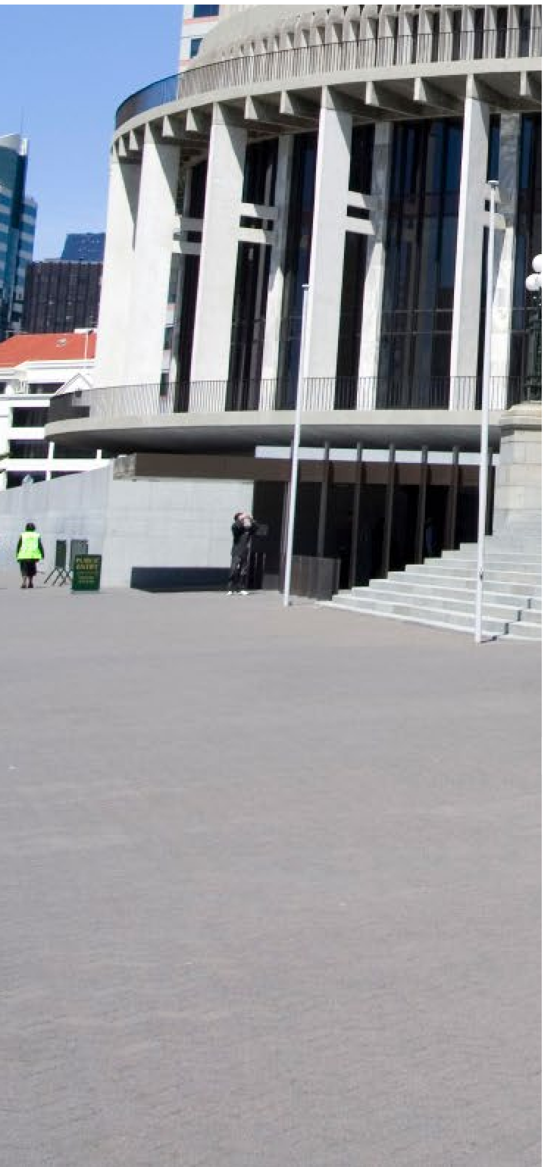
Tax Tips, June 2020

New omnibus tax bill introduced



Earlier this month, the Government introduced the *Taxation (Annual Rates for 2020-21, Feasibility Expenditure and Remedial Matters) Bill*. It's a bumper tax bill containing changes to several areas of tax law, many of which have been signalled for some time. The Bill is currently awaiting its first reading in Parliament.

In our June edition of Tax Tips, we provide a detailed discussion of the key changes in the Bill, including:

- tax deductions for feasibility expenditure on new investments
- tightening of the land rules for those that habitually buy and sell land
- new rules for the allocation of purchase price when buying and selling a business
- income tax treatment of leases subject to NZ IFRS 16, and
- further changes to GST.

For more information on what's in the Bill, go to Inland Revenue's Tax Policy website.

Please get in touch with your usual PwC adviser if you'd like to discuss how any of these upcoming changes might affect you.

Feasibility and other black hole expenditure

The new feasibility expenditure provisions in the Bill will confirm the deductibility of feasibility and other black hole expenditure incurred by taxpayers in relation to the development of capital projects that are subsequently abandoned as well as providing an immediate deduction where a taxpayer incurs less than $10,000 of this kind of expenditure in an income year.

Background

The proposed changes to the tax treatment of feasibility expenditure have been a long time in the making. The Government first released a discussion document in May 2017 following the Supreme Court's decision in *Trustpower Ltd v Commissioner of Inland Revenue* [2016] NZSC 91 and Inland Revenue's interpretation statement, *IS 17/01: Income tax – deductibility of feasibility expenditure*, released in February 2017 in the light of that decision.

Prior to Trustpower, Inland Revenue considered that feasibility costs should be deductible up until the point a capital project was committed to (often referred to as the "commitment test"). However, the Supreme Court decision significantly restricted the availability of deductions, holding that where feasibility expenditure is incurred as an ordinary and recurring incident of a taxpayer's business it will only be deductible when:

- it is not directed towards a specific capital project, or
- if directed towards a specific project, it is so preliminary that it does not materially advance that project.

The Bill proposes legislative amendments to reverse this course and increase the availability of deductions for taxpayers incurring feasibility expenditure on the grounds that the current non-deductible treatment distorts investment decision-making. So, for example, feasibility expenditure incurred in relation to the creation of an asset that would be depreciable property may only be deductible if that asset is recognised under the depreciation tax rules. This creates an incentive for businesses to complete projects that, but for the non-availability of the deduction, would otherwise be abandoned.

What expenditure qualifies?

The Bill does not use "feasibility expenditure'" as a defined term. Rather, proposed section DB 66 (being the main provision allowing a deduction, subject to the expenditure below the $10,000 de minimis in section DB 67 described below) refers to expenditure incurred "in relation to making progress towards completing, creating, or acquiring property" where the relevant property would be depreciable property (at a rate higher than 0%), or revenue account property. Proposed section DB 66 permits a deduction for this expenditure where a project is abandoned, and the relevant property is therefore not completed, created, or acquired.

Section DB 66 explicitly overrides the capital limitation, although the general permission, and other general limitations still apply.

Effectively then, the proposals extend beyond expenditure incurred in the course of testing the feasibility or otherwise of a particular project and apply to permit deductions for black hole expenditure in relation to the acquisition or creation of property more generally.

When is expenditure deductible?

Unless the relevant expenditure is below the $10,000 de minimis described below, section DB 66 provides that taxpayers are allowed a deduction for feasibility expenditure spread over a 5-year period, beginning with the income year in which the relevant project is abandoned.

Immediate deduction for expenditure below $10,000 de minimis

Under proposed section DB 67, where a person has incurred less than $10,000 in feasibility expenditure in an income year (and provided that this expenditure is not deductible under another provision in the Income Tax Act 2007) such expenditure is immediately deductible under this section. It is not necessary for the relevant project to be abandoned.

Claw-back of deductions where project is later completed

Where a person has claimed a deduction under proposed section DB 66 and the project is subsequently completed, then deductions previously taken under section DB 66 will be clawed back as income under section CH 13. This income arises in the income year in which the relevant project is completed. There is no limit to the time period over which these claw-back provisions can apply.

Effective date

As currently drafted, the Bill only allows deductions for expenditure incurred in the 2020-21 and later income years.

Our comments

We are broadly supportive of the proposed changes. We agree that not allowing deductions for feasibility and black hole expenditure can distort economic decision making and that this is harmful to the New Zealand economy. The proposed deductions should reduce such distortions.

However, we consider that the effective date of these changes should be brought forward to the date that the Level 4 Lockdown was announced i.e. 23 March 2020. COVID-19 has caused an unprecedented economic disruption to business in New Zealand. In the light of lockdowns introduced in New Zealand and overseas, many businesses will be reassessing and revising plans for capital expansion. In our view, accelerating the implementation of these rules will ensure that tax does not provide any impediment for businesses that are already making hard choices.

Further, in our experience, many businesses abandoning capital projects will incur additional expenditure (e.g. to secure release from third-party contracts entered into in relation to the development of the relevant project). In our view, non-deductibility of abandonment expenditure introduces similar distortions into economic decision-making, and section DB 66 could usefully be extended to allow deductions for this type of expenditure as well.

We also anticipate that, because it is open-ended, the section CH 13 claw-back will give rise to significant uncertainty in its application. If the relevant project is restarted, expenditure that is deducted under section DB 66 could conceivably be clawed back many years later. In these circumstances, there may be some difficulty in determining whether there is a connection between expenditure previously deducted and the project that eventuates. Clear Inland Revenue guidance on how this will work will be necessary.

Habitual buying and selling of land

The Bill contains amendments that will adjust the application of the residential land and business premises exclusions to the land-taxing provisions, and the main home exclusion to the bright-line test, in certain circumstances.

Background

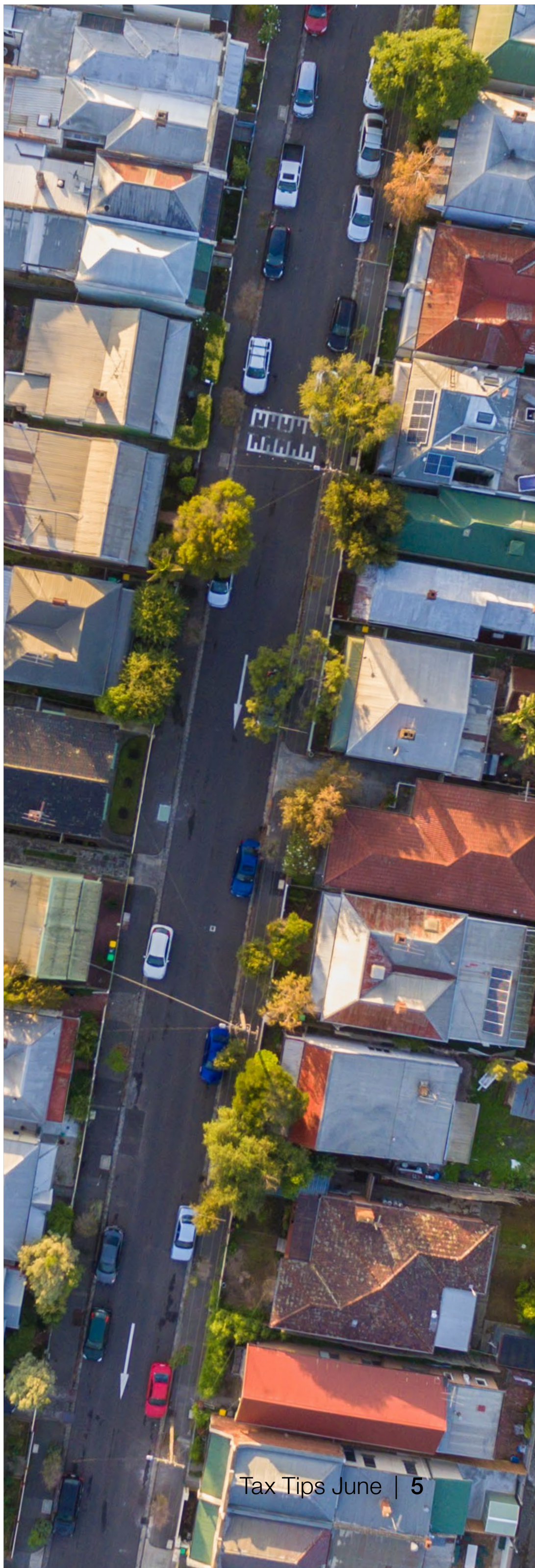
These changes were signalled in a consultation document Inland Revenue released last year. Proposals in that document are now reflected in the 2020 Bill. There are two significant changes:

1. There is an extension to the application of the "pattern of buying and selling of land" qualification to the residential land, business premises, and main home exclusions. By extending the application of the qualifications, the amendments narrow the scope of the exclusions, and extend the circumstances in which land disposals may be subject to tax.
2. The Bill also proposes to place an additional restriction on the application of the qualifications in respect of the residential land and business premises exclusions. These qualifications will only prevent these two exclusions from applying where the relevant land was also acquired for a purpose or with an intention of disposal.

Residential land, business premises, and main home exclusions do not apply where there is a regular pattern of buying and selling of land

Sections CB 16 and 19 set out (respectively) the residential land and business premises exclusions to ss CB 6 – 11 of the land-taxing provisions. Each of these exclusions include a qualification that they do not apply to a person who has:

- in the case of the residential land exclusion, engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of houses; and
- in the case of the business premises exclusion, engaged in a regular pattern of acquiring and disposing, or erecting and disposing, of premises for businesses.



Section CB 16A provides a qualification to the brightline test in section CB 6A to the effect that section CB 6A will not apply to the sale of residential land if either:

- the person has engaged in a regular pattern of acquiring and disposing of residential land described; or
- the exclusion has been used by the person 2 or more times within the 2 years prior to the sale.

Where these qualifications apply, the exclusions will not apply to prevent taxation under the relevant land-taxing provisions. The logic underlying these qualifications is that a regular pattern of buying and selling, or developing and selling, houses or business premises is indicative of a profit motive. The qualifications are intended to prevent a taxpayer who acquires land with a view to selling at a profit, or that might otherwise be subject to the brightline test, from temporarily using that property as a home or business premises, so as to gain the benefit of the residential land, business premises, or main home exclusions.

Extension of qualifications to patterns of buying and selling land by a group of persons

As currently drafted, the pattern of buying and selling qualifications apply narrowly, only looking at the activities of the person disposing of the relevant land for the purposes of determining whether there is a pattern of buying and selling. The Bill proposes to extend the scope of the qualifications to take into account activities of other connected persons or entities to ensure that taxpayers cannot circumvent the application of the regular pattern qualifications by buying and selling land using different people and entities each time.

Who is included in a "group of persons"?

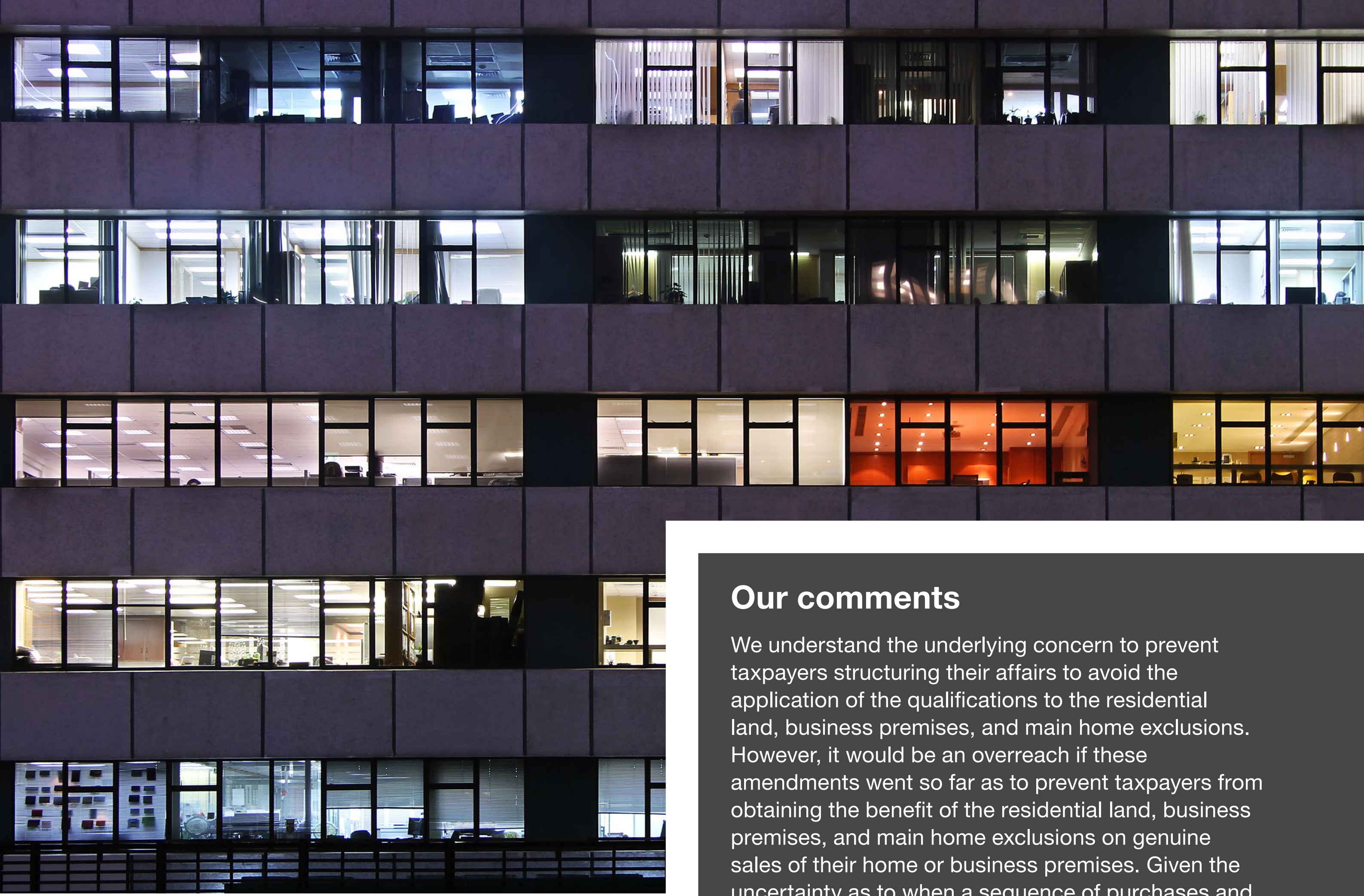
For the purposes of the residential land and main home exclusions, the Bill proposes that the qualifications will apply (and the exclusions therefore will not apply) where the relevant sale is part of a pattern of buying and selling by a group of persons of houses in which each member of that group has lived. A trust can also be treated as a member of the group if it is substantially controlled by a person who has also lived in each of the relevant houses.

For the purposes of the business premises exclusion, it is proposed that the qualification will apply (and the exclusion therefore will not apply) where:

- the relevant sale is part of a pattern of buying and selling by a group of persons (including companies) of land that has been occupied by one of the members as business premises; and
- there is a single person who has significant control or involvement over the activities of each member of that group.

Qualification to residential land and business premises exclusions – requirement that land is acquired for a purpose or with an intention of disposal

The Commentary acknowledges that extending the application of the qualifications (and thereby limiting the scope of the exclusions) could mean that genuine sales of homes or business premises could be caught by the land-taxing provisions. To avoid this overreach, the Bill includes a requirement that, for the qualifications in each of the residential land and business premises exclusions to apply to a sale of land, section CB 6(1) must also apply to that land (i.e. that land must have been acquired for a purpose or with an intention of disposal). This additional requirement has not been included in the qualification applying in relation to the main home exclusion and the brightline test.



Our comments

We understand the underlying concern to prevent taxpayers structuring their affairs to avoid the application of the qualifications to the residential land, business premises, and main home exclusions. However, it would be an overreach if these amendments went so far as to prevent taxpayers from obtaining the benefit of the residential land, business premises, and main home exclusions on genuine sales of their home or business premises. Given the uncertainty as to when a sequence of purchases and sales might constitute a regular pattern of buying and selling, this was a serious concern with the initial proposals in the consultation document.

Therefore, we are pleased that the amendments have introduced the “acquired for a purpose or with an intention of disposal” requirement to the residential land and business premises exclusions. This should provide taxpayers some additional protection in relation to the sale of property that is acquired for genuine use as a home or business premises.

On the other hand, in our view, it is unfair and inconsistent for the qualification to the business premises exclusion to be extended to take into account the activities of related companies in circumstances when the exclusion itself does not. It is a long-standing deficiency of the business premises exclusion that it will not benefit a corporate group where one company leases business premises on land acquired by a different group company. Where the relevant land is genuinely used by the group as business premises, the exclusion should apply. Given the amendments being made to the qualification to the business premises exclusion, it would make sense to address this issue also.

Clarifying nature of pattern required to trigger the qualification

The Commentary notes that the qualification to the residential land and business premises exclusions have sometimes been interpreted quite narrowly, to apply only where there is a similarity or likeness between the various transactions that make up the pattern, and in how the relevant land that is bought and sold is used. For example, in relation to the residential land exclusion, the Commentary suggests that under current legislation there may not be a pattern (and the qualification, therefore, may not apply) where a first property is bought, lived in and sold, a second is renovated while it is lived in and sold, and the third is a bare section where a house is built and lived in then sold.

Amendments to the drafting of these exclusions will mean that they will apply to any regular pattern of buying and selling land used as a residence or business premises, with a focus on the regularity of the transactions rather than on what is done on the land while it is held.

New rules for purchase price allocation – buyers beware!

The Bill contains new rules that will require the vendor and purchaser in a transaction to adopt consistent cost allocations for income tax purposes across assets within the tax base. The new rules will apply in relation to agreements for the disposal and acquisition of property entered into on or after 1 April 2021. Purchasers who are unaware of the new rules are at significant risk of leaving value at the negotiating table.

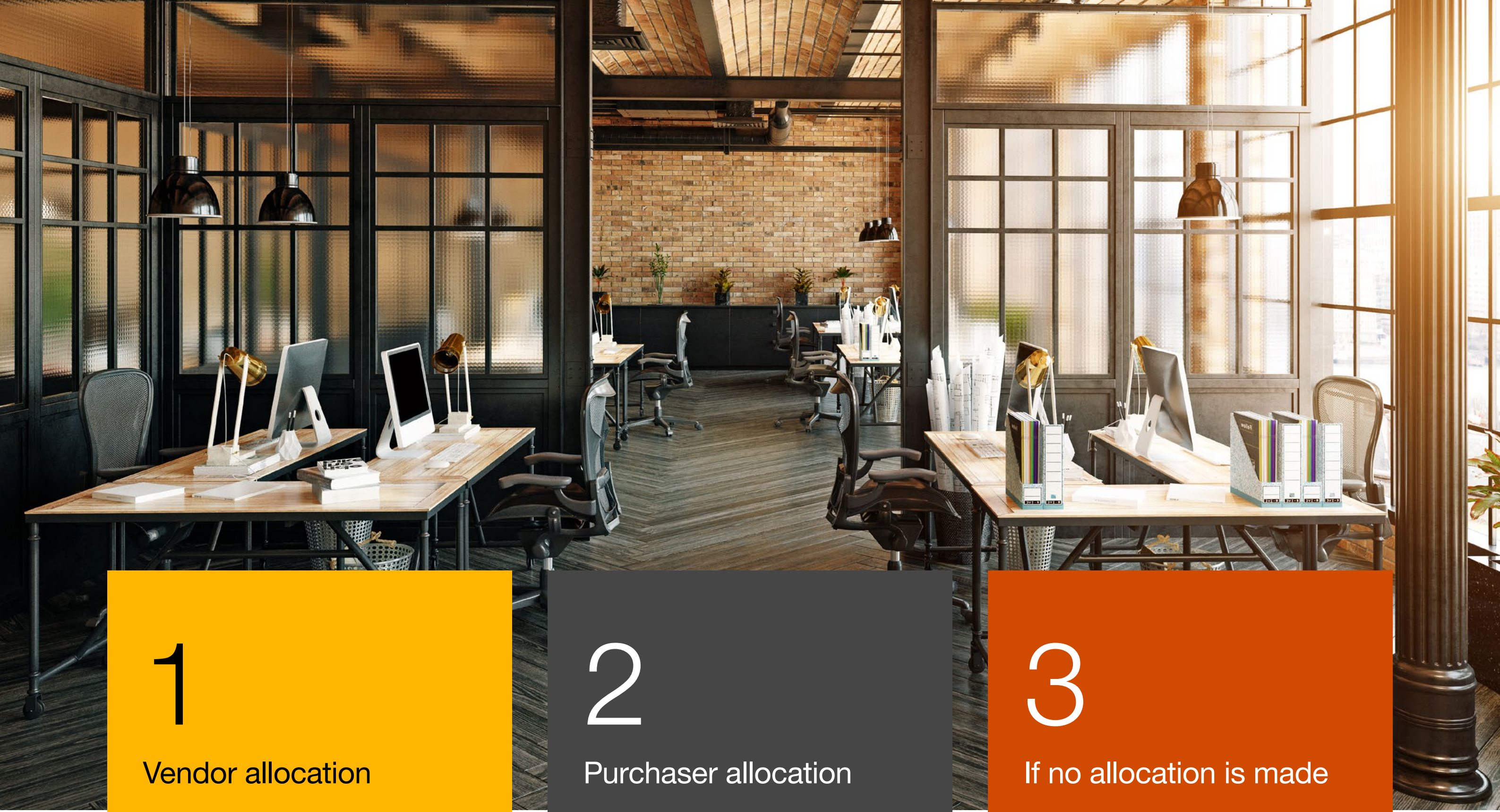
Overview

Under current law, parties to a sale and purchase transaction are generally required to ascribe market values to assets in the tax base, such as depreciable property and trading stock. However, market value is a range and, other than for trading stock, there is no requirement for the vendor and purchaser to use the same market value. In practice, this can result in the two parties adopting different allocations, which can then minimise each party's respective tax liabilities. Disposals of commercial property and going concern businesses have been identified as particular areas of concern by Inland Revenue.

The purchase price allocation reforms cover two scenarios. If enacted as introduced, in both instances, the resulting allocation must ascribe market values to the assets, and the Commissioner of Inland Revenue may require the parties to adopt a different allocation if she considers that the allocation does not reflect market value.

The first scenario is where the vendor and purchaser have agreed a purchase price allocation before filing their respective income tax returns incorporating their tax position in relation to the transaction. Where this is the case, the proposed section GC 20 states that the parties must file in accordance with the agreed allocation.

The second scenario is where the vendor and purchaser have not agreed an allocation before filing their tax position in relevant returns. In these circumstances, the proposed section GC 21 contains three mechanisms to ensure a single allocation is made and is subsequently followed by both parties. If section GC 21 is enacted as proposed, the requirements are as follows:



1

Vendor allocation

In the first instance, the vendor is required to determine the allocation based on market value, and to notify both the purchaser and the Commissioner of this allocation within two months of the change of ownership in the assets occurring. Both parties must then file tax returns based on this allocation. However, the allocation chosen by the vendor must not result in any additional tax loss on the sale of that property.

2

Purchaser allocation

If the vendor fails to notify an allocation within the two-month timeframe, the obligation to determine the purchase price allocation is transferred to the purchaser. Once the allocation has been made, the purchaser must notify the vendor and the Commissioner, with both the vendor and purchaser then filing their tax returns based on that allocation. Other than the requirement for the allocation to reflect relative market values, there are no constraints on the purchaser's allocation.

3

If no allocation is made

If neither party makes an allocation, the vendor is treated as disposing of the property for its relative market value, and the purchaser is treated as acquiring the property for nil consideration. This precludes the purchaser from (a) in the case of revenue account property, claiming a deduction for the cost of the property upon future disposal, or (b) in the case of depreciable property, claiming depreciation deductions.

Degree of specificity

Under the proposals, the parties do not have to allocate an amount of the purchase price to every individual asset. Rather, the allocation may be made at the level of asset categories that are subject to particular income or deduction rules e.g. buildings, depreciable property, revenue account property, land, financial arrangements, etc.

Small transactions exceptions

If enacted as introduced, the rules will only apply to transactions where the total purchase price is $1 million or more, and the purchaser's allocation to taxable property is $100,000 or more. However, the de minimis only applies where the parties have not agreed an allocation. If an allocation has been agreed, then the parties must file their tax returns on that basis.

A proposed de minimis will also apply to the Commissioner's ability to challenge an allocation, with the Commissioner unable to challenge an allocation to an item of depreciable property if:

- the adjusted tax value of the property is less than $10,000;
- the allocation to the property is no less than its adjusted tax value and no greater than its original cost; and
- where there are multiple identical assets each with an adjusted tax value of less than $10,000, the total amount allocated to those assets is less than $1 million.

Our comments

The proposed rules have been foreshadowed for some time, and they're already driving a major change from recent deal practice where, historically, parties have taken their own tax positions on cost allocation without the agreement or knowledge of the other party. The proposed rules bring with them some key commercial implications, such as:

1. It is now best practice to include a purchase price allocation (or a mechanism for agreeing an allocation) in the sale and purchase agreement. This means that, if a purchaser is placing significant value on the way a particular asset is treated for tax purposes, the purchaser needs to front-foot this with the vendor. The need for agreement between the parties on the allocation may add negotiating tensions and complexities, with potential implications for the timing and value of deals being agreed.
2. Support for the chosen allocation should still be documented to demonstrate market value (e.g. where possible/appropriate supported by an independent valuation). It is not enough that arm's length parties negotiate a purchase price as the Commissioner can still challenge that allocation. This will be especially relevant where there is a tax advantage for one of the parties in adopting a particular allocation.

It will be in the purchaser's best interests to make sure a purchase price allocation is undertaken. If an allocation is not made, the purchaser will not be able to claim depreciation or cost deductions. This is a serious financial consequence designed to incentivise the parties (or the purchaser at least) to follow the rules.

The new rules include some welcome changes to what Inland Revenue proposed originally, such as an increase in the de minimis and clarification that the allocation need only be at an asset category level, rather than at an asset-by-asset level.

Please get in touch with your usual PwC adviser if you would like to discuss the potential impact of these rules.

Leases accounted for under NZ IFRS 16

The Bill proposes changes to allow taxpayers with certain leases accounted for under *New Zealand Equivalent to International Financial Reporting Standard 16 Leases* (NZ IFRS 16) to choose to more closely follow their accounting treatment for tax purposes.

The proposed tax changes result from the replacement of the previous accounting standard for leases, *New Zealand Equivalent to International Accounting Standard 17 Leases* (NZ IAS 17), with NZ IFRS 16, which applies to income years starting on or after 1 January 2019.

Lessees

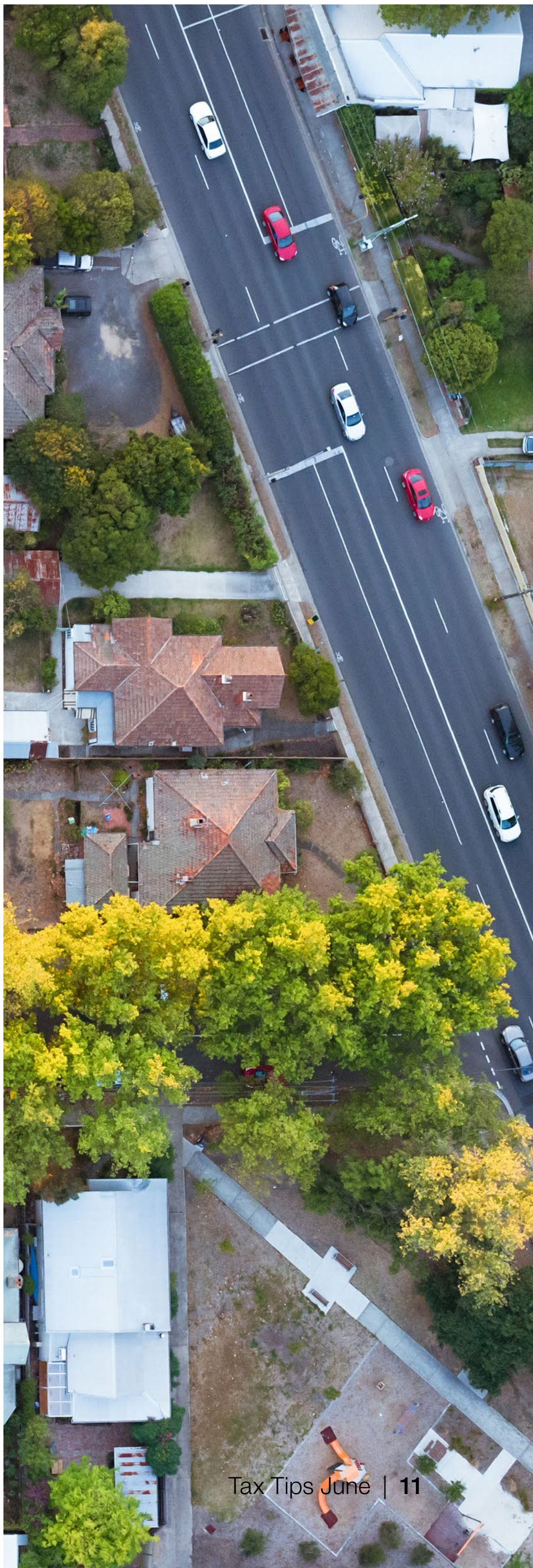
For lessees, NZ IFRS 16 removes the distinction between operating and finance leases for accounting purposes and, instead, requires all leases to be recognised on the balance sheet by recognising both a right-of-use lease asset and a lease liability. The Bill does not propose any changes to the current definitions of an operating and finance lease for tax purposes.

(a) Personal property operating leases

The Bill proposes to allow lessees who apply NZ IFRS 16 the option to more closely follow their accounting treatment for tax purposes in relation to leases of personal property that are classified as operating leases for income tax purposes. However, where the lease is from an associated party or a lease where the asset is subleased, the existing tax treatment must continue to apply.

If enacted, these proposed amendments will apply for income years beginning on or after 1 January 2019. The intention is to align the introduction of these new tax rules with the application date of NZ IFRS 16 for accounting purposes.

Once the choice is made to follow the NZ IFRS 16 accounting treatment for personal property operating leases in a taxpayer's tax return, it must continue to be applied. While the NZ IFRS 16 accounting treatment can be followed, there are additional tax adjustments required over the lease term to ensure that the deduction of the lease expenditure is at a similar time to when the expenditure is incurred where NZ IFRS 16 was not applied. The adjustments that may be required relate to impairments, revaluations, make-good costs, and direct costs.



Our comments

While these proposed changes may have been intended to ease tax compliance for personal property operating leases, in practice they could have the opposite effect. In addition to calculating and spreading transitional adjustments, taxpayers will need to track the spreading of any required tax adjustments by each leased asset over the lease term and complete an end of lease wash-up adjustment. We expect this will have an impact on how widely the proposed rules are adopted by taxpayers.

Taxpayers should also be aware that the decision to apply these proposed rules is irrevocable, and care should be taken before electing in.

To illustrate how these adjustments are intended to operate, we have prepared a simple example based on a combination of the examples provided in the Government's Commentary on the Bill.

- On 1 April 2021, a company enters into a five-year equipment lease with payments of $20,000 at the end of each year.
- The company expects to spend $15,000 to restore the asset at the end of the lease.
- On 31 March 2024, the company is required to recognise an impairment charge of $20,000.

At the end of a lease (or where it is no longer a lease accounted for under NZ IFRS 16), a 'wash-up' tax adjustment is required to ensure that total deductions over the term of the lease match those that would have been deductible for a taxpayer not applying NZ IFRS 16 for tax.

There is also a transitional adjustment where the optional choice applies for tax after the original start of the lease in the year a taxpayer first chooses to apply NZ IFRS 16 for tax.

(b) Real property operating leases

Leases of real property will continue to follow the existing tax treatment as an operating lease. The proposed rules mean that a lease of real property will continue to follow the existing treatment even if a taxpayer has chosen to apply NZ IFRS 16 for tax for other leases. The existing tax definition of a finance lease applies only to personal property lease assets, so that a lease of real property cannot be a finance lease.

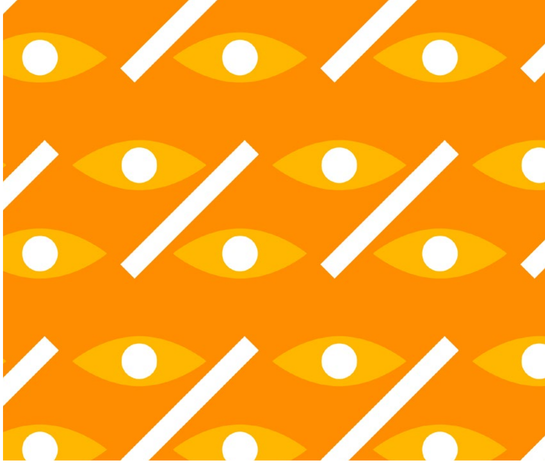
Lessors

The Bill does not propose any changes to the current tax treatment of leases for lessors.

Table 1: The company's expected tax deductions over the term of the lease

Year ended 31 March	Accounting expenditure	Less: add-back adjustment	Plus: impairment and revaluation adjustment	Less: make-good and direct costs adjustment	Tax deduction
2022	$24,288	$0	$0	$3,000	$21,288
2023	$23,667	$0	$0	$3,000	$20,667
2024	$43,024	$20,000	$0	$3,000	$20,024
2025	$12,357	$0	$10,000	$3,000	$19,357
2026	$11,664	$0	$10,000	$3,000	$18,664
	$115,000	$20,000	$20,000	$15,000	$100,000

The company should also be entitled to a tax deduction for costs incurred in making good the asset.



Proposed changes to GST

GST on mobile roaming services

The current GST treatment of mobile roaming services has been in place since 2003 when New Zealand introduced specific GST rules for telecommunications services. The Bill proposes changes to the GST treatment of mobile roaming services to reflect changes in technology, consumer habits, and overseas developments.

The current GST rules use the location of the person who initiates the supply from a telecommunications supplier to determine where the services have been consumed (and, therefore, whether GST should apply). Mobile roaming services received by New Zealand residents travelling overseas are either zero-rated or not subject to GST. Meanwhile, overseas travellers who use mobile roaming services in New Zealand may be subject to GST at 15%. However, rules which allow non-resident telecommunications suppliers to not register for GST mean that these are often not taxed in New Zealand either.

The amendments contained in the Bill adopt the principle that the place of supply in relation to mobile roaming services should be determined by reference to the **residence of the consumer.** New Zealand residents who consume mobile roaming services while overseas will be charged GST at 15%. Overseas travellers who use mobile roaming services in New Zealand will either be charged GST at 0% (if the roaming services are supplied by a New Zealand resident telecommunications supplier) or are not subject to New Zealand GST (if the roaming services are supplied by a non-resident telecommunications supplier).

A new definition of "mobile roaming services" will be introduced to give effect to these rules. These include mobile telecommunications services supplied to the mobile device of a person who is outside the country of their usual mobile network. The country of a person's usual mobile network will be determined by reference to the country code of the subscriber identity module (SIM) used in their mobile device. This means that these rules will not apply to a New Zealander who buys a local SIM when they are travelling overseas (and vice versa for overseas travellers who buy a New Zealand SIM).

If enacted, the new rules will apply from 1 April 2022.

Our comments

Since the introduction of the telecommunications services GST rules in 2003, there have been several policy changes relating to cross-border services and intangibles both in New Zealand and from the OECD. Alignment with the OECD's International VAT/GST Guidelines (which many other countries have since adopted including New Zealand's own remote services GST rules) helps minimise the instances of double taxation or double non-taxation. However, the change does reflect a new tax charge and consideration should be given to a GST credit for any overseas taxes paid on the same services.

We note that, aside from the changes to mobile roaming services, the Bill does not make any other changes to the special rules applying to telecommunications services. This is despite officials' statements in the 2019 issues paper, *GST on telecommunications services*, which indicated that these special rules will largely be repealed and generally treated as remote services. In our view, the changes contained in this Bill should be supplemented by repealing the special rules for telecommunications services. This would help reduce the complexity of determining which regime should apply (i.e. the telecommunications services rules or the remote services rules) and would align with the international treatment.

Changes to GST credit note rules

Correcting an invoice when 15% GST incorrectly charged

It is unclear under the current rules whether a credit note can be issued in relation to a supply where GST was incorrectly charged at 15% (i.e. because the supply should have been zero-rated or exempt). There is currently a mechanism allowing a credit note to be issued when the consideration for a supply has changed e.g. if a discount is applied after the supply has been made. In these circumstances, the credit note will reduce the amount of GST charged in a prior period. For example, if a $230 supply is subsequently discounted to $200, the supplier can claim back in their next GST return the GST component of the $30 discount (i.e. $3.91).

Correcting a supply where GST was charged incorrectly is a slightly different situation as the supplier is seeking to claim back the entire $30 of GST that should not have been charged. Positively, the amendments contained in the Bill introduce a specific rule to allow a credit note to be issued in these circumstances.

If enacted, this taxpayer-friendly measure will apply retrospectively from 1 April 2012.

Our comments

As noted in the Commentary on the Bill, issuing a credit note in these circumstances has several benefits. It provides for a better audit trail of how a transaction was treated and corrected for GST and ensures that the correct amount of GST is paid without the compliance and administrative cost of requesting the Commissioner of Inland Revenue to amend a previous GST return to achieve this result.

Using credit notes to allow a correction of the full amount of incorrectly charged GST is a practice that has been adopted by many taxpayers since the introduction of GST. The proposed amendments provide greater certainty to taxpayers that credit notes can be used to correct errors in this way.

We would also welcome further clarification that a credit note can be issued for a transaction where GST was inadvertently charged despite there being no supply at all (e.g. if GST was charged in error in relation to a compensation payment).

Time limit for issuing a credit note for a supply made in an earlier period

As currently drafted, it appears that a credit note may be issued in relation to any historic GST period (i.e. there is no time limit for issuing a credit note). The Bill proposes that a credit note may be issued to correct errors occurring in the last four years. This will be measured by reference to the last day of the relevant taxable period to which the error that the credit note relates. For example, a credit note may be issued on 30 June 2020 to correct any error occurring in the taxable period ending 30 June 2016 (and subsequent periods). This aligns the time limit for issuing credit notes with the "time bar" that applies when a taxpayer requests a refund of GST by amending a previous return. An extra four-year time limit may be available to adjust an overpayment of tax that occurred due to a clear mistake or simple oversight e.g. in relation to an error that arose in the taxable period ending on 30 June 2012.

A seven-year time limit for credit notes applies already in relation to credit notes issued for a supply of land that was incorrectly charged GST at 15% rather than zero-rated under the compulsory zero-rating of land rules. This will be preserved for credit notes issued in these circumstances.

Inland Revenue is concerned there may be a fiscal risk of taxpayers issuing a credit note beyond the proposed four-year time limit, following the announcement of this proposed amendment. On this basis, if enacted, these rules will apply from the date of introduction of the Bill (i.e. 4 June 2020).

Our comments

We agree that, as a matter of policy, a time limit should apply in relation to the issuing of credit notes. Time limits such as the time bar that applies to GST refunds are in place to balance accuracy with certainty and finality. Aligning the time limit to the existing time bar periods seems justified in these circumstances.

Compulsory zero-rating (CZR) – remedial amendments

The Bill contains several technical remedial amendments to the CZR rules to correct gaps in the current law. These include changes to ensure that:

- All assignments or surrenders of a lease agreement for land are zero-rated (provided they meet certain existing criteria).
- Any business assets transferred as part of a business sale which involves a zero-rated supply relating to land leases can be zero-rated.
- CZR will apply when a lease is cancelled by the lessor and the previous lessee arranges a new lease for a new lessee.

Please get in touch with your usual PwC adviser if any of these proposed changes impact your business.

Other remedial changes

Use of pre-consolidation imputation credits

The Bill proposes an amendment to the consolidated imputation group rules, which would allow a consolidated imputation group to use pre-consolidation imputation credits of individual member companies before using group credits. Historically, it has been Inland Revenue's view that legislation has required a consolidated imputation group to exhaust all its group imputation credits before it can draw on the pre-consolidation credits of the individual group companies. The proposed amendment will align the rules for consolidated imputation groups with that of amalgamated companies and individual companies (i.e. on a first-in first-out basis). Certain requirements, including shareholder continuity, must be met for the pre-consolidation imputation credits to be available for use.

If enacted, the proposed amendment will apply to the 2008-09 and later income years.

Bringing KiwiSaver employer contributions into the penalties, recovery, and use-of-money interest regimes

Employers may choose to make voluntary contributions to their employees' KiwiSaver accounts above the compulsory three per cent. The Bill proposes an amendment to ensure that the same interest, penalties, and debt collection mechanisms apply to both voluntary and compulsory employer KiwiSaver contributions. The proposed amendment will also extend the PAYE withholding and deduction rules to include voluntary employer KiwiSaver contributions and, if enacted, will apply from 1 April 2021.

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