Tax Tips September 2021

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pwc

Government introduces omnibus tax bill

On 8 September 2021, the Government introduced the Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Bill ("the Bill") to Parliament. The Bill will be referred to the Finance and Expenditure Select Committee shortly for public consultation, and is expected to be passed by 31 March 2022.

The Bill contains a variety of policy and technical changes. This Tax Tips covers some of the key proposals:

GST changes

- Excluding cryptocurrencies from GST
- Modernising the GST invoicing rules and recordkeeping requirements
- Changes to the GST apportionment rules
- Allowing a second hand goods input tax credit on supplies between associated persons
- Zero-rating the domestic leg of the international transport of goods
- Changes to the GST grouping rules

Income tax changes

- Proposed changes to stop councils from transferring their tax exempt status benefits to taxable council controlled organisations
- Excluding cryptocurrencies from the financial arrangements rules
- Key remedial changes with respect to New Zealand's hybrid and branch mismatch rules
- Allowing tax pooling where there is no existing tax assessment or quantified obligation

The GST policy changes are largely welcome and progress several items which the Government consulted on in the February 2020 GST policy issues paper ("Issues Paper"). Most of the changes are intended to simplify compliance in a range of areas, reflect modern business practices, and clarify areas of technical uncertainty. We note that some of the key policy issues outlined in the Issues Paper have not made it into the Bill, and may be subject to further consultation. In particular, changes around the GST treatment of managed funds; the full review of the apportionment and adjustment rules; and insurance payouts made to third-parties. We will be interested to see where the Government and officials will land with respect to these issues.

We also note that the Bill does not contain the new interest limitation rules on residential property (although these will be effective from 1 October 2021). We understand that draft legislation for these changes will be introduced as a Supplementary Order Paper to the Bill before it is referred to the Finance and Expenditure Select Committee.

Remedial amendments are an important part of ensuring that New Zealand's tax legislation remains fit for purpose over time, and to address unintended consequences and legislative anomalies. We commend the Government and officials' work to address these. However, we have concerns regarding the impact that the proposed changes for local government and residential property could have on the overall coherence of the tax system, which is essential to ensuring neutrality between investment decisions and minimising complexity in tax legislation.

Cryptoassets

What is the issue addressed in the Bill?

Broadly, cryptoassets are digital property (also known as coins or tokens) that use cryptography to secure transactions and verify the transfer of the coins or tokens. This industry has been growing exponentially, and investors, exchanges, and start-ups have a vested interest in understanding the tax outcomes.

GST

The GST treatment of cryptoassets has been uncertain. Under current GST law, there is potential for multiple taxation. The Bill proposes to exclude cryptoassets from the GST net to ensure the GST rules do not impose barriers to developing new products and investment activities. The application date is proposed to be **1 January 2009** (when the first cryptoasset, Bitcoin, was launched).

Positively, the Bill also confirms that GST on costs associated with issuing cryptoassets with features similar to traditional securities – security tokens – can be deducted by a GST registered business (with a start date of **1 April 2017**).

Income Tax

The Bill also proposes that cryptoassets (based on the same definition as for GST purposes) will be excluded from the financial arrangements rules. Financial arrangements are arrangements like loans where someone receives money in return for providing money in the future. Special rules apply to determine when income and expenditure relating to the financial arrangement is recognised for income tax purposes.

Some cryptoassets which share similar characteristics with debt will however continue to be subject to the financial arrangements rules.

Who is affected?

The proposed changes will impact New Zealand GST registered issuers of tokens. Currently, the uncertainty around the GST treatment of the supply of cryptoassets has meant issuers of tokens tend to look to supply tokens to parties outside of New Zealand. The removal of this uncertainty will improve New Zealand's appeal as a country to make token issuances from, particularly as this proposal provides more GST certainty compared to other popular locations of token issuances.

Many countries are at various stages of developing stablecoins – these are digital currencies backed by fiat currency and often with the support of that country's monetary authority. This GST proposal should also promote the development of stablecoins in New Zealand from a tax perspective.

Definition of cryptoasset

A wide definition of cryptoasset is proposed (covering virtually all the cryptoassets) and the supply of cryptoassets will be excluded from being taxable or exempt for GST purposes. Other services related to cryptoassets, that are not in themselves supplies of cryptoassets such as mining, providing cryptoasset exchange services or providing advice, will continue to be subject to the existing GST rules.

Importantly, the definition of "cryptoasset" refers to a digital representation of value that must be fungible. Non-fungible tokens (NFTs) do not fall within the definition so ordinary principles of GST will apply. Suppliers of NFTs also need to think about the VAT/GST remote services rules in other countries as many consumers are located overseas.

PwC view

The GST measures will be welcomed by the commercial community and in our view it is the more attractive solution as it is simple and will involve less compliance when compared to the alternative option of treating supplies of cryptoassets as an exempt supply, which was also being considered in the Issues Paper. Removing cryptoassets from the financial arrangements rules will also be a welcome measure as these rules are often complex to apply. As this area is developing, the most important aspect of the legislative reform is providing clarity on what is excluded from the scope of GST – we consider this has been achieved. In addition, confirmation of GST deductions for costs associated with issuing security tokens is a welcome measure.

GST – Modernising the tax invoice requirements

What is proposed?

The current rules regarding tax invoices have not changed substantially since they were first introduced in 1986. Some of these requirements are now outdated and impractical given modern business systems and practices. The Bill proposes changes to these rules, which are intended to modernise invoicing requirements to align with modern day business recordkeeping practices, e-invoicing initiatives and electronic recordkeeping.

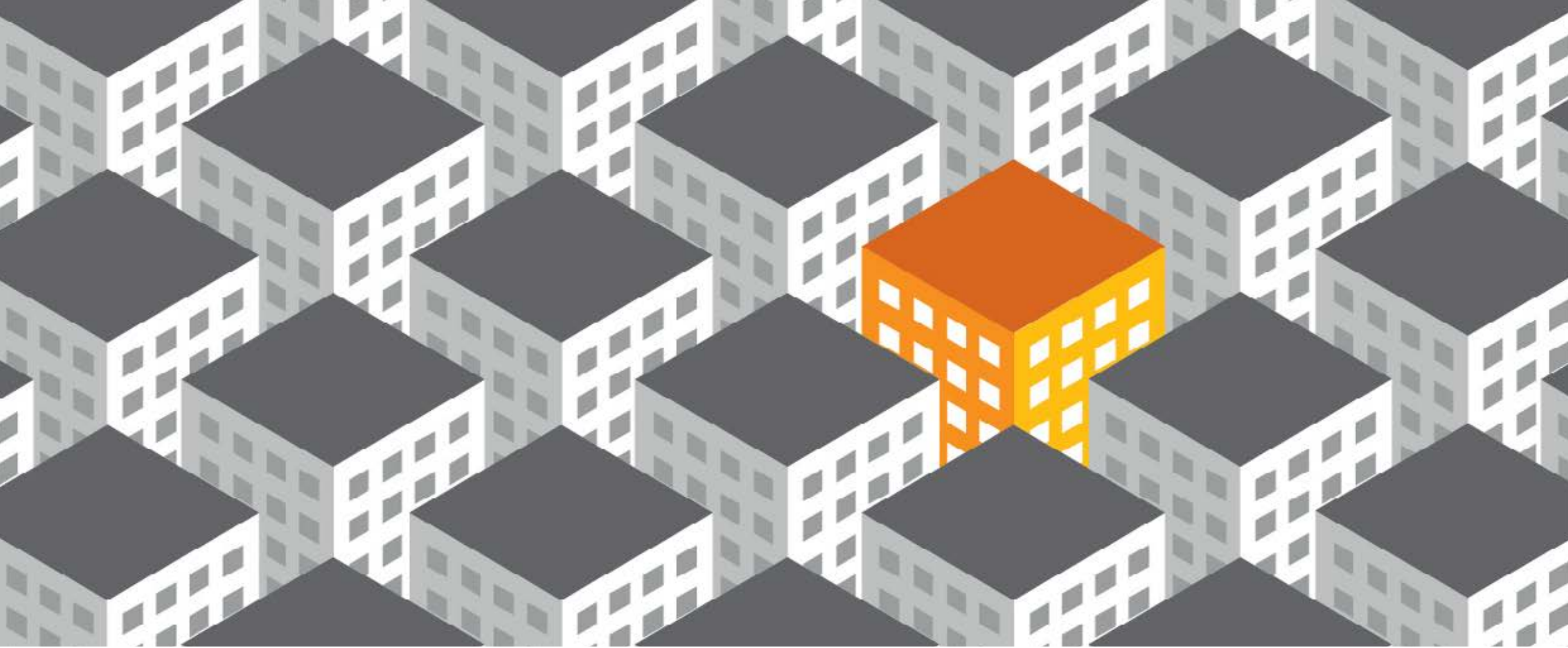
The proposed changes would see a shift from rigid, prescriptive recordkeeping and documentation requirements (including prescribed documents such as tax invoices and credit notes), to providing flexibility for GST registered persons to create and retain information in their business recordkeeping systems.

While the manner and form would differ, the nature of the information would remain largely unchanged, ensuring that there is no disturbance to the process for calculating and paying GST. The primary list of required information continues to be:

- Prescribed information identifying the supplier and the recipient
- The amount of the consideration payable for the supply of goods and services
- The date of the supply
- A description of the goods or services supplied
- The amount of GST charged for the supply (which can be on an inclusive basis)

The current concepts of "invoice" and "tax invoice" will be removed, replaced with more general concepts such as "supply information" and "taxable supply information".

Further, it is also intended that the process for credit and debit adjustments will become more flexible. This would allow for errors to be corrected without issuing credit and debit notes. We expect that the Commissioner will publish guidelines for this process.



A series of other specific amendments would occur in parallel in order to support this shift in requirements. These include:

- Repeal of simplified tax invoices for taxable supplies having a value not exceeding $1,000;
- The low-value threshold where taxable supply information is not required will increase from **$50 to $200** (to align with the amount typically authorised for "PayWave" transactions);
- Where a copy of taxable supply information is requested by a recipient, this would no longer be required to be marked "copy only";
- Buyer-created tax invoices (BCTIs) would no longer be required to have Inland Revenue pre-approval. However, other requirements remain, including requiring an agreement to exist between the supplier and recipient (who must both be GST registered) stating that only the "buyer" will create the taxable supply information and will provide that information to the "seller", and the reasons for entering into this agreement;
- A nominated member of a GST group may issue taxable supply information and keep records of taxable supply information on behalf of the GST group. This can be the representative member of the GST group; another group member nominated as the entity responsible for issuing and recording taxable supply information; or the relevant group member which made the supply; and
- A group of registered persons (a "supplier group") can use the shared invoice process if none of those entities are part of a GST group. A nominated entity may issue tax invoices as agent on behalf of the other entities which comprise the supplier group.

In addition to the changes set out above intended to simplify the rules, additional requirements are also proposed:

- Under current law, a supplier is only required to provide a tax invoice if requested by the recipient. The proposed amendments would require the supplier to provide a GST registered recipient with the taxable supply information at the time of supply in all cases.
- Requirements to keep records of information such as the time of supply (or anticipated time of supply).

To ensure the integrity of the system, the proposals would be supported by removing the "knowledge" offence of issuing multiple invoices for the same supply with a strict liability offence for claiming input tax multiple times for the same supply.

PwC view

The general principle and intention of modernising these rules and giving increased flexibility is welcome. Many businesses find the current requirements rigid. However, it will be very important to ensure that businesses who have no immediate plans to implement new finance systems are still able to operate under the existing framework. The drafting of the new rules is also unnecessarily complex, and in parts difficult to read and understand. Furthermore, the additional requirements proposed could also have the unintended effect of reducing flexibility and increasing compliance costs. We will be considering the proposals carefully to ensure they are workable and do not result in actually increasing compliance costs for businesses.

GST apportionment rules – Disposal of assets used for taxable and non-taxable purposes

What is proposed?

Under current law, when a GST registered person disposes of an asset that was used partly for taxable and non-taxable purposes, they can claim an additional input tax deduction in respect of their non-taxable use of an asset. However, this deduction is capped at the unclaimed portion of GST paid by the registered person at the time the land was acquired (i.e. the amount attributed to their non-taxable use of the land). This cap means that, despite the actual non-taxable use, all the appreciation in value of the asset is treated as being related to the land's taxable use.

The Bill proposes to remove the cap and simplify the rules by using one formula to calculate the deduction (except for property developers). This is intended to provide a more accurate reflection of the proportion of taxable and non-taxable use.

The Bill also proposes to repeal the current rule in section 5(18) of the Goods and Services Tax Act 1985 ("GST Act"), which states that where a registered person has claimed a GST deduction for a proportion of a dwelling, the sale of that dwelling is deemed to be a taxable supply, but only to the extent that the proportion claimed bears to the whole dwelling.

Although not clearly set out in the Bill commentary, in our view both of these proposed changes need to be considered together, and are relevant to the current overtaxation of appreciating assets and Inland Revenue's views on the apportionment rules.

The issues are best illustrated by an example.

Example: current law

In 2010, Catherine purchased a home for $1.15 million (no GST – bought from a private individual). She will use the property both as her home, and partly as her commercial art studio. Catherine operates her art business as a sole trader and is GST registered. Her private use is 70%, taxable use is 30%. She claimed a secondhand goods input tax deduction of $45,000 to reflect that 30% of the property will be used for taxable purposes.

Catherine later sells the property for $2.3 million (including GST). Inland Revenue's view is that:

- The sale of the entire property is subject to GST – so output tax of $300,000 is payable on the sale of the property
- On sale, Catherine can claim an input tax deduction of $105,000 (i.e. the unclaimed input tax at the time Catherine acquired the property)

PwC considers that currently, under section 5(18), only 30% of the property is subject to GST on sale.

Example: proposal under the Bill

Under the same facts as above but under the new rules, the GST outcomes would be as follows:

- Output tax of $300,000 is payable on the sale of the property (section 5(18) will be repealed, so there is no longer a basis to say only 30% of the property is subject to GST on sale).
- Catherine can claim an input tax deduction of $210,000 (being 70% of the output tax payable, reflecting the non-taxable use of the property).

The effect of the proposed change is that GST is only paid based on 30% (taxable use percentage) of the increase in value.

PwC view

The current rules were not designed with assets which appreciate in value (e.g. land) in mind. As such, in some circumstances land is overtaxed under these rules. We support the proposed changes to the extent that they seek to address this, i.e. removing the cap on the input tax deduction available on sale. This should ensure that the GST treatment of land more accurately reflects its taxable and non-taxable use.

We consider that the proposal to repeal section 5(18) (supply of a proportion of a dwelling) is significant, and has not had a full discussion – it is not discussed at all in the Bill Commentary. Inland Revenue appears to be of the view that it should have been repealed many years ago when the apportionment rules were originally introduced, and that it was always intended that minor taxable use of an asset would bring the entire asset within the GST net. We disagree, and believe that there has continued to be a lot of uncertainty regarding GST treatment under the apportionment rules of the sale of assets that have had a mixed use.

Overall, the rules relating to land and apportionment are still very complex, and in some circumstances will still result in overtaxation. We understand that further proposals to address the apportionment rules, particularly the GST treatment of land (and dwellings used for taxable and non-taxable purposes) may be subject to further consultation and refinement. We welcome a wider review of the rules with a view to further simplification and more equitable GST treatment.

Ability to agree an alternative apportionment method

What is proposed?

Under current law, it is only possible for larger taxpayers (i.e. above an annual $24 million turnover threshold) and suppliers of financial services to agree an alternative methodology with the Commissioner for determining the taxable and non-taxable use of goods and services. The Bill proposes to remove the $24 million turnover threshold so that any GST registered person will be able to agree to an alternative apportionment method.

PwC view

We support the proposal, which will provide greater certainty for taxpayers in relation to their apportionment methods. Apportionment is a complicated area of GST law and moves to provide flexibility and simplify compliance with these rules is a welcome development.

We are also looking forward to developments in the wider workstream to review the apportionment and adjustment rules, which are complex and do not always result in clear and consistent outcomes.

Secondhand goods deductions for associated persons

What is proposed?

A GST registered person who is not charged GST when they acquire a secondhand good (including land) can generally claim a "secondhand goods" GST deduction. However, under current rules, the GST deduction will be lost if a person buys an asset and then transfers it to an associate. In these circumstances, the secondhand goods credit is limited to the GST that was originally charged to the associated person. If no GST was charged, that means no deduction is available.

A common example is a non-GST registered individual purchases land with the intention of developing it, and then transfers it to an associated company to carry out the development:

- Alex (non-GST registered individual) buys a large piece of land in Karaka from a private seller (no GST charged) for $1.15 million, with the intention of developing it. Alex decides it would be best to do the development in a

company to manage her commercial risk. Alex sets up a company, registers it for GST, and transfers the land to the company.

- The secondhand goods claim of $115,000, that Alex would have been entitled to if she registered for GST and did the development in her own name, is lost. The property development company cannot claim the secondhand goods deduction because under current rules, it acquired the land from an associate (Alex), and the deduction is limited to $0, being the amount of GST charged on the supply when Alex acquired the land.

The current law gives rise to an unfair and unintended outcome. Many taxpayers have been denied significant GST claims under this rule.

The Bill proposes to allow an input tax credit for secondhand goods acquired from an associated person based on what would have been available to the original associated purchaser. So in our example above, Alex's property development company would be entitled to the same $115,000 deduction that Alex would have if she had completed the development herself.

PwC view

PwC have lobbied for this law change for many years, and are pleased it has been included in the Bill. The current rule was introduced originally to prevent taxpayers engineering increased deductions where land had increased in value prior to being applied for a taxable purpose. We believe it was never intended to prevent any deduction from being claimed at all.

These rules often catch taxpayers by surprise. Given the context in which this rule often applied (i.e. land transactions), the denied secondhand goods credit could be significant. While the proposed amendment is positive and long overdue, we note that it is only proposed to apply prospectively, from the date of enactment of the Bill. This will be a disappointment to many adversely affected taxpayers. As this addresses what we consider is an unintended legislative anomaly, we support a retrospective application date.

GST – Domestic leg of the international transport of goods

What is proposed?

Currently, the New Zealand leg of the international transport of goods can only be zero-rated for GST if it is supplied by the main transport supplier. If (as is often the case) an international transporter sub-contracts the domestic leg to a New Zealand-based courier, that New Zealand courier must add 15% GST to their charge. There is currently significant non-compliance and uncertainty around these rules.

The Bill proposes to allow New Zealand transport services (transporting goods to or from New Zealand) supplied to the primary (non-resident) transport supplier to be zero-rated.

PwC view

We welcome the move to clarify the GST treatment of the domestic leg of the international transport of goods. The approach proposed in the Bill is similar to the position in Australia and Singapore and will provide certainty and a level playing field for transport providers.

GST grouping

What is proposed?

In 2019 Inland Revenue released a Public Rulings Issues Paper for consultation, which identified two possible approaches to interpreting the application of the GST grouping rules:

1. The "narrow" approach: a supply is treated as being made by the relevant group member and simply attributed to the representative member from an administrative / compliance perspective.
2. The "wide" approach: all supplies made by a member of the GST group are deemed to have been made by the representative member.

The Bill proposes a "single company" approach (i.e. the wide approach) by clarifying certain key principles, including that supplies made to third parties by any member of the group are treated for GST purposes as made by the representative member of the group.

PwC view

We support the move towards clarifying how the GST grouping rules should be applied, and in our view the "wide" approach is preferable over the "narrow". However, there are many areas of uncertainty in the GST grouping rules and it's likely that the proposals will not resolve all of these. The proposals describe the single company as "operating separately each activity that each member would operate", and the intent or implications of the "single company but separate activities" approach are not fully clear.

Another area where the single company approach may give rise to technical uncertainty is in the context of cross-border transactions. These issues will need to be worked through and we hope that the submissions process may tease some of these out.

We also welcome the proposal to apply to the Commissioner for relief from joint and several liability after a company has left the GST group. The proposals address the inflexibility of the current rules by aligning the position of GST groups with consolidated groups for income tax purposes.

Other important GST changes

The Bill proposes a number of other remedial amendments to the GST Act to address legislative anomalies which are inconsistent with the policy intent. In summary, these include:

- Amendments to allow GST input tax recovery for non-resident businesses when a GST registered non-resident has imported goods and paid GST to Customs on the imported goods (unless the goods are then supplied to another person in New Zealand who will not be using the goods to make taxable supplies).
- Technical amendments to the compulsory zero-rating (CZR) of land rules, including changes to the timing and nature of adjustments which are sometimes required after the supply.
- Allowing a supplier who delivers goods to a New Zealand resident recipient who then exports those goods outside of New Zealand (e.g. on "Free on Board" Incoterms) to zero-rate the supply. The rules currently only allow such supplies to non-resident recipients to be zero-rated.
- Deduction notices may be issued for members of unincorporated bodies and persons who are no longer registered.
- More flexibility for changing the end date of a GST period.
- The Commissioner of Inland Revenue's decision to reopen an assessment for a time-barred GST return is proposed to be treated as a disputable decision.
- The purchaser of a zero-rated going concern who uses the goods for a partly non-taxable use is proposed to be required to apportion the zero-rated transaction to reflect the non-taxable use.
- Proposed exemption from making an adjustment for apportioned supplies if the registered person has performed a "wash up" calculation to account for a full change of use of an asset.

Local Government changes

What is proposed?

The Bill includes some very significant changes to the way local authorities are taxed. The key proposed changes are:

- dividends from a wholly-owned council controlled organisation (CCO), port company or energy company will be exempt income;
- local authorities will no longer be allowed deductions for charitable donations;
- deductions for finance costs will be limited to finance costs incurred:
  - on loans to council controlled trading organisations (CCTOs);
  - on borrowings to acquire shares in a group company that is a CCTO;
  - on base price adjustments for financial arrangements involving CCTOs;
- unused imputation credits will no longer be able to be converted to a tax loss;
- imputation credits attached to a dividend derived by a local authority will no longer give rise to a credit in a consolidated group's imputation credit account.

These changes are proposed to apply for the 2022-23 and following income years.

PwC view

While the Bill Commentary states that the local authority changes are focused on improving the integrity of the tax system, in our view the proposed changes goes beyond this with some of the proposals unfairly penalising local authorities compared to other taxpayers.

In particular, we are concerned about the proposal to deny local authorities tax credits for charitable donations. We understand this proposal is based on some councils, having received fully imputed taxable dividend income, claiming a donation deduction which shelters the taxable dividend income and allows the council to have the excess imputation credits converted to losses. Those losses are then available to offset taxable income from CCTOs. The proposal would stop the conversion of unused imputation credits and the receipt of exempt dividends from CCTOs. However:

- It is not clear to us why it is necessary to remove the donations deduction entirely for local authorities – and indeed, it seems unfair to deny deductions for just one class of taxpayer.
- The donation denial is likely to result in a drop in funding for the charitable sector, which will create pressure on the central government to fill the gap. Councils nationwide are carrying debt and have fixed rate increases budgeted for years to come, so it is inevitable that councils will choose to make fewer charitable donations to retain cash to pay the additional tax.
- The commentary suggests the Government has overlooked the fact that the claims for donation deductions represent only a small portion of the community support actually provided by councils.
- The draft legislation and commentary is unclear on how the proposal would apply in a consolidated group scenario. If the income tax consolidation group rules prevail over the proposed donation denial, then it may continue to be claimed by councils with consolidated tax groups.

Overall, the proposals seem piecemeal and not clearly thought through. The timing also seems inappropriate given the local government sector is currently in the midst of significant change and reform (e.g. Three Waters Reform Programme, Resource Management Act reform and the *Future for Local Government* review). In our view it would be better to consider local government taxation more holistically in the light of the role of local government in our communities. Perhaps it is timely to consider the removal of local government from the income tax system entirely.

Cross border payments – anti-hybrid and branch regime – imported mismatch changes

The imported hybrid mismatch rule can deny New Zealand tax deductions where a cross-border payment indirectly funds a hybrid or branch mismatch elsewhere in the global group (including, in certain instances, payments to third parties). The Bill expands the scope of the current rules as well as including a number of remedial changes.

Expanded scope for 'deemed' payments within tax groups

The Bill proposes an expansion of the scope of the imported hybrid mismatch rule to include a denial for deductions in certain situations where there is a hybrid or branch mismatch in the global group, but there is no series of payments that connects the initial New Zealand payment to that mismatch. The relevant situations are where a link can be treated as arising between the New Zealand payment and the offshore mismatch through the existence of a foreign tax consolidated group, tax loss offset or similar mechanism. This rule, if enacted, would bring New Zealand's rules broadly in line with those adopted in some other jurisdictions, including Australia. The rule has proven to be very difficult to apply in practice in other jurisdictions, particularly in the context of US consolidated groups.

For many New Zealand taxpayers this change will significantly expand the work that they need to undertake to ensure that they have appropriately considered these rules to determine their New Zealand tax position and to be able to prepare the required documentary evidence outlined in Inland Revenue's Operational Statement to hold on file.

This proposed change is intended to take effect for tax years starting on or after the Bill is enacted.

Remedial changes

It is good to see important remedial measures being included in the Bill to correct the application of the imported hybrid mismatch rules. In particular, the proposed changes ensure that there should not be a denial under this rule where the offshore hybrid mismatch also results in sufficient dual inclusion income to offset the hybrid mismatch deductions or where the offshore mismatch is not due to hybridity.

These proposed changes are intended to have retroactive effect to 1 July 2018 (when the hybrid and branch mismatch rules initially came into effect).

Positive changes to tax pooling rules

What is proposed?

We are pleased to see the Bill includes a proposal to permit the use of tax pooling for tax liabilities arising from voluntary disclosures (i.e. where there is no existing assessment). This is a positive change for taxpayers as it will reduce interest costs on tax shortfalls – which currently applies at the rate of 7.00%p.a and higher in earlier periods – in circumstances where the non-compliance was unintentional.

As an anti-abuse measure, taxpayers will be required to notify the Commissioner of their new liability within a reasonable timeframe of becoming aware, and satisfy the Commissioner that they have taken reasonable care to comply with their obligations.

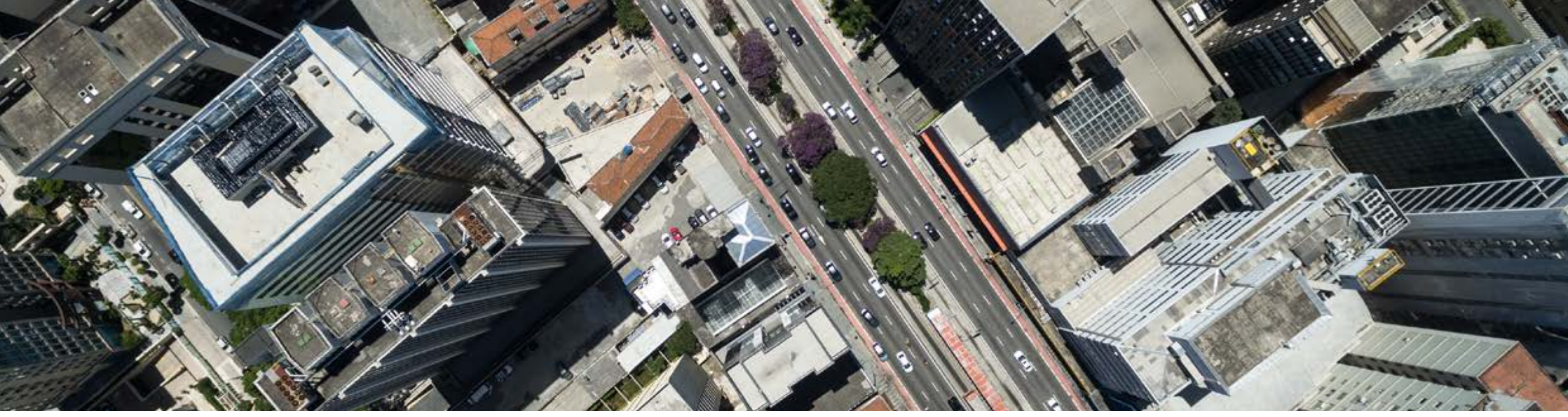
Currently, tax pooling is generally not available where there is no existing assessment or quantified obligation. This leads to unfair outcomes where businesses are unaware of an obligation and not otherwise subject to penalties on tax shortfalls. PwC had previously engaged with Inland Revenue to seek a law change.

There is a further remedial change to the tax pooling rules in the Bill, which confirms that the early-payment discount is accessible with purchased tax pooling funds.

PwC view

This proposal may encourage voluntary compliance by providing a reduced interest charge for taxpayers to voluntarily disclose tax shortfalls.

As there is some subjectivity involved with determining whether a taxpayer is eligible to use this proposed new rule, we believe it is important that clear Inland Revenue guidance accompanies the legislative changes as to what will be considered “reasonable” in practice.



Further international tax reform – watch this space!

For a number of years, there has been increasing public interest regarding whether the international tax framework is 'fit for purpose' in light of the ever-changing digitised economy. This has been further challenged as some jurisdictions have introduced unilateral changes to ensure they retain their competitiveness.

Officials from 133 countries (including New Zealand), through the OECD's "Inclusive Framework", have recently committed to an agreed framework which is likely to bring fundamental changes to the international corporate tax system. The two-pillar framework has the potential to bring the most significant changes to international tax law for material multinational groups since its inception.

While much of the detail and how the changes will apply remains to be finalised, the OECD is set to release an implementation plan by the end of next month. An ambitious plan has been laid for all countries' legislation to be drafted in 2022 and to be in effect in 2023.

What is Pillar I and Pillar II?

The large majority of the OECD countries through the Inclusive Framework have agreed a two-pillar solution to address the tax challenges arising from the globalisation and digitalisation of the economy and to adopt a global minimum tax. The two-pillar solution aims to ensure that large multinational enterprises pay tax where they operate and earn profits, while looking to add certainty and stability to the international tax system through a global minimum tax rate.

The most recent statement released by the Inclusive Framework is still very general with respect to some of the key design features of the two pillars. However, the key components of the two-pillar framework are summarised below.

	PILLAR I	PILLAR II
Purpose	Involves a re-allocation of taxing rights towards market jurisdictions where physical presence is not already established.	Involves applying a global minimum effective tax rate of at least 15% to put a floor on jurisdictional tax rate competition.
Thresholds	The rules would, initially, be limited to multinational groups with global consolidated revenues exceeding €20bn and profitability thresholds greater than 10% (expected to be reduced to €10bn 7 years post implementation). There is a further proposal (amount "B") which would look to provide a fixed "baseline" return for marketing and distribution functions by way of formulaic apportionment. This could potentially apply much more broadly and without any threshold. However this workstream has been delayed to late 2022.	Pillar II would apply to the profits of multinational enterprises where the global consolidated revenues exceed €750 million.
New Zealand impact	Given the thresholds above, no New Zealand headquartered companies are expected to have a Pillar I obligation. However, we may see additional taxing rights allocated to New Zealand.	Approximately 20 New Zealand headquartered companies are expected to be within the scope of these rules and others belonging to global groups are likely to be impacted due to their broader group structures.

Further detail and observations with respect to the key components of the Pillars are included in the global PwC Tax Policy Alert.

What does this mean for New Zealand?

The New Zealand Government remains consistent in voicing its support of an internationally agreed OECD solution. Inland Revenue is currently consulting with key players in the tax industry (including PwC) and, as further detail is released by the OECD, we expect to see Inland Revenue lead public consultation on the areas within the two-pillar solution which are of importance to New Zealand. At a minimum, we are expecting that there would need to be adoption of a new multilateral treaty that will be required and domestic legislative changes to ensure that New Zealand's tax rules align with the international framework (for example, mitigating double taxing of profits where appropriate).

With many open questions with respect to the design features of the two-pillar solution still being worked through, it is difficult to forecast the impact of these changes to the New Zealand tax base but it is expected that New Zealand is likely to be in a broadly tax neutral position. It is also not expected that there will initially be material impact to individual New Zealand taxpayers outside of the approximately 20 taxpayers which are above the €750 million revenue threshold for Pillar II noted above.

There is likely to be an interesting question for the Government, when the design features are released, as to whether the lack of a comprehensive capital gains tax regime in New Zealand means that there is further tax paid in the shareholding jurisdiction to 'top up' for the reduced New Zealand effective tax rate (where this results in a rate below 15%). More broadly, the complexity of the formulaic effective tax rate calculation and its interactions with financial accounting and deferred tax concepts is proving challenging. There are a number of intricacies to be worked through by the OECD to avoid unintended consequences.

Separately, we would expect that the significant progress on the development of this global agreement is likely to ensure that the unilateral digital services tax that the Government outlined in its 2019 discussion document will continue to be on hold pending the final agreed implementation of the OECD solution.

Where to from here?

An implementation plan is expected to be released by the OECD in October 2021. However, it is likely that even then details will remain to be developed given the significant political and technical work that remains to be completed.

The negotiations continue to be politically intense, particularly with respect to whether the Biden Administration will be able to secure the Congressional support required to amend the current GILTI regime so that Pillar II can be effectively implemented. Additionally, given that there are a number of EU member states that currently do not support the Statement released, it could be difficult for the European Union to unanimously pass EU directives implementing the new framework.

The possible timelines released indicate implementation will follow swiftly (with the new rules to be effective by 2023). In our view, the timelines seem optimistic and ambitious but there is momentum behind what could be the most significant international tax reform in a century. We are here to help you navigate through these changes and understand the potential impacts as further details are released.

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