were initially designed with a view towards a straightforward scenario where one platform operator facilitates the supply of services on behalf of an underlying supplier. In practice, some business models involve multiple layers of platform operators involved in one transaction (for example, a booking site which allows users to book accommodation which is listed on another booking site – and the booking site has no legal relationship with the underlying supplier). Based on this feedback, the flat rate credit scheme now provides that a supply of listed services between marketplace operators should be zero-rated for GST.
- "Ride-sharing" was not defined and it was initially proposed that the ordinary meaning of "ride-sharing" would apply. However, submitters were concerned that the term "ride-sharing" was uncertain and could potentially give rise to overreach of the rules. To provide greater certainty to taxpayers and avoid unintended services being captured by the new rules, the Platforms Act now defines "ride-sharing" and "ride-hailing" as services provided through an electronic marketplace that involve the engagement of a personal driver to transport a person to their chosen destination.

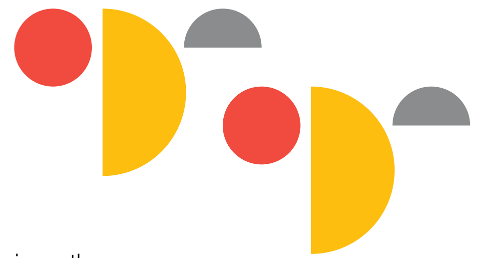


**PWC VIEW:** By and large, the changes made to the new information reporting and GST rules for platform operators following the select committee process were positive. The changes are intended to reduce compliance costs, are broadly taxpayer-friendly, and clarify aspects of the rules which gave rise to uncertainty as originally drafted. However, it is undeniable (and acknowledged by the Government) that the new rules will place significant compliance costs and obligations on platform operators. The current Government's view is that this is justifiable, given that many platform operators are large multinational operators with greater resources at their disposal than underlying suppliers. A parallel may have been drawn with the similar marketplace rules which expanded the GST net to remote services and low value goods supplied by non-resident as the general view is that those rules have been highly successful in generating revenue, with the compliance burden falling across relatively few taxpayers.

The systems changes required to comply with the new rules are likely to require a significant investment of time and resources to implement (which is why the Government proposed that they apply from 1 April 2024). Experience shows that platform operators will need at least a year to build and bed in the necessary changes to their systems. Additionally, underlying suppliers (e.g. drivers and accommodation providers) will also need to get their heads around the implications of the new rules – for example, GST registered underlying suppliers will need to stop charging GST and instead will need to zero-rate their supplies. Many underlying suppliers will need to navigate this alongside the impact of the changes to the GST apportionment rules (discussed in further detail below).

The proposed GST changes are complex and if the rules remain in place, it is likely that remedial amendments will be required to address unintended outcomes (as is the case with most major tax reform). Furthermore, this comes off the back of several years of fairly significant GST policy changes, and therefore it is fair to question the introduction of these new rules. However, it is important to consider the global context. While New Zealand will be one of the first countries to bring in these GST rules for platforms, the European Commission has recently announced that similar rules are proposed to be introduced in Europe.

Given the current global landscape, it is important that policymakers aim for global consistency (it is difficult for platforms to comply with different sets of rules in the countries they operate in) and certainty. It is unfortunate that the introduction of the GST rules in New Zealand has become a political issue which will create uncertainty for impacted platforms.



## GST apportionment and adjustment rules

The Platforms Act introduces several changes to the GST apportionment rules. Previously GST registered businesses who make a mix of taxable and exempt supplies were required to apportion their GST claims (revenue and capital expenditure) and make ongoing annual adjustments for capital assets over $5,000 (for varying periods of time depending on the value of the asset).

From 1 April 2023, there will be an all-or-nothing "principal purpose" test for purchases that cost $10,000 or less (e.g. if the use of the goods or services is mainly for taxable purposes, a full input tax deduction will be allowed; and vice versa). This would cover revenue expenditure and smaller value assets such as computers, phones, and tools.

The intent of this rule was to simplify the current apportionment and adjustment rules. If taxpayers would not have to apportion for lower-value purchases, then it was thought that this would reduce the number of taxpayers who need to make an apportionment or adjustments. However, the feedback from taxpayers was that the new all-or-nothing rule was likely to have the opposite effect of increasing compliance costs for many businesses, as they will be required to update how their systems identify and treat purchases of $10,000 or less for GST purposes. Taxpayers who have a less than 50% taxable use who are currently claiming deductions would lose out on their deductions altogether.

Based on these public submissions, the Government has now made this new all-or-nothing rule optional. Businesses can choose to continue to apportion their GST deductions for purchases that cost $10,000 or less if they want to (and businesses who make mainly non-taxable supplies are likely to want to continue to do so). However, to reduce the risk of "cherry picking", once an election is made (i.e. choose whether to continue to apportion, or to apply the new all-or-nothing rule), businesses are required to apply that same approach for a minimum of 24 months. This election is made by taking a GST position in the taxpayer's GST return.

For businesses that do want to take advantage of the new rule, it will be important to receive tax advice on the new rules and make an election in their next GST return. As the new rule applies from 1 April 2023, for some taxpayers they will need to make a decision before filing their GST return for the period ending 30 April 2023 (due to be filed by 28 May).

Making the new all-or-nothing rule optional is the main change to the GST apportionment changes contained in the Platforms Act. The other GST apportionment changes were covered in our September 2022 Tax Tips, and are largely unchanged since then.

**PWC VIEW:** The change to make the all-or-nothing rule optional is a positive example of the benefit of public consultation. Policymakers rely on taxpayers to inform them of how new rules will impact them in practice, and whether there will be any unintended outcomes. In this case, submissions which indicated that the new rules would have the opposite of the intended effect were compelling. It is positive that changes were made to make the rules more workable and apply as intended.

However, our position throughout the reform process for the GST apportionment rules has been that there are many wider issues with the current apportionment rules and many of these issues remain unresolved. Our preference remains for the Government to undertake a holistic first principles review of the apportionment and adjustment rules – including consideration of whether the all-or-nothing rules for lower value purchases should apply more broadly (as was previously the case, before the apportionment rules were introduced).

### ICYMI – other important GST change in the Platforms Act

**GST apportionment – electing assets out of the GST net**

A new rule allows GST registered persons to 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 not subject to GST. For example, a dwelling with a home office. The requirements to qualify are as follows:

- no previous GST 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 subject to the compulsory zero-rating of land rules when acquired.

If deductions have already been claimed in respect of the goods, there are transitional rules which allow GST registered persons to pay back the GST claimed, in order to take the goods out of the GST net.

**GST invoicing and record-keeping**

Changes to the GST tax invoice rules (covered previously in our March 2022 Tax Tips) were enacted last year, to apply from 1 April 2023. The new rules are now in force – please refer to our flyer summarising the key changes and how you might be impacted by the changes.

## Cross-border workers

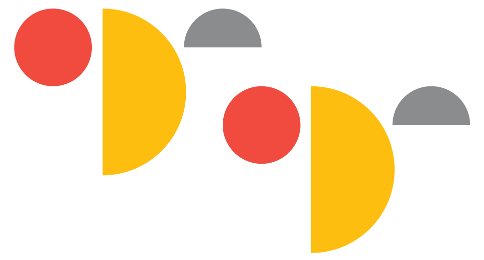
The Platforms Act introduces a number of changes in relation to the tax treatment of "cross-border workers". While a strict application of employment tax rules is appropriate for domestic employees, this can be disproportionately complicated for cross-border employees. In addition to the difficulty of non-resident employers trying to comply with unfamiliar New Zealand tax rules, there are some circumstances where the employer may not realise that they even have a New Zealand tax obligation. A number of changes and clarifications were introduced to the Pay-As-You-Earn (PAYE), fringe benefit tax (FBT), and employer superannuation contribution tax (ESCT) rules to address these issues.

The proposals attracted a significant amount of submissions from impacted taxpayers and employers (it is likely that this issue is particularly top of mind for many employers with the rise of remote working in the post-Covid environment). Based on this feedback, the Government made a number of changes to these rules:

- Various changes to ensure that employers are primarily liable for ESCT and FBT, regardless of their presence in New Zealand (the original proposals allowed these obligations to be transferred to employees in certain circumstances). Transferring these obligations to the employee will now be optional.
- Requiring employers to provide their employees with sufficient information to help them complete their employment income return form.
- Allowing fringe benefits to be treated as taxable income at the employee's marginal tax rate, rather than at the top FBT rate (which can be up to 63.93%).
- Allowing employers to choose whether contributions to an employee's foreign superannuation scheme should be subject to the PAYE rules or the FBT rules.
- Extending the range of circumstances when taxpayers can access the new 60-day "grace period" to gather the necessary information to meet their PAYE, FBT, and ESCT obligations.

In addition to the above, changes were proposed in relation to non-resident contractors' tax (NRCT). NRCT applies to contract payments made to non-residents who perform services in New Zealand or provide the use of goods (e.g. leasing goods situated in New Zealand). A number of changes were proposed to the current rules to provide greater flexibility and more closely align with commercial practice. While many of these proposed changes were positive, some of the practical requirements were not workable (in particular, new reporting requirements for NRCT payers). Based on public feedback, many aspects of the proposed NRCT changes were dropped, and Inland Revenue plans to consult further on these proposals.

**PWC VIEW:** With more workers wanting the flexibility to be able to work remotely, it is more important than ever for employers to be on top of the tax implications of remote working arrangements. It is positive and timely that Inland Revenue has introduced these new rules, which are broadly positive, simplifying the rules and reducing compliance costs. The tweaks made to these rules throughout the submission process are also sensible responses to the issues raised by submitters. However, the new rules do not solve all problems and there are still areas of some uncertainty – for example, the requirement for employers to determine whether they have a "sufficient presence" in New Zealand. It will be important for Inland Revenue to issue guidance and examples to help employers comply with their New Zealand obligations.



# Information reporting obligations – will you be impacted?

What is the role of a tax authority today and how does it best carry out its functions? While the role of accountants and lawyers is still vital for effective tax administration, it is becoming increasingly important that tax authorities have the ability to collect and analyse large volumes of data. In part, this is necessary because of the increased digitisation of businesses and business transactions, but it is also now possible due to tax authorities' increased capabilities. In a New Zealand context, Inland Revenue has recently (finally) completed a years-long transformation process through its implementation of an advanced new computer system.

This new system (START) has opened up a world of possibilities for Inland Revenue. Recently, we are seeing Inland Revenue introduce a range of new information collection obligations for businesses which have access to taxpayer information.

For businesses, being compliant with their tax obligations no longer just means that they are paying the right amount of tax. For many businesses, their obligations now extend towards acting as Inland Revenue's collection agent for taxpayer information.

One such information reporting regime for platform operators in the gig and sharing economy was covered above (and in our September 2022 Tax Tips article) in greater detail. However, platform operators are not the only businesses which will be required to collect taxpayer information. We elaborate on two other recent proposals below.

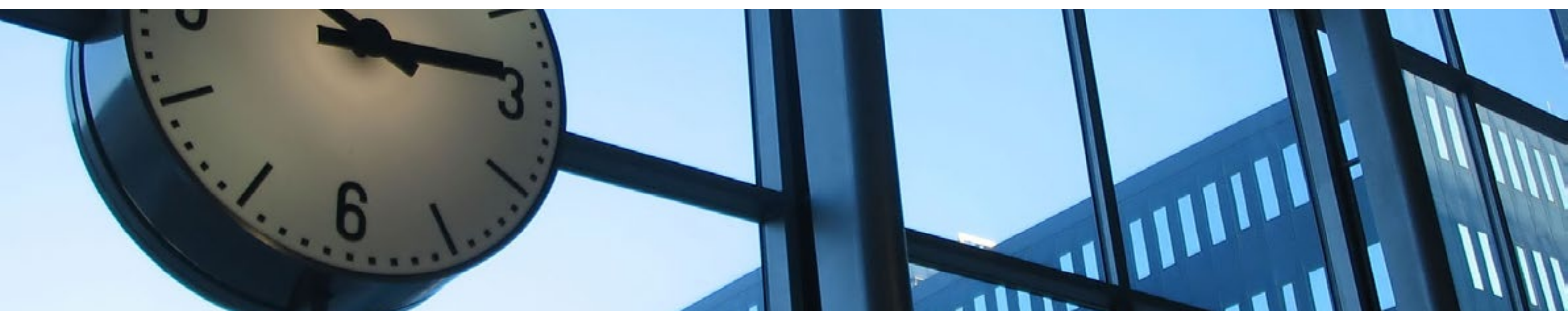
## Bulk dataset reporting for Payment Service Providers (PSPs)

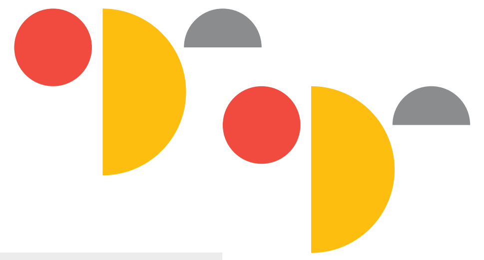
### Background

The Government has introduced new rules which will require PSPs to collect merchant identifying information and information on merchants' transactions. The new rules are modelled on existing reporting requirements in Australia (the business transactions through payment systems (BTTPS) rules) – however there are some key differences between the Australian and New Zealand rules.

PSPs are defined broadly for the purposes of these new rules. A PSP is any business that facilitates payments for goods and services between customers and merchants. Some common and obvious examples are banks and credit card companies – but due to broad definition, it will also include businesses like buy-now-pay-later (BNPL) operators.

These rules are intended to allow Inland Revenue to ensure that merchants are reporting and paying the correct amount of tax to Inland Revenue. For example, if Inland Revenue receives information from a credit card company that a company has made over $60,000 of sales in a year but that company is not GST registered, Inland Revenue may send that company a letter to query why this is the case.





**Key features**

PSPs will be required to collect information relating to the merchant's identity (e.g. name, contact information, IRD number, NZBN, etc.) and aggregate monthly income information of each of those merchants. Each reporting period runs for a period of 6 months (April to September, then October to March) and PSPs are required to provide the information to Inland Revenue within a month and seven days of the end of the relevant reporting period (i.e. 7 November and 7 May). The first reporting period began from 1 April 2023.

PSPs can seek an exemption from these rules if another PSP is better placed to provide the information – where there are multiple PSPs involved in processing a transaction, the PSP with access to the most information is intended to be required to have the reporting obligation.

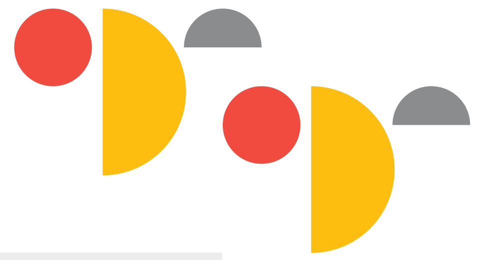
Under the regulations, Inland Revenue was required to take all reasonable steps to notify impacted PSPs whether they have a reporting obligation under these new rules (although we understand from our discussions with Inland Revenue that PSPs are still expected to comply with the new rules if they are caught within the definition of PSP even if they have not been notified by Inland Revenue).

**PWC VIEW:** These new rules impose significant compliance costs on impacted PSPs and many aspects of the new rules are still unclear. For example, there is a lot of ambiguity as to the criteria for obtaining an exemption from the rules; the extent of PSPs' obligations to provide correct and complete information; and other practical details on how the information is to be processed and presented to Inland Revenue.

The regulations giving effect to these rules came into force in November 2022. Even if all aspects of the rules were totally clear from day one, it was unrealistic to expect PSPs to be able to build the systems required to collect merchant information by 1 April 2023. Based on subsequent feedback from impacted PSPs, Inland Revenue is taking a light-touch approach to enforcement in the initial stages and we understand that in most cases, Inland Revenue will exercise its discretion to allow PSPs to start complying from the second reporting period starting from 1 October 2023. While Inland Revenue's approach and responsiveness has been well received, there are wider questions as to how and why these rules were rushed into force without sufficient lead-in time for PSPs to assess how they are impacted by these rules and make adequate preparations to be able to comply.

While officials did consult publicly on these rules, in our view there was insufficient lead-in time from when the rules came into effect and the first reporting period. By way of comparison, the information reporting rules for platform operators were introduced to Parliament in late 2022 with a proposed start date of 1 January 2024 (and some aspects have since been further delayed).

In our view, these new rules were well-intentioned, and once they are fully bedded-in, it will allow Inland Revenue to educate taxpayers as to their obligations more effectively, and where necessary, take targeted compliance intervention actions. However, the process to implement these new rules has been less than ideal and could serve as a lesson for future policy development.



## Cryptoasset Reporting Proposal

The OECD has developed information reporting rules for intermediaries which facilitate transactions involving cryptoassets. The Crypto-Asset Reporting Framework (CARF) identified that, while there are extensive information reporting requirements in place for traditional financial institutions under the OECD's Common Reporting Standard (CRS), the CRS does not adequately deal with the rapidly growing sector of cryptoasset intermediaries.

The CARF proposes that certain intermediaries collect and report information on crypto-to-crypto transactions, crypto-to-fiat transactions, and transfers of relevant crypto-assets, to their home jurisdiction's tax authority. Tax authorities would then exchange information with other tax authorities. Similarly to the PSP rules, the intent of the CARF is to allow tax authorities to receive information about crypto investors' holdings and transactions, and apply targeted compliance interventions to ensure that crypto investors are complying with their tax obligations.

Late last year, Inland Revenue carried out targeted consultation on the Government's proposal to incorporate the CARF into New Zealand domestic legislation (similarly to how the OECD Model Rules for platform operators have been incorporated into New Zealand law). It was proposed that this would be included in tax legislation which would be introduced to Parliament in early 2023.

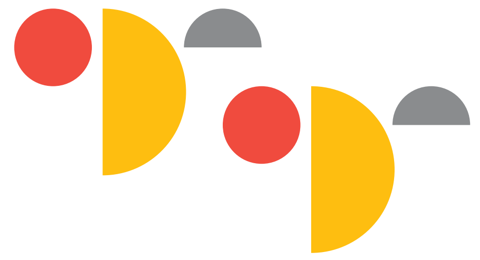
Based on feedback from this targeted consultation, we understand that the proposal to incorporate the CARF into New Zealand law has been temporarily put on hold to allow Inland Revenue to conduct further consultation. The timeframes to implement the CARF seemed ambitious. The Government initially planned to introduce legislation implementing the CARF only a few months after concluding targeted consultation. By way of comparison, when New Zealand implemented the CRS, there was a full public consultation process followed by extensive in-person meetings with impacted financial institutions to work through practical implementation issues.

**PWC VIEW:** We support the implementation of the CARF in New Zealand to the extent that it is adopted elsewhere in the world. As an OECD-led initiative, we consider that there is a good chance of broad adoption and it will likely become a minimum standard for most OECD member countries. Adopting a multilateral solution developed by the OECD will help provide global consistency, which reduces compliance costs for those impacted by the CARF.

However, the crypto sector is still relatively new. Business models in the sector are not well or widely understood, and practical implementation is likely to be more complex than the CRS (which involved the regulation of financial institutions with relatively established business models).

Further, from a "New Zealand Inc." perspective, we think there is value in New Zealand adopting a "fast follower" approach to adopting the CARF. The crypto sector is highly mobile, and we expect that jurisdictions which provide regulatory certainty and are an easy place to do business will realise significant economic benefits. New Zealand should be careful and considered in its approach to regulating the crypto sector. To that end, there is value in taking a wait and see approach to see how the sector develops, and for the New Zealand government to adopt an informed and strategic approach to the sector (both in terms of tax compliance and administration, and the wider regulatory settings).

We support the Government's decision to hit the pause button and look forward to continued engagement with officials in the future.



# GST treatment of directors' fees

## What is the change?

Inland Revenue issued three Public Rulings clarifying the GST treatment applied to directors' and board members' fees on 22 February that are effective for an indefinite period from 1 April 2023. There were no legislative amendments and Inland Revenue has stated "the rulings are not a change in the Commissioner's view", instead these public rulings should be viewed as an "expansion" of Inland Revenue's current interpretations in relation to directors fees.

The Commissioner concluded for the first time that professional directors (i.e. "a person that only provides directorship services") are not eligible to be GST registered and, accordingly, also issued Operational Position OP 23/01 providing guidance on the application of these rulings as "the Commissioner is aware that some professional directors are registered for GST, having incorrectly taken the view that they are carrying on a taxable activity."

## Who might be impacted?

All company directors and members of the following boards: local authority, board, council, committee or other body (but excluding those appointed by the Governor-General or the Governor-General in Council). In particular, as the Commissioner concluded that "professional directors are not eligible to be registered for GST", directors who are directly appointed by a company and that are currently GST registered should reconsider their GST position in light of the public rulings.

Where directors have incorrectly registered for GST on the basis they were carrying on a taxable activity, the Commissioner will not require these taxpayers to *retrospectively* deregister; however, those incorrectly GST registered will need to deregister for GST on or before *30 June 2023*.

## When does a director or board member need to return GST on their fees?

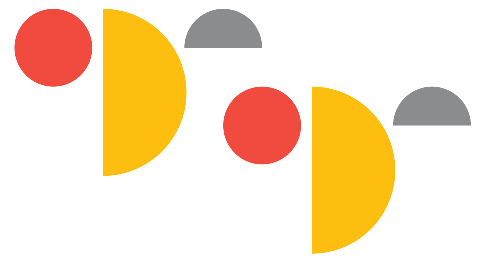
The GST treatment can be categorised into two broad categories (i) where the director or board member contracts directly with the company or through a third party or (ii) where the director or board member takes office as an employee of a third party or partner in a partnership.

In category (i), the key considerations are:

- Is the director or board member GST registered in respect of a separate taxable activity (such as a GST registered sole practitioner supplying accounting or legal consulting services)? and
- Was this directorship accepted in connection with that taxable activity?

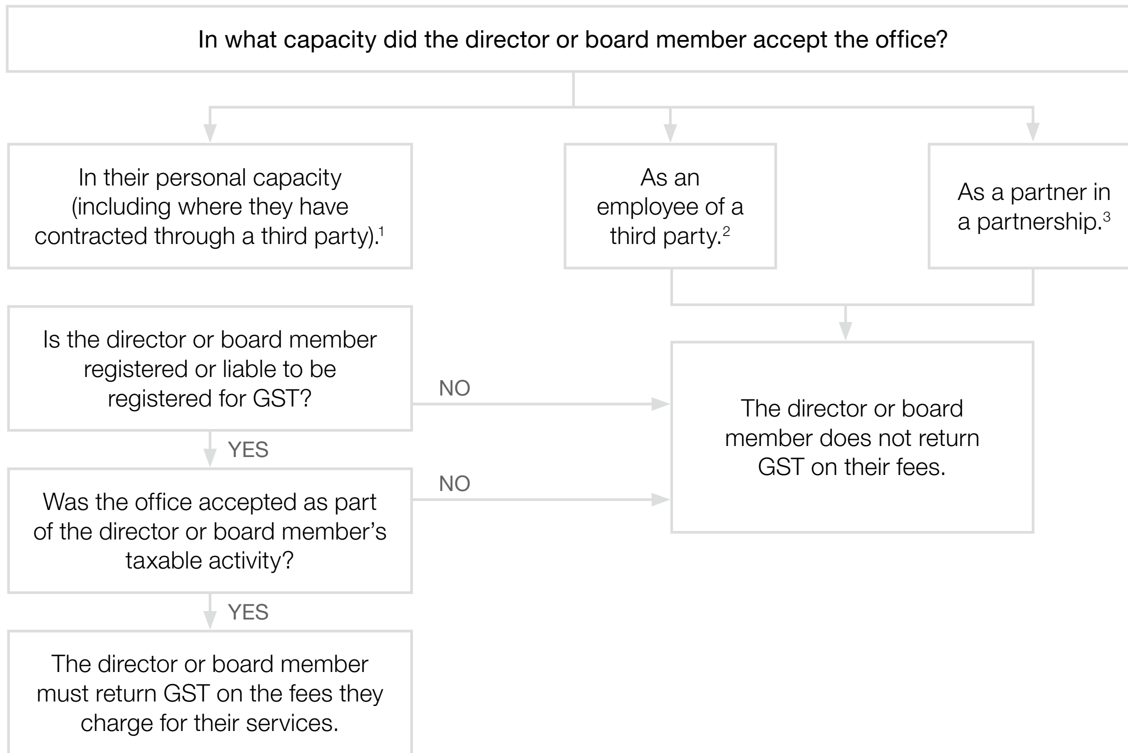
Only if the answer to both of the above is affirmative should GST should be accounted for by the director or board member on his or her services.

In category (ii) the director or board member is not required to account for GST on their services as the director or board member cannot have accepted the office as part of their taxable activity as they are either an employee or partner in a partnership. The third party or partnership will have to consider whether it has any obligation to account for GST on the directorship or board member fees.



Inland Revenue have illustrated their view in the below flow chart:

**Does a director or board member need to return GST on their fees?**




**PWC VIEW:** The public rulings were necessary to clarify a grey area of GST law that has, at times, resulted in inconsistent GST treatments. The Commissioner has provided some further clarity for a number of scenarios where directors or board members are not entitled to register for GST. For example, where a person's sole activity is holding a single (or multiple directorships) they would not have a taxable activity, and therefore not be required to account for GST on their fees, nor be entitled to claim any input tax deductions in respect of their expenses.

The Operational Position, confirming that directors that had incorrectly registered for GST would not be retrospectively deregistered is welcomed. This appears to acknowledge the historic complexities determining whether a director carried on a taxable activity and provides that taxpayers should not be penalised for their previous interpretations that may have been inconsistent with the Commissioners revised view in the Public Ruling.

However, as evidenced by the examples in the Commentary to the Public Rulings, a key area of challenge for directors that may remain is to determine whether their directorship was accepted (and continues to be) as a part of carrying on a particular taxable activity. While in many cases this may be obvious, these examples acknowledge in other cases that factually this may be difficult to determine. Further, since the public rulings were finalised, there has been significant confusion as to the position for personal services companies whose sole activity is providing directorship services. In our view, such companies should be entitled to register for GST, but there are different positions being taken in the market. We understand that Inland Revenue will soon be releasing a further statement on this aspect specifically.

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