Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill

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Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill

November 2018

Prepared by Inland Revenue

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Modernising tax administration – Individuals' income tax

OVERVIEW

There were a wide range of submissions in relation to the individuals' tax changes as well as significant support for the direction of the changes. The responses to submissions set out below reflect Inland Revenue's view on the design and implementation of the new rules for the income tax treatment of individuals. These views take into account the views of the system design and implementation teams as well as the views of policy officials.

Inland Revenue is committed to delivering the changes in time to complete the tax year end process for the tax year ending 31 March 2019 to ensure that the benefits of automatic refunds can be provided to hundreds of thousands of taxpayers that are not getting refunds under the current system. The changes would also enable a significant number of taxpayers that have been getting refunds with the assistance of intermediaries to access the full value of their refunds. There would also be additional administrative costs of implementing a transitional system if implementation was not able to be delivered within this timeframe.

Issue: General support for the theme of the proposals

Submission
(Chartered Accountants Australia and New Zealand, Accountants and Tax Agents Institute of New Zealand, Olivershaw, Fire and Emergency New Zealand, KPMG, PwC, Baucher Consulting Limited, Corporate Taxpayers Group, Chartered Public Accountants, Deloitte, EY)

Most submitters on the individuals' income tax proposals expressed their support for the direction of the changes.

A number of submitters who noted their support for the proposals caveated that support with specific concerns, which are set out below.

Comment

Officials welcome the support, but acknowledge the concerns with various aspects of the Bill. This report notes the specific concerns raised by submitters as separate issues.

Recommendation

That the submission be noted.

Issue: Resources to deal with issues raised by taxpayers

Submission
(Chartered Accountants Australia and New Zealand, Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, KPMG, Olivershaw)

The submitters support the overall objectives to modernise and simplify tax administration for individuals. They note that while the changes are being embedded, Inland Revenue must be adequately resourced to respond to taxpayers' enquiries. In addition, Inland Revenue should be adequately resourced to provide support (telephone and other) to assist individuals who are not comfortable using myIR (e-services) or encounter problems using myIR. *(Chartered Accountants Australia and New Zealand, Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited, Olivershaw)*

There are 500,000 secondary tax codes issued. That provides an indication of the scale of potential contacts with individuals, which will trigger a response. Inland Revenue will have to be ready to manage those contacts. *(KPMG)*

Comment

Inland Revenue is currently planning for implementation of the proposed changes and, as part of that planning, is assessing the resources and processes it needs to have in place to address taxpayers' concerns and enquires. The intention is that individuals will still be able to seek assistance by phone.

454,000 people used secondary tax codes during the 2015–16 income year. Of these people 180,000 had tax to pay or a refund of less than $50. 196,000 had a tax refund of more than $50 and 78,000 had tax to pay of more than $50. Inland Revenue is using this type of data to evaluate likely customer impacts and interactions.

Inland Revenue will communicate the changes and explain what taxpayers can expect and need to do to prepare for these changes.

Recommendation

That the submission be noted.

Issue: Inland Revenue's readiness for these changes

Submission
(Chartered Accountants Australia and New Zealand, Accountants and Tax Agents Institute of New Zealand, KPMG)

To date, the Business Transformation (BT) roll out has not always run smoothly and it is important for the next phase to operate without incident and, as intended, to maintain on-going trust in the tax system. *(Chartered Accountants Australia and New Zealand)*

Another submitter generally welcomes the proposals, which they see as bringing greater fairness to the tax system, however, they have reservations about whether Inland Revenue has the capacity to meet the increased demand. They submit that Inland Revenue needs to assure tax advisors and the public that its systems will be ready to meet the demand next year. *(Accountants and Tax Agents Institute of New Zealand)*

The new model will require Inland Revenue to exercise judgement during the year to recommend actions regarding tax codes and rates and, at year end, complete assessments. If following Inland Revenue's recommendation results in large tax bills, taxpayers will expect Inland Revenue to stand behind its "advice". *(KPMG)*

Comment

Inland Revenue is planning for the implementation of the proposed changes as part of release 3 of the BT programme, which is scheduled for April 2019. Lessons learnt from the previous BT releases are being taken into account.

Inland Revenue recognises that implementation of the policy changes for individuals, as well as transferring income tax into the new technology platform START, will be a significant change in income tax administration and impact on most New Zealanders and their businesses. A comprehensive communication plan has commenced and will continue to be rolled out in the coming months. Inland Revenue will communicate the changes and explain what taxpayers can expect and need to do to prepare for these changes.

Officials agree that Inland Revenue will have to exercise judgement in making suggestions regarding tax codes and rates, and further, that the position of the taxpayer will need to continue to be monitored so that a revised recommendation can be made if necessary. Inland Revenue will also need to clearly communicate:

- the basis of the recommendation;
- the fact that changes to the taxpayer's situation could potentially make the recommendation inappropriate; and
- that the taxpayer has the right not to accept the recommendation.

Recommendation

That the submission be noted.

Issue: 1 April 2019 application date should be deferred

Clause 2(22)

Submission
(Corporate Taxpayers Group)

In addition to the construction of the software to implement these changes, these proposals also hinge on the success of the implementation of the investment income reporting proposals, the full benefits/effects of which won't be experienced in this limited timeframe (reporting will not be on a real time basis until 2020–21). With this in mind, the Group queries the appropriateness of the 1 April 2019 application date.

Comment

While additional information will come in and improve the quality of the information Inland Revenue holds over time, the application of these changes for the 31 March 2019 year end income tax processes will give rise to significant benefits for taxpayers. Delaying these changes will result in continued inefficiencies in relation to the administration of individuals' income tax, which, in the view of officials, would outweigh any benefits gained by deferring the application date until the investment income proposals were implemented.

Recommendation

That the submission be declined.

Issue: Adequate consultation on the design and implementation of the new rules

Submission
(Corporate Taxpayers Group)

While the Group is overall supportive of these proposals, it is concerned about how meaningful the consultation process will be for these new rules. The systems and technology platform that will enable and put into effect the proposals will need to be built before the Bill comes into force. This means that any submission points made are unlikely to be properly considered and difficult to implement as the design of the system will be underway to meet the tight timeframes to get this Bill enacted and operational.

Comment

Officials consider that any changes made to the Bill during the Parliamentary process will need to be incorporated into the design, and implemented as part of the new business system and the technology platform.

Officials also note that a number of changes have been recommended as a result of submissions made.

Officials note that there are significant benefits for taxpayers who earn reportable income that will arise from these changes, such as an increased number of refunds being paid out, and enabling a large number of individuals who currently receive refunds through intermediaries to receive the full amount of their refunds going forward. Due to these benefits, officials believe that the earliest reasonably possible implementation is needed.

Recommendation

That the submission be noted.

Issue: Trial of Inland Revenue systems

Submission
(KPMG)

Inland Revenue should trial its new powers so it can identify when it is likely to produce incorrect judgments. This should inform its communication to taxpayers so that taxpayers can appropriately check and confirm Inland Revenue's notifications. This should be done before the powers provided are widely used.

Comment

Inland Revenue's Business Transformation programme involves a major IT change programme which includes a rigorous system testing programme. Inland Revenue continues to conduct extensive programme testing to ensure the integrity of its systems. In addition, Inland Revenue's operational systems and processes that are being developed for the proposed changes will be periodically reviewed and tested.

Recommendation

That the submission be noted.

Issue: Education and publicity campaign

Submission
(Chartered Accountants Australia and New Zealand, Deloitte, EY, KPMG, Financial Services Council)

Many individuals are not used to interacting with the tax system. An education and publicity campaign should be undertaken to inform individuals of the changes to individuals' income tax.

Comment

Dedicated engagement will be undertaken to inform individuals of the proposed changes to income tax from November 2018. November activity will include awareness messaging via mainstream and targeted channels to inform individuals of the proposed changes to income tax. Examples will be provided to show how the proposed changes might work for individuals in the future. Direct messages will be sent to existing Inland Revenue customers via email. Engagement activities will be undertaken with tax agents and community teams to widen the awareness of the proposed changes. Following the November activity, a second phase will run early in 2019 continuing to promote awareness.

A third phase is scheduled to run (on condition of the proposed legislation being passed) in April 2019. This will include more specific details of the changes and what action some individuals may need to take. This activity will be segmented to reach various audiences and include messages about how to find out further detail and/or support.

Recommendation

That the submission be accepted.

Issue: Taxpayer responsiveness

Submission
(KPMG)

The new system relies on individuals to respond but taxpayers are unlikely to view correspondence from Inland Revenue or respond in a timely manner. This is because most taxpayers do not regularly check myIR or tend to treat Inland Revenue correspondence as "bad news".

Comment

Inland Revenue recognises that the implementation of these policy and technology platform changes will be a significant change in income tax administration for individuals. Inland Revenue will communicate the changes and explain what taxpayers can expect and need to do to prepare for these changes.

Inland Revenue will only use myIR to communicate when a taxpayer has an active myIR account. When communicating via myIR, Inland Revenue also uses other methods, such as text or email, to advise the taxpayer of the correspondence they have received in their myIR account.

Recommendation

That the submission be noted.

Issue: Methods of communication

Submission
(EY)

In relation to individuals who have a myIR account, IRD should confirm whether communications (such as the issuing of the individuals pre-populated account or payment date reminders) will only be made through their myIR account, or whether IRD will also contact the individuals by email, post and/or text message.

Comment

Inland Revenue will only use myIR to communicate when a taxpayer has an active myIR account. When communicating via myIR, Inland Revenue also uses other methods, such as text or email, to advise the taxpayer of the correspondence they have received in their myIR account.

Recommendation

That the submission be accepted.

Issue: Access to non-electronic channels

Submission
(Accountants and Tax Agents Institute of New Zealand, EY)

It is very important that taxpayers have the option to deal with Inland Revenue either in person or through traditional channels such as mail and telephone. ATAINZ submits that alternative channels need to be available. *(Accountants and Tax Agents Institute of New Zealand)*

Inland Revenue should confirm the use of myIR will not be compulsory and that paper will continue to be available to individuals without a myIR account. *(EY)*

Comment

Inland Revenue expects that the work it has undertaken to simplify its online services will result in the majority of individuals using these channels. Inland Revenue is, however, very aware that a proportion of its customers are not able to (or may prefer not to) access online services for a variety of reasons. For these reasons Inland Revenue is committed to maintaining other communication channels such as mail and telephone to ensure that individuals can meet their tax obligations.

Recommendation

That the submission be noted.

Issue: Electronic channels increase the risk of online fraud

Submission
(Accountants and Tax Agents Institute of New Zealand)

The submitter notes that with Inland Revenue delivering more of its services through online channels, it needs to be mindful that this increases the risk of online fraud. They submit that Inland Revenue should undertake an extensive information campaign to inform individuals of how its process around tax refunds will work. They also ask what redress will be available for any victims of fraud.

Comment

Inland Revenue is developing a communication plan that will start to be rolled out from November 2018. The purpose of this communication plan is to make sure individuals are aware of the changes and what to expect.

Inland Revenue is very aware of the risks relating to online fraud, and actively works to limit these risks and explain to customers what to expect when Inland Revenue communicates with them online. Inland Revenue's emails to customers informing that they have new mail, which they access via myIR, includes the following message – "Inland Revenue will never send you an email requesting you to confirm, update or disclose confidential information through an unsecure channel such as email".

In addition, Inland Revenue often issues media statements about scams and what to expect from Inland Revenue when communicating with customers.

If an individual believes they have been scammed they should report the matter to the Police. Any redress would be through New Zealand's court system.

Recommendation

That the submission be noted.

Issue: Changing information during the year

Clause 21

Submission
(EY, Olivershaw)

Individuals should be able to make changes to their income information held by IRD throughout the year, rather than having to wait until after the pre-populated account is issued at the end of the year. *(EY)*

Inland Revenue should issue clear guidance around how individuals can make such changes from a practical perspective. *(EY)*

There will be a number of situations where income information Inland Revenue holds on an individual will not be complete or correct. An example is joint account interest which needs to be allocated between the respective account holders. Inland Revenue needs to state that it is acceptable for individuals to make changes to the information provided by financial institutions and employers which has been used by Inland Revenue to pre-populate the individual's account. *(Olivershaw)*

Comment

Officials agree with the submitters that individuals should be able to make changes to their information held by Inland Revenue during the year. The system design allows for this. This matter can be dealt with operationally and does not require legislative change.

Inland Revenue will communicate with individuals to make sure they are made as aware as possible of the changes and what to expect and do. This will include guidance on how to make changes to the income information that has been pre-populated and make it clear that Inland Revenue expects some individuals to make changes. Inland Revenue will also set out in its information the types of situations that may require individuals to change their income information details.

Recommendation

That the submission be noted.

Issue: Inclusion of portfolio investment entity income that is under-taxed

Clause 21

Submission
(Financial Services Council, EY)

The submitters recommend that reportable income should include portfolio investment entity (PIE) taxable income where the PIE income has been taxed at a prescribed investor rate (PIR) that is too low.

Comment

The amount of the income tax withheld by a PIE on the taxable income earned by an investor is generally treated as a final tax (excluded income). Where this is the case, the investor is not required to include such income in their annual tax return. Where, however, the investor has used a PIR that is too low, the PIE taxable income is treated as taxable income of the investor that must be returned in their annual tax return so that it can be taxed at the marginal tax rate of the investor. The onus is currently on the investor to include such income in their tax return.

The meaning of reportable income includes that the information on the income must be provided to the Commissioner by 31 May. While some PIEs will report by 15 May, PIEs that are a superannuation fund or retirement savings scheme are not required to provide their investor income information until 30 June and in some cases even later. There are more than two million members of KiwiSaver schemes whose PIE income information will therefore not

be available on a timely basis to be checked to determine if it needs to be included in an individual's income tax assessment.

Including only non-locked in PIE income as reportable income is likely to be confusing for customers especially for those with both locked-in and non-locked investments. Investors in locked-in schemes such as KiwiSaver need to have certainty about their obligation to check their PIR is correct.

Inland Revenue does intend to include under-taxed PIE income in peoples' tax information to the extent that this is known in time as part of the end of year process. However, due to the timing of the information requirements for locked-in PIEs, officials do not agree that PIE taxable income that has been taxed at a rate lower than the correct rate under the PIE rules, should be included as reportable income in the proposed new rules.

Recommendation

That the submission be declined.

Issue: Assisting individuals to use the most appropriate tax code

Clauses 28 and 30

Submission
(CPA Australia)

The submitter supports the proposal for Inland Revenue to assist individuals to use the most appropriate tax code during the income tax year, particularly where the individual has secondary or irregular sources of income. They consider this will improve individuals' perception that they are being taxed appropriately and fairly as they earn throughout the year. It can also avoid the individual's exposure to a balancing payment due at year end.

Recommendation

That the submission be noted.

Issue: Incorporating use of resident withholding tax rate in new section 25A

Clause 30

Submission
(Financial Services Council, ANZ, Corporate Taxpayers Group, Deloitte, EY)

The submitters felt that new section 25A, which deals with the use of unsuitable resident withholding tax (RWT) rates, should incorporate previous section 25A(3). The previous section provides that a payer must use the RWT rate provided by the Commissioner in relation to a person as soon as reasonably practicable after the date of notification. The section also provides that if a person subsequently notifies the payer of a different RWT rate, the payer must apply the rate notified by the person.

Comment

Officials agree with submitters that proposed section 25A should incorporate existing section 25A(3) to clarify that payers will still have a reasonable period of time to make tax rate changes after they have been notified of them.

Recommendation

That the submission be accepted.

Issue: RWT tax rate changes

Clause 30

Submission
(Financial Services Council)

Inland Revenue needs to issue guidance on how often it expects RWT rate change instructions to be issued and it needs to consult with payers of RWT on the practicalities in preparing this guidance to reduce the compliance burden on RWT payers.

Comment

Inland Revenue is working with investment income payers and industry bodies as part of the implementation of the investment income changes in the recently enacted Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018, and will continue to work with these parties to determine the appropriate operational guidelines for issuing RWT rate change instructions. Guidance will be prepared regarding these changes and made available to investment income payers.

Recommendation

That the submission be accepted.

Issue: Application of change in tax code

Clauses 28 and 30

Submission
(EY)

The submitter considers that Inland Revenue should make it clear how an individual must consent to a change in tax code recommended by the Commissioner. If the change is consented to and the tax is underpaid, it should be collected over time rather than as a lump sum. The submitter also considers that the legislation should clarify that any recommended change in the tax code would apply on a prospective basis only.

Comment

Officials consider that the way in which a person consents to a change in tax code recommended by the Commissioner is an operational matter. Where the Commissioner recommends a change in tax code for a taxpayer, the Commissioner will make it clear to the taxpayer what they need to do to consent to the change.

Where a taxpayer consents to a change in tax code and the tax is underpaid, they must square up their tax position at the end of the year. This ensures that the treatment of taxpayers in this situation is consistent with other individuals, who will receive an automatic refund or amount of tax to pay if a square up is required. It is noted that a taxpayer will have until terminal tax date to pay any tax owing and that there are mechanisms already available to deal with situations of taxpayer hardship.

Officials accept the submission that the legislation should clarify that any recommended change in a tax code would apply on a prospective basis only.

Recommendation

That the submission be declined in respect of the first two points. Officials recommend accepting the submission that a recommended change in tax code apply on a prospective basis only.

Issue: Interest and penalties following change to RWT rate

Clause 30

Submission
(EY)

The submitter considers that where the Commissioner notifies a payer of a change in RWT rate due to the payee not objecting to the change within 20 working days, the payee should not be subject to any interest or penalties that have arisen due to the Commissioner recommending a rate that is too low for the individual's specific circumstances.

Comment

Officials note that they are recommending changes so that a potentially unsuitable RWT rate will only be changed where the payee consents to the change (as set out in *Obtaining consent to change unsuitable RWT rates)*. Officials disagree that interest and penalties should not apply where the Commissioner notifies a payer to change a taxpayer's RWT rate that the payee has chosen to accept the change. Officials consider it adequate that the payee (taxpayer) will have until terminal tax date to pay any tax that is due before penalties and interest would potentially apply.

Recommendation

That the submission be declined.

Issue: Applying RWT changes to joint accounts

Clause 30

Submission
(EY)

Inland Revenue should consult with payers of resident withholding tax (RWT) on how these RWT changes should be applied to joint accounts.

Comment

Inland Revenue is in on-going consultation with payers of RWT on the investment income changes enacted in March 2018, and will discuss rate changes as part of this consultation.

Recommendation

That the submission be noted.

Issue: Updated prescribed investor rates for default KiwiSaver members

Submission
(Financial Services Council)

Inland Revenue should also be required to provide fund managers with updated prescribed investor rate (PIR) rates for default KiwiSaver members where it has income information that indicates their PIR should be lower, by 31 July each year. As tax withheld by a PIE is generally a final tax, this would ensure KiwiSaver members were not overtaxed.

Comment

Once Inland Revenue starts to receive more frequent employment and investment income information, Inland Revenue will be able to proactively advise fund managers of the appropriate PIR for their investors, based on the information Inland Revenue has available. Section HM 60(5) of the Income Tax Act 2007 allows the Commissioner to do this. Officials do not, however, support requiring the Commissioner to provide PIRs by 31 July each year. For taxpayers who have not provided the required tax information or who have an extension of time arrangement for filing their tax return, the PIR determined by Inland Revenue may not always be accurate.

Recommendation

That the submission be noted.

Issue: Obtaining consent to change unsuitable RWT rates

Clause 30

Submission
(KPMG, Chartered Accountants Australia and New Zealand)

Inland Revenue should require consent from individuals who it considers are using an unsuitable tax rate to instruct a payer to change their withholding rate. This will ensure that investment income and employment income are treated consistently under the proposals.

Comment

Officials accept that having different treatments of rate change requests could cause confusion and that it is therefore preferable that both PAYE and RWT rate change suggestions should only be actioned where the recipient has consented to the change.

Recommendation

That the submission be accepted.

Issue: Commissioner of Inland Revenue to recommend the use of a tailored tax code

Clauses 27 and 28

Submission
(Accountants and Tax Agents Institute of New Zealand)

The submitter supports the proposals in respect of simplifying the process of applying for a tailored tax code. They note that enabling the Commissioner to recommend a tailored tax code for an employee should significantly improve the numbers of taxpayers paying the right tax from the outset.

Comment

Officials acknowledge the general support for the proposals.

Recommendation

That the submission be noted.

Issue: Inland Revenue's ability to cope with increased applications for tailored tax codes

Clauses 27 and 28

Submission
(Accountants and Tax Agents Institute of New Zealand)

The submitter notes that the number of applications for tailored tax codes will be substantial and is concerned that Inland Revenue may not have the capacity to meet the demand.

Comment

As part of the proposals on tailored tax codes, not only are Inland Revenue simplifying the application process for a tailored tax code, but will also monitor changes in a person's earnings and proactively recommend tailored tax codes where applicable. As the system is set up to recommend tailored tax codes by design, this will ensure the system works as efficiently as possible. That said, Inland Revenue is planning for the implementation of the proposed changes and has accounted for the resourcing requirements necessary to address the increased level of contact with taxpayers. Suggestions to people that they may benefit from using tailored tax codes will be made in stages to ensure there are sufficient resources available with suggestions being made to the individuals that it is apparent will derive the most benefit first.

Recommendation

That the submission be noted.

Issue: Using tailored tax codes to collect underpaid tax from prior years

Clauses 27 and 28

Submission
(Accountants and Tax Agents Institute of New Zealand)

The submitter recommends using tailored tax codes to collect underpaid tax from prior income years. In the submitter's view, this would make it easier for low-income earners to repay any arrears of tax and would be preferable to the use of a deduction notice from a privacy perspective.

Comment

Officials have not proposed using tailored tax codes to collect underpaid tax from prior income years at this stage, and note that a number of other debt collection models are available. Officials also note that the tailored tax code regime is voluntary. As taxpayers are best placed to know whether their current pattern of earnings will continue, Inland Revenue will only notify an employer of an employee's tailored tax code where the employee consents to the recommendation. As the tailored tax code regime is voluntary in nature, officials do not consider it to be an appropriate mechanism to collect underpaid tax from prior income years at this stage.

Recommendation

That the submission be declined.

Issue: Not using tailored tax codes to square up for the year

Clauses 27 and 28

Submission
(PwC)

The submitter recommends that a change in tax code (to either a more suitable tax code or tailored tax code) is used not to ensure there is a "square up" at year end, but to ensure that the most appropriate rate or code is used from a specific point in time. This would minimise any changes required in subsequent tax years and place less of an administrative burden on employers.

Comment

One of the key objectives behind these proposals is to ensure that taxpayers pay about the right amount of tax during the year and are not left with a tax bill or refund at year end. It follows that, where possible, a tax code should be used to ensure about the right amount of tax has been paid by year end. Officials do note that, in some instances, a "square up" may not be possible for hardship reasons. For example, where a taxpayer has underpaid tax and a tailored tax code is implemented near the end of the tax year, there may not be enough pay periods left to "claw" that tax back without placing the taxpayer into hardship. Inland Revenue will discuss this with taxpayers and take this into account when setting a tailored tax code.

Recommendation

That the submission be declined.

Issue: Lack of understanding of tailored tax codes

Clauses 27 and 28

Submission
(CPA Australia)

The submitter considers that a taxpayer's lack of understanding as to how a tailored tax code will benefit them will remain the same under the proposed changes.

Comment

Inland Revenue will be communicating with taxpayers to make sure they are made aware of the changes and what to expect. Information on the new tailored tax code processes will be an important part of this. It is also noted that, by virtue of Inland Revenue recommending tailored tax codes to individuals who may benefit from them, more people will learn about the benefits of tailored tax codes.

Recommendation

That the submission be noted.

Issue: The process for consenting to a tailored tax code

Clauses 27 and 28

Submission
(EY)

The submitter's view is that Inland Revenue should make it clear how an individual must consent to a tailored tax code recommended by the Commissioner. In particular, does the employee need to complete the online or manual tailored tax code application process?

Comment

Officials consider this an operational matter. Where the Commissioner recommends a tailored tax for a taxpayer, the Commissioner will make it clear to the taxpayer what the taxpayer needs to do to consent to this recommendation.

Recommendation

That the submission be noted.

Issue: Treatment of tax payable following application of a tailored tax code

Clauses 27 and 28

Submission
(EY)

Any substantial tax payable for the tax year as a result of the Commissioner recommending a tailored tax code that is too low should be taken into account on future coding rather than collected as a lump sum payment.

Comment

Inland Revenue will continue to monitor the likely end of year tax position of taxpayers that are using tailored tax codes and will suggest changes to the tailored tax code where it is apparent that the code will put the taxpayer in a position with a substantial refund or a substantial amount of tax payable at the end of the year.

Individuals using tailored tax codes will always have to square up their tax position at the end of the year, as the tailored tax code will typically be a flat tax rate based on the estimates of income made at the time the tailored tax code was proposed. Where they still have tax to pay a taxpayer will have until the terminal tax date to pay the tax owing. Where payment of the tax isn't possible by the terminal tax date the taxpayer can enter into an instalment arrangement with Inland Revenue. Officials consider that the measures currently available to a taxpayer where a payment of tax will put the taxpayer into a position of hardship are adequate, and that the treatment of tax to pay in these circumstances should remain unchanged.

Recommendation

That the submission be declined.

Issue: Extending the assessment period

Clause 21

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

Proposed section 22I of the Tax Administration Act 1994 defines the "assessment period" during which Inland Revenue intends processing returns as either the period from 1 April to 7 July or the due date for filing a tax return where a person has an extension of time arrangement. The submitters recommend that the 7 July date should be replaced by 28 August. This represents the due date for the first instalment of provisional tax for a standard balance date taxpayer, and would give Inland Revenue more time to complete the assessment process for the 750,000 taxpayers this would apply to.

Comment

Officials note that the rules around the information that taxpayers are required to provide are not changing except to the extent that Inland Revenue is able to pre-populate more income information for taxpayers. There are no additional information requirements on individual taxpayers that would suggest that additional time is required.

Any consideration of changes to due dates also needs to take the extension of time rules into account. These rules allow taxpayers with tax agents until the 31st of March in the following year to file their tax returns. These rules are a concession to the normal 7 July filing date and mean that tax agents that are preparing a larger number of tax returns can spread their workload across the year.

Changing the due date for tax return filing to 28 August could create a significant compliance burden as it would mean that taxpayers might be required to file their income tax return, file a GST return, pay the GST, and pay their provisional tax on the same day. As such, it would be inappropriate to make such a change without consulting on it.

During consultation on the individuals' income tax proposals, officials were told about taxpayers that began their tax return preparation only a few days before the due date being under stress. Officials note this but consider that it is likely that these people would still begin their tax return preparation a few days before the due date even if there was a later due date. As such, changing the due date would be unlikely to resolve this issue.

Due to these factors, officials disagree with changing the date for filing information to 28 August at this point in time. During discussions with officials, the specialist advisor to the Committee expressed concern that if there were issues with Inland Revenue's computer systems, people may not be able to file their tax information by the due date. Rather than shifting the due date to a later fixed date, officials propose that the Commissioner give a proportionate extension of time to people or classes of people that have been disadvantaged or unable to file their tax information due to Inland Revenue system issues. The specialist advisor was involved in discussions over the appropriate solution and agrees with the proposed solution. Officials also recommend allowing for errors on assessments that have been automatically calculated by the Commissioner of Inland Revenue to be corrected up to the terminal tax date (7 February of

the following year) without interest or penalties (unless the taxpayer is in the provisional tax regime).

Recommendation

That the submission be declined, but that the alternative suggestion developed with the specialist advisor be accepted.

Issue: The year-end tax obligations of individuals

Clause 21

Submission
(PwC)

Once a pre-populated account is complete, the taxpayer should receive automatic notification of this and the assessment period. This would enable taxpayers to ensure that the information is correct and make any changes, if necessary. If the taxpayer does not respond, the Commissioner should assess the return.

Comment

Officials disagree with the submission. For individuals that only earn reportable income and for whom Inland Revenue judges that the information it holds is correct, Inland Revenue will automatically issue the relevant refund or tax bill. If it turns out that the individual needed to make an amendment to their return, officials recommend that they will have until the terminal tax date to do so without penalties or interest being imposed. This will enable Inland Revenue to pay out tax refunds as soon as possible.

Recommendation

That the submission be declined.

Issue: Pre-population of investment income

Clause 21

Submission
(Chartered Accountants Australia and New Zealand)

Procedures will need to be put in place to promptly process annual investment income for the year ended 31 March 2019. Individuals' pre-populated accounts for the tax year ended 31 March 2019 will be incomplete. Investment income information is currently only collected at year-end and individuals' accounts are not populated with this information. Inland Revenue will need to implement procedures to process the 31 March 2019 investment year-end information. The information must be processed in a timely manner.

Comment

The Government recently enacted an amendment to move forward the due date for interest income information from 31 May to 15 May, and the amendment applies from the 2018–19 tax year. Inland Revenue's systems are being designed to upload this interest income information received by 15 May and pre-populate the individual's account with this information. This annual process will run for both the 2018–19 and 2019–20 tax years until investment income is received on a monthly basis from 1 April 2020.

Inland Revenue will not have dividend and/or Māori authority taxable distribution income until the 2020–21 tax year. In the interim, individuals will need to provide this information to Inland Revenue. Inland Revenue's communication material will ensure that people are aware of this obligation. There is a current requirement to provide investment income information in certain circumstances as part of the personal tax summary process.

Recommendation

That the submission be noted.

Issue: Year-end income tax obligations of individuals – interactions with tax agents

Clauses 5(3), (21), (25) (26), (37), (43), (49)(60–62) 21, 69, 70 and 102

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Ltd)

The submitters suggest that if a taxpayer is linked to a tax agent or other organisation, then unless otherwise noted, all correspondence should be through the tax agent. The submitters note that their members have experienced frustration and unnecessary compliance costs as a result of a combination of incorrect, sometimes confusing and often duplicate communications between Inland Revenue and clients. They are concerned that these issues will be compounded with the new year-end income tax obligations for individuals.

Comment

Inland Revenue is aware of the concerns being expressed by the submitters and is currently working on solutions to address the problems. It is Inland Revenue's intention that if a taxpayer is linked to a tax agent for a tax product, all communication relating to that taxpayer and tax product will be provided direct to the agent.

Inland Revenue will still communicate directly with taxpayers in relation to some of its campaigns such as making employers aware that mandatory payday filing starts from 1 April 2019.

Recommendation

That the submission be noted.

Issue: Definition of reportable income

Clause 21

Submission
(Matter raised by officials)

Proposed new section 22D contains a meaning of reportable income which is limited to the individual whose IRD number (tax file number) has been provided to the payer of the employment income and/or investment income. This means that in the situation of joint bank accounts or other income derived jointly where the IRD number of the joint holder(s) is not provided by the payer, the income is not treated as reportable income. To ensure that the write-off of tax payable rules apply where reportable income has been allocated to a joint account holder in this situation, the meaning of reportable income for the purposes of the write-off rules needs to include reportable income that has been allocated to the joint account holder.

Recommendation

That the submission be accepted.

Issue: Date by which accounts must be pre-populated

Clause 21

Submission
(EY)

The Tax Administration Act 1994 should specify the date by which IRD must issue pre-populated accounts to individuals.

Comment

Officials disagree with the submission. Including a specified date in legislation by which information will be pre-populated is unnecessary as the system design means Inland Revenue will pre-populate the information as soon as possible after receiving it (typically within a day of receiving the information where the information provided includes the recipient's IRD number). The pre-population of information will also be brought closer to the end of the tax year once Inland Revenue begins to receive investment income information on a monthly basis (that is, for the tax year ending 31 March 2021), as the necessary information will be available sooner.

To the extent that there are delays in the process, Inland Revenue can reasonably expect to have an increasing level of contact from individuals that expect tax refunds. This would put pressure on Inland Revenue's call centres and therefore provides additional motivation for Inland Revenue to complete the pre-population process as soon as possible after the end of the tax year.

Recommendation

That the submission be declined.

Issue: Assessment period

Clause 21

Submission
(Matter raised by officials)

Proposed new section 22I(3) provides that the assessment period for the new individuals rules is the period starting on 1 April after the end of the tax year to which the assessment applies and ends on the later of 7 July or a later date if the person has an extension of time to file a return.

This period provides some flexibility around when an individual is able to review the information in their pre-populated account and make any changes and/or confirm that it is correct and complete and hence becomes an assessment. Officials consider that an assessment period is not required due to other changes being recommended which make this provision redundant.

Comment

The assessment period adds complexity in understanding and administering the rules. The purpose of the period was to allow an individual time to review and add any additional information (or make changes) before it became an assessment. This ensured that the individual was not subject to use-of-money interest on any changes made during the assessment period.

Individuals subject to these rules will be required to provide any additional information or make changes to their pre-populated account by 7 July, unless they have an extension of time to provide that information.

Officials recommend that use-of-money interest does not apply if an assessment for a person that the Commissioner has treated as earning solely reportable income is amended before the terminal tax date (unless they are subject to the provisional tax regime). Use-of-money interest and late payment penalties will apply from the date of the terminal tax date if any tax payable is not paid.

These proposed changes mean that it is unnecessary to have the assessment period and officials therefore recommend that it is removed.

Recommendation

That the submission be accepted.

Issue: Assessment period for taxpayers with an extension of time arrangement

Clause 21

Submission
(EY)

The legislation should specify:

- the end of the assessment period for an individual who has an extension of time to file a return of income under section 37 of the Tax Administration Act 1994; and
- whether taxpayers will be able to link with a tax agent post 7 July to file additional information within the extended assessment period for tax agents.

Comment

The assessment period was intended to provide flexibility for taxpayers and the Commissioner to show, adjust and confirm tax information and is linked to section 37 of the Tax Administration Act 1994 which sets out due dates for filing returns and the extension of time rules. Officials are concerned that the assessment period provisions as currently drafted may in fact limit the ability to amend a return after the end of the assessment period and consider that it would be clearer to replace the assessment period with a due date. This has been set out in the *Assessment period* section above and deals with the points raised by the submitter.

Recommendation

That the submission be declined.

Issue: Notification of amendment to information

Clause 21

Submission
(Matter raised by officials)

Proposed new section 22H deals with amending an account for incorrect information. Proposed new subsection (2) provides that Inland Revenue may amend information in an individual's pre-populated account or adjusted account to correct errors in the information. For example, an employer may correct employment income information that has already been pre-populated which Inland Revenue updates to the individual's account. The provision as drafted requires Inland Revenue to immediately notify the individual of the amendment.

Officials consider the requirement to immediately notify is not needed and that the requirement should simply be to notify the individual. The person will be notified of the amendment as a consequence and as part of the process of making the amendment.

Recommendation

That the submission be accepted.

Issue: Zero pre-populated accounts

Clause 21

Submission
(EY)

The legislation should state whether there is a requirement on the Commissioner to issue zero pre-populated accounts to individuals or to notify individuals that they have a zero pre-populated account.

Comment

Where an individual has not had any reportable income information reported to Inland Revenue and they are not expected to have other income, no tax calculation will be prepared. If they do earn any other income and that income is above the reporting requirement threshold, they will still be required to report that other income to Inland Revenue. The zero pre-populated account concept was intended to provide individuals with a place to report any other income, however, officials accept that this should be clarified.

Officials do not agree that individuals should be notified that they have a zero pre-populated account where there is no expectation that they have any tax obligation. For example, if a young child was given an IRD number as part of the birth registration process, there is little point in Inland Revenue communicating with that child each year until they begin earning taxable income.

Recommendation

That the submission be declined.

Issue: Issuing notification within assessment period

Clause 21

Submission
(EY)

The Commissioner should be required to notify an individual that she is satisfied that the information in their account is correct, or issue a default assessment within the assessment period.

Comment

Where the Commissioner is satisfied with the information in the taxpayer's account, the Commissioner will issue the assessment and where appropriate the refund or tax bill to pay. The taxpayer is required to be notified of the assessment.

Where the Commissioner believes the taxpayer may want or need to provide information, the Commissioner will prompt the taxpayer to do so. The taxpayer will be advised of the completion of the assessment once that information is provided. Where the information is not provided, the Commissioner will determine the next steps depending on the type of information that might have been expected and might either make further requests for information, choose to complete the assessment based on the information already held or might make a default assessment. In each of these scenarios, the Commissioner will either ask the taxpayer for further information or notify them of the assessment.

The proposed removal of the assessment period set out in the officials' submission means that there would not be a need for concept of providing the communication or notification within the assessment period. Instead, it is expected that the Commissioner will trigger a communication such as an information request or a notification of an assessment as decision points are reached and there is a requirement to notify the taxpayer when an assessment has occurred.

Recommendation

That the submission be declined.

Issue: Groups of taxpayers

Clause 21

Submission
(EY)

There should only be two groups of taxpayers; Group A and Group B. Should Group C be retained, Inland Revenue should clearly state the criteria used to assign a taxpayer to Group A, B or C. Tax agents should be able to signal to Inland Revenue what group their client will fall in.

Comment

The groups described in the *Commentary* have no official standing and are not part of the legislative proposals. The use of the groups in the *Commentary* was intended purely to illustrate how the Commissioner would interact with different types of taxpayers. Inland Revenue needs to make operational decisions about how to interact with different taxpayers, and business rules will be used to differentiate between types of taxpayers and to cause those interactions to happen. All of the interactions will occur within the framework set out by the legislation.

Officials consider it appropriate the Commissioner follows different courses of action for taxpayers where she thinks she has almost all of the likely information (described in the *Commentary* as Group B) than she might follow for taxpayers where she has little or no information and she has an expectation that she will be provided with significant information (described in the *Commentary* as Group C).

Taxpayers will be able to advise Inland Revenue if they have other information to provide before or soon after the end of the year to ensure that they are not automatically calculated based solely on the information the Commissioner holds. The system design will enable taxpayers to notify Inland Revenue of this online as well as by other means.

Recommendation

That the submission be declined.

Issue: Taxpayers should not be unduly prevented from making changes to their accounts

Clause 21

Submission

(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Ltd, KPMG)

Proposed section 22H enables the Commissioner to make revisions to a taxpayer's account when she has been provided with incorrect information regarding the taxpayer. Under proposed section 22H(4), a taxpayer may request an amendment to their final account under section 113 of the Tax Administration Act 1994. However, the Commissioner's power under section 113 to amend an assessment is discretionary. It is not appropriate that taxpayers should need to rely on the Commissioner's discretion to correct assessments. *(Accountants and Tax Agents Institute of New Zealand)*

Amending incorrect assessments issued by Inland Revenue is essentially at the discretion of the Commissioner using her powers under section 113 of the Tax Administration Act 1994. This seems to underestimate the importance of a transparent and fair tax disputes process. *(Baucher Consulting Ltd)*

It is likely that corrections will need to be made. These may simply be a result of a taxpayer being unengaged, or because Inland Revenue does not have all the information. *(KPMG)*

The existing amendment process is likely to be confusing for individuals without experience of the tax system. Further, in our view, they do not provide clear rights for taxpayers to correct the position. (For example, Inland Revenue can decline to exercise its ability to amend an assessment under section 113 of the Tax Administration Act 1994 despite, in our view, the clear incorrectness of the assessment). *(KPMG)*

Comment

Officials agree that the legislation should more explicitly set out the ability for an individual to amend their account post-assessment and that if an individual whose assessment has been automatically calculated by the Commissioner of Inland Revenue does this after the assessment but prior to the terminal tax date, they will not be subject to penalties or interest (unless they are subject to the provisional tax regime). This would apply even if the auto-calculation resulted in a refund being paid to the taxpayer and their account is subsequently adjusted resulting in tax to pay. However, there should still be a restriction in the cases where the Commissioner has reason to believe that the amended information is incorrect. This provision effectively allows a grace period for taxpayers to amend any information and recognises that there is no tax due until the terminal tax date (which for individuals is generally 7 February).

For amendments after the terminal tax date, an individual may ask the Commissioner to amend information under section 113. Section 113 of the Tax Administration Act provides for the Commissioner to amend an assessment as she deems necessary in order to ensure its correctness, notwithstanding that tax already assessed may have been paid.

The submitters consider that the current discretionary power for the Commissioner to amend a final assessment is not appropriate. Officials agree that this provision should also reflect that the Commissioner should only decline a revision if she has reason to believe the revised information provided is wrong.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Inland Revenue needs to be able and willing to correct errors in the information it has quickly

Clause 21

Submission
(Olivershaw)

Making this new process work requires withholding taxes to be as accurate as possible and that Inland Revenue is able and willing to correct errors in the information it has quickly – such errors reflecting the diversity and complexity inherent in how people manage their individual affairs.

Further, it is unclear how Inland Revenue will react when taxpayers seek to make changes to information supplied by financial institutions. There are many reasons why interest supplied by a financial institution is not what the taxpayer should return.

Comment

There are several provisions for amending information, depending on who identifies the error (the Commissioner or the individual) and at what stage of the assessment process the error is identified.

Individual taxpayers will be able to access their account and make amendments to information on their income. If income has been reported from a financial institution and the individual considers it does not correctly reflect their taxable income, they will be able to update that income with the correct amount. Guidance will be provided on how to make these amendments and reflecting that there are a number of situations where the Commissioner would expect the information to need to be amended.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Error correction after an assessment is made – voluntary disclosure process

Clause 21

Submission
(EY)

There needs to be a simpler mechanism than the section 113 process for individuals to correct errors in their final account once an assessment has been made. For example, correction via myIR or by telephone.

Many taxpayers, especially those without tax agents, are unlikely to be aware of the section 113 process and may find making a section 113 request to be both challenging and time consuming. This could result in many errors not being corrected.

Comment

Officials consider that the proposed amendment to allow individuals whose assessment has been automatically calculated by the Commissioner of Inland Revenue to correct errors prior to the terminal tax date will enable a straightforward process. The taxpayer will have the right to make the amendment unless the Commissioner considers that incorrect information is being provided.

Individuals who wish to make a correction after the terminal tax date will still be required to follow the usual process for amending an assessment. Inland Revenue will ensure information on the process for correcting errors is available in guidance and on the website.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Taxpayers should be automatically allowed to amend an automatically calculated assessment

Clause 21

Submission
(KPMG)

The error correction provision should also allow a taxpayer the automatic ability to correct an assessment.

A taxpayer's ability to amend an assessment through the section 113 process is not absolute. The Commissioner considers that this provision provides her with the discretion to amend an assessment. She is not obliged to do so. Given the process that will be undertaken to issue an assessment, we consider that taxpayers should have an automatic right to have errors corrected.

Comment

Officials consider that the Commissioner should accept and amend an assessment if requested by an individual whose assessment has been automatically calculated by the Commissioner. As mentioned in the section, *Taxpayers should not be unduly prevented from making changes to their accounts*, officials agree that the legislation should more explicitly set out the ability for an individual to amend their account post-assessment. However, this should be subject to the restriction in the cases where the Commissioner has reason to believe that the amended information is incorrect.

Recommendation

That the submission be accepted.

Issue: Grace period for penalties/interest if taxpayer was automatically assessed

Clause 21

Submission
(Olivershaw, KPMG, Chartered Accountants Australia and New Zealand, EY)

A taxpayer is subject to penalties if an assessment is incorrect. For an expectedly large number of individuals, Inland Revenue will be making an assessment based on the information it has. In our view, taxpayers in that position should not be subject to penalties. (We acknowledge that if the information provided to a taxpayer in their pre-populated income tax account is clear and comprehensive there is a case for penalties being applied.) We submit that penalties should only apply to assessments generated by Inland Revenue in more narrowly defined circumstances. *(KPMG)*

Where Inland Revenue has automatically issued a notice, taxpayers should be given a period of time – at a minimum of four months – to make adjustments with no penalty or use-of-money interest charges. *(Olivershaw)*

Penalties should not be imposed when a refund is issued automatically and a taxpayer subsequently seeks to have the assessment adjusted by including non-reportable income. *(Chartered Accountants Australia and New Zealand)*

There needs to be a mechanism to deal with taxpayers in debt following receipt of automatic refunds they were not entitled to due to income not being accounted for in the pre-populated account. *(EY)*

Comment

Time to make adjustments following an auto-assessment

Officials agree that the legislation should more explicitly set out the ability for an individual to amend their account post-assessment and that if an individual who has had an auto-assessment does this prior to the terminal tax date they will not be subject to penalties or interest (unless they are subject to the provisional tax regime). This would apply even if the auto-calculation resulted in a refund being paid to the taxpayer and their account is subsequently adjusted

resulting in tax to pay. There would be a restriction in the cases where the Commissioner has reason to believe that the amended information being provided is incorrect. This proposal effectively allows a grace period for taxpayers to amend any information and recognises that there is no tax due until the terminal tax date (generally for individuals 7 February).

Penalties following Inland Revenue generated assessments

If an individual's assessment is found to be incorrect and they did not comply with their obligations under section 22F(1) to provide information on other income, or section 22F(2) which relates to "reportable income" information not included in their pre-populated account that they knew or might have been reasonably expected to know was incorrect and they did not amend the assessment before the terminal tax date, they could be subject to interest and penalties such as shortfall penalties.

Recommendation

That the submission be noted.

Issue: Ability to amend where no information is pre-populated

Clause 21

Submission
(KPMG)

New section 22H requires incorrect information to have been provided to the Commissioner before an error can be corrected. The provision should allow amendments to be made if no information is provided. It is likely that errors will arise because no information has been provided to the Commissioner. (See her ability to decide for Group A individuals for example.) New section 22H may technically limit her and a taxpayer's ability to correct assessments.

Comment

It is intended that individuals be able to make amendments to their pre-populated accounts regardless of whether the account is pre-populated with income information or not. Officials agree that the drafting should ensure individuals have an ability to amend an account that doesn't contain any information and provide information.

Recommendation

That the submission be accepted.

Issue: Process for determining if auto-calculation

Clause 21

Submission
(KPMG)

For Group A individuals, their pre-populated account will automatically become a self-assessment where Inland Revenue is satisfied that the information is complete and correct. This is without any taxpayer interaction. There is no guidance given, either in the Bill or the accompanying *Commentary*, on when the Commissioner will consider this to be the case, and the consequences if she is wrong. That is, how will the Commissioner be able to adequately discharge this responsibility, as she will effectively be deeming the individual's tax position to be correct (in effect this is a Commissioner assessment, not a self-assessment)?

The process that will be followed by the Commissioner in determining whether an individual is in Group A should be clearly communicated, as well as the recourse available to the taxpayer if Inland Revenue makes an error.

Comment

The Commissioner will determine whether the individual should have their tax position automatically calculated based on information held about the individual. For example, if information held for prior years indicates that the individual only earns reportable income and the Commissioner has no reason to believe that this is not the case for the current tax year. Individuals will be able to access their information through myIR and will also be able to inform Inland Revenue that they expect to begin earning other income so that their tax position isn't incorrectly automatically calculated. The Commissioner will use the pre-populated account to create an assessment once she is satisfied the information in the account is complete and correct.

Taxpayers have an obligation to provide information on income that isn't covered as reportable income. Under proposed section 22F, an individual is obliged to provide information on "other income" (section 22F(1)) and also to provide information on "reportable income" which is not included in the pre-populated account if the individual knows, or might reasonably be expected to have known, that the amount should properly be included in the final account for the year (section 22F(2)).

If the Commissioner issues an auto-assessment for an individual which subsequently turns out to be wrong, and the individual did not amend their assessment by the terminal tax date the individual may be liable for penalties and use-of-money interest on any unpaid tax.

The legislation provides for the individual to make amendments to an assessment – this includes if the assessment was made automatically by the Commissioner. Officials propose amendments to the draft Bill to ensure that individuals whose assessments have been automatically calculated by the Commissioner of Inland Revenue may make changes to their assessment at any time before the terminal tax date without being charged interest (unless they are subject to the provisional tax regime) or penalties (see prior section *Taxpayers should not be unduly prevented from making changes to their accounts*).

If the taxpayer considers that the automatic assessment is wrong after the terminal tax date, there are existing avenues open to the taxpayer to provide a voluntary disclosure or dispute the assessment if they consider it was incorrectly calculated.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: The Commissioner should have to apply the disputes rules to amend post-assessment

Clause 21

Submission
(KPMG)

The Commissioner should not be able to simply amend an assessment and should be required to apply the disputes rules before amending post-assessment.

The Commissioner is entitled, by new section 22H(3), to simply correct errors provided the individual is notified. In the absence of this provision, the Commissioner would be required to either have an agreed adjustment or issue a notice of proposed adjustment to commence the disputes process with a taxpayer. We can see no reason, if the Commissioner's process to issue an assessment based on information provided to her is robust, why the same requirements should not apply for individuals subject to the new process.

Comment

Officials agree that the ability for the Commissioner to amend information post-assessment should generally be subject to the procedures provided for under the disputes rules when individuals have confirmed their accounts under proposed new section 22G.

Applying these processes would mean that if the Commissioner wishes to make an adjustment to a position post-assessment, she will be required to send the taxpayer a notice of proposed adjustment outlining the proposed adjustments and the reasons for the adjustment. The taxpayer may either accept the proposed adjustment or send a notice of response.

However, in the case of an assessment which has arisen following an automatic calculation, officials consider that the Commissioner should be able to correct errors in line with time bar provisions in section 108. Section 108(1) restricts Inland Revenue from amending a return if four years have passed since the end of the tax year in which the return was filed. However, this does not apply where the return is fraudulent, wilfully misleading, or omits all mention of income of a particular nature or derived from a particular source. Officials note that the Commissioner doesn't currently have to issue a notice of proposed adjustment to amend a personal tax summary.

Section 89C(l) provides that the Commissioner is not required to issue a notice of proposed adjustment before the Commissioner makes an assessment if the assessment results from an amendment made under section 22H. Section 22H requires the Commissioner to notify the individual. Officials consider this is appropriate for pre-assessment errors. However, if the Commissioner seeks to amend post-assessment under proposed section 22H(3), she should be required to issue a notice of proposed adjustment for assessments which individuals have confirmed under proposed new section 22G.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Inland Revenue should issue clear guidance for disputes process

Submission
(EY)

We recommend IRD releases clear guidance around the process for a taxpayer (or their agent) to dispute IRD assessments, escalate disputes or submit additional information.

For example, how will amendments to reported income be made (such as shadow payroll over-reporting for tax equalised taxpayers) once a pre-populated account has been issued?

Comment

Officials agree that further guidance on amending assessments and the disputes process should be provided. Simple guidance on amending assessments will be included with the notification of the assessment, while more detailed guidance will be included in the *Tax Information Bulletin* if the legislation is enacted.

Inland Revenue will also have this information available on its website.

Recommendation

That the submission be accepted.

Issue: Inland Revenue should simplify the disputes process

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

The submitter suggests Inland Revenue considers revisions to the current tax disputes process to simplify its processes and enable individuals to exercise their rights to dispute an Inland Revenue decision. *(Accountants and Tax Agents Institute of New Zealand)*

The submitter suggests the Committee request that Inland Revenue investigate changes to the tax disputes system to allow fairer access to tax disputes for taxpayers. *(Baucher Consulting Limited)*

Comment

Officials are recommending changes to the proposals to give individuals whose assessment has been automatically calculated by the Commissioner of Inland Revenue the right to amend their assessment up to the terminal tax date with no penalties or interest (unless they are subject to the provisional tax regime). In addition, officials agree (as noted above) that further guidance on amending assessments and the disputes process should be provided as part of the *Tax Information Bulletin* if the legislation is enacted.

Officials note that concerns with the tax disputes process have been raised with the Tax Working Group. In the Tax Working Group's interim report, the Group "recommends that the Government establish a taxpayer advocate service to assist with the resolution of tax disputes" and the Government has expressed an interest in this recommendation.

Officials consider that the concerns raised with the disputes process will be addressed by the combination of the following; the recommended changes to make it easier for individuals to amend their automatically calculated assessment, the provision of further guidance in the *Tax Information Bulletin*, and work that arises as a result of the Tax Working Group's recommendations to the Government in relation to the process for resolving tax disputes.

Recommendation

That the submission be declined.

Issue: Knowledge offence for knowingly taking no action in relation to incorrect pre-populated account

Clause 94

Submission
(Corporate Taxpayers Group, Deloitte)

Clause 94 introduces a new knowledge offence when a person "knowingly takes no action in relation to an incorrectly pre-populated account referred to in section 22E with the result that the information about an individual's taxable income for a tax year is incorrect or incomplete". This means that a person liable under this section could face a fine of up to $25,000 for a first time offence. The submitters feel this is excessive and should not proceed.

Comment

Officials agree that clause 94 should not proceed, but note that the existing knowledge offence provisions already cover the situation where a taxpayer knowingly fails to provide income information that they are required to provide. As the knowledge offences are criminal offences they have to be taken as a prosecution through the court process. This is an expensive process and means that it is very unlikely to be applied except in the most egregious cases of failing to provide income information.

Officials also note that as the knowledge offences are subject to the court process, any resulting penalty is imposed by the Judge rather than by the Commissioner of Inland Revenue and that the Judge will take a range of factors into account in determining the level of the penalty. This means that even though the maximum penalty is significant, in reality the level of penalty imposed would be likely to be significantly lower if the amount of tax in question was low.

Recommendation

That the submission be accepted.

Issue: Automation of refunds and tax to pay

Clause 21

Submission
(CPA Australia)

The submitter supports the proposal to issue income tax refunds where Inland Revenue is satisfied they have complete and correct income-related information, without requiring any proactivity by the individual taxpayer. They believe this will reduce any current uncertainty for an individual taxpayer as to their entitlement to a refund and removes an unnecessary compliance burden on individuals with relatively simple tax affairs.

Recommendation

That the submission be noted.

Issue: Correctness of refunds or tax to pay

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

Procedures should be put in place to ensure refunds are correctly credited, and minimise any negative consequences that could arise from automatically issuing refunds. Issues identified include:

- taxpayers ending up in debt requiring further Inland Revenue action because of unreported income; and
- incorrect bank account details are held by Inland Revenue because the taxpayer has changed banks or a tax agent's bank account details are recorded.

To minimise refunds being issued incorrectly, it is suggested that Inland Revenue engage with taxpayers or their agents, if they have one, before issuing a refund. *(Chartered Accountants Australia and New Zealand)*

Getting the tax position right will not be simple for a sizable number of individuals. For example, Inland Revenue will have to judge whether an individual is likely to have cash or other non-reportable income. A notice from Inland Revenue recommending a tax code or rate change as part of pro-active action during the year is likely to be treated as correct. At the same time, Inland Revenue will consider that it must get the year-end assessment right. This means that its recommendation during the year may need to be corrected at year end if circumstances change. Its judgments, including on which taxpayers can receive an automatic refund or bill will be tested. This will put pressure on Inland Revenue's process for deciding when self-assessments are automatic. These processes have not been trialled. *(KPMG)*

Comment

Officials note that the proposed changes would replace the existing personal tax summary and tax return filing processes. Where taxpayers are currently filing IR3 returns with income information they will still be expected to provide that information and they will not be considered suitable for auto calculation. Inland Revenue will use current year income information plus previous returns and personal tax summaries to understand the income profile of the taxpayer and decide whether to automatically calculate the taxpayer's assessment.

Even though a taxpayer may have their tax position automatically calculated, they will still have an obligation to report any other income. Officials are proposing changes to allow taxpayers who have had their tax position automatically calculated to amend their assessment up to the terminal tax date without exposure to penalties or interest (unless they are subject to the provisional tax regime).

Contacting taxpayers whose tax position is being automatically calculated before issuing refunds would slow down the refund for most taxpayers. The use of good analytics to determine whether a taxpayer should have their tax position automatically calculated and the provision of an easy amendment process and clear communication when a refund is issued should limit the number of errors and enable them to be easily fixed.

Inland Revenue is working with personal tax summary intermediaries to improve the bank account information that Inland Revenue holds. This will improve Inland Revenue's ability to pay out refunds electronically. Where Inland Revenue doesn't hold appropriate bank account information for a person any refund would be paid by cheque.

Recommendation

That the submission be declined.

Issue: Enable direct credits to overseas bank accounts

Clause 98

Submission
(Deloitte)

The submitter suggests officials consider amending section 184A of the Tax Administration Act 1994 to enable automatic direct credits to overseas bank accounts where the overseas account is the primary or only account for the taxpayer. The submitter suggests this will increase the overall efficiency and automation of the tax administration system for refunds.

Comment

Under section 184A, the Commissioner of Inland Revenue must make a tax refund by direct credit into a New Zealand bank account nominated by the taxpayer. Exemptions are available where this causes undue hardship to a taxpayer or is not practicable. The section applies for tax types once an Order in Council is made specifying the application date from when the specific tax type is to be refunded by direct credit. As part of Business Transformation, this has been and is planned to continue to be timed with the transition of a tax type to Inland Revenue's new

computer platform. Taxpayers who are unable to, or for whom it is difficult to obtain a New Zealand bank account (for example, because they live overseas), can already provide the Commissioner with an overseas bank account of their resident country and receive direct credits into that account for tax types as and when they are moved to be administered from Inland Revenue's new computer platform.

For administrative cost as well as anti-money laundering and fraud identification reasons, officials consider it is not desirable to include the option of providing an overseas bank account as a standard option in section 184A. It should therefore continue as an exemption process. In many cases, taxpayers are able to provide overseas bank accounts through an online process if interacting with Inland Revenue through their online portal.

Recommendation

That the submission be declined.

Issue: Amounts of tax to pay that Inland Revenue would not seek to collect

Clauses 21 and 97

Submission
(Matter raised by officials)

Officials recommend the clarification and simplification of the rules on amounts of tax to pay that Inland Revenue will seek not to collect from individuals who only earn reportable income. The Bill currently contains write-off rules that apply to amounts of tax payable that arise where tax is withheld in accordance with the PAYE rules or withheld at the correct rate. The Bill also provides that where less than $200 of income is taxed incorrectly this does not need to be paid.

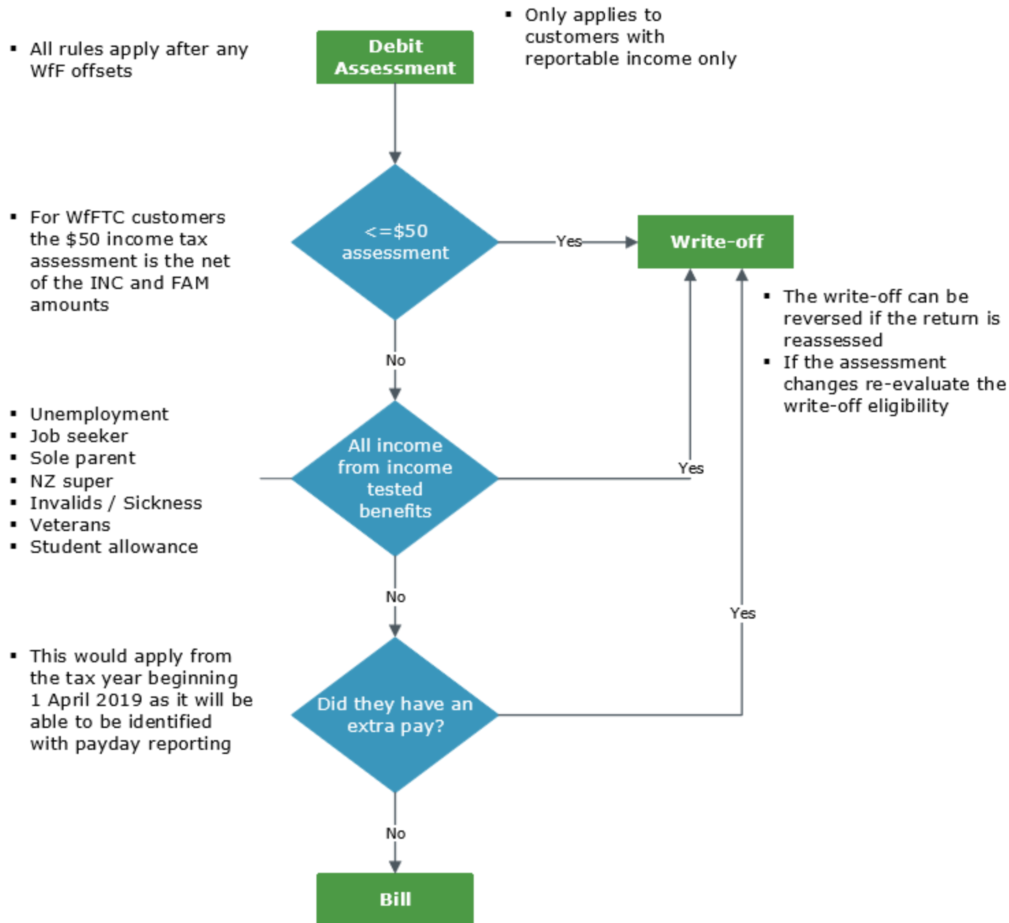
It is proposed that these write-off rules can be simplified by combining some of the rules and being more specific about others. The purpose of this submission is to provide a consolidated summary of the write-off rules as they would apply under these proposals.

There is a separation between the way in which the write-off rules apply to taxpayers in general, and the way in which they are intended to apply to individuals. Both positions are discussed in turn below, and the write-off flow chart can be used as an interpretive aid.

Write-off rules that apply to all taxpayers and tax types

Where a taxpayer is assessed as having tax payable, and that amount is not more than $20, that amount will be written off under section 174AA of the Tax Administration Act 1994. If a subsequent reassessment reduces or increases the amount of tax payable, the original $20 that was written off will remain written off and have no impact on the reassessed amount. Any subsequent amount of tax payable that arises from a reassessment will also be written off under this rule if the amount is under $20.

Proposed Write-off Rules



Exceptions to benefits and extra pay rules:

- **The Commissioner has recommended a change of tax code or rate**
- **The individual has used a tailored tax code**
- **The individual receives WfFTC**

Where a taxpayer is assessed as having tax payable that is greater than $20, this amount is required to be paid unless the taxpayer is an individual and one of the write-off rules that applies to individual's is applicable.

This is the current law and no change is proposed.

Proposed write-off rules that apply to individuals who have earnt only reportable income

An individual will be able to qualify for a write-off in the following circumstances, where, for the tax year, they have only earnt reportable income. The proposed write-offs will be reversible where a taxpayer no longer meets the requirements to receive the original write-off, whether that be through a subsequent reassessment or otherwise.

(a) Where an individual only earns reportable income and tax payable is not more than $50

If an individual, who only earns reportable income, has tax payable at year end that is no more than $50, then that amount of tax will not be required to be paid. Where the amount of tax payable is greater than this amount, the entire amount payable must be paid unless another one of these rules applies.

The purpose of this rule is to ensure that individuals who have had about the right amount of tax deducted will not have a tax bill at year end. As interest income will now be included in a taxpayer's income and tax calculation, the addition of the $50 write-off essentially maintains the position where undertaxed interest income was not required to be reported provided it was less than $200.

(b) All income from income tested benefits

Where an individual earns all of their income from an income tested benefit, education grant or a payment of NZ superannuation/veterans pension, and an amount of tax payable arises at year end, then this amount will not have to be paid by the individual.

The purpose of this rule is to deal with an apparent under-withholding of PAYE in the situation where a person may receive a payment for a back-year entitlement.

(c) Extra pay period in the corresponding income year

If an individual who only earns reportable income which has been taxed at the correct rate has tax payable at year end because they have had an extra pay period, then that amount of tax owing will not need to be paid.

For example, if an individual is paid on a fortnightly basis and there are 27 pay periods in the relevant tax year, then not enough tax will be deducted. This occurs because fortnightly PAYE calculations are based on standard years with 26 fortnightly pay days. In order to ensure that individuals who have complied with all of their tax obligations do not receive an unexpected tax liability, amounts of tax to pay that arise solely due to an extra pay period will not be required to be paid.

Inland Revenue will have the ability to identify the occurrence of an extra pay period once payday reporting of employment income begins. This means that this exception would apply from the tax year beginning 1 April 2019.

Exclusions

A taxpayer will also be excluded from claiming a write-off, other than the under $50 write-off, where the following applies.

WfFTC paid by Inland Revenue

The individual or their partner has received a WfFTC payment from Inland Revenue, whether by way of instalments during the year, lump sum at year end or where the abatement is greater than zero.[1]

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[1] See section MD 13 of the Income Tax Act 2007.

Tax rate/code changes

A taxpayer will not qualify for a write-off where:

- the Commissioner has recommended a change to a higher tax code or rate; or
- the individual has used a tailored tax code.

Application of an incorrect tax rate where tax is payable

A taxpayer will be excluded from a write-off of greater than $50 where an amount payable by the individual has been caused by the incorrect application of the tax rules or the application of an incorrect marginal tax rate to income, where that income is:

- an amount of income for which the obligations of the individual under the PAYE rules are not met;
- investment income where RWT is withheld at a rate lower than the individual's marginal tax rate;
- schedular income where tax has been withheld at a rate lower than the correct rate;
- income from employment that is an extra pay where tax has been withheld at a rate lower than the correct rate;
- income from employment that is secondary employment earnings where tax has been withheld at a rate lower than the correct rate;
- a taxable Māori authority distribution where the individual's annual gross income exceeds $48,000;
- derived from employment as an election day working where the individual's annual gross income exceeds $48,000;
- derived from employment as a casual agricultural worker where the individual's annual gross income exceeds $48,000; and
- an amount of employee share scheme income where the employer has not elected to withhold tax.

Recommendation

That the submission be accepted.

Issue: Small balance refunds

Clause 97

Submission
(Matter raised by officials)

The Bill as introduced removes the current provision which allows Inland Revenue to refrain from refunding tax if the amount is $5 or less. Small refunds are currently carried forward and refunded once the amount exceeds $5. This provision was being removed because it was envisaged that all refunds would be made by direct credit and the administration and compliance costs associated with the issue and banking of cheques would not be a factor.

Comment

Officials note that while the intention is to move to issuing tax refunds by direct credit, there will still be a need to issue cheques in the short term. It is recommended that the provision that allows Inland Revenue to refrain from issuing refunds of $5.00 or less is retained and that these amounts would be held on the taxpayer's account until their total refund amount was sufficient to justify refunding in light of the costs of processing a cheque.

Recommendation

That the submission be accepted.

Clause 42

Issue: Support for simplifying the administration of donations tax credits

Submission
(Accountants and Tax Agents Institute of New Zealand, PwC)

The submitters generally support the proposals to simplify the administration of donations tax credits.

Recommendation

That the submission be noted.

Issue: Allow in-year donations claims

Submission
(Accountants and Tax Agents Institute of New Zealand)

It would be beneficial to allow people who only earn "reportable income" to make claims during the income year, perhaps subject to an annual limit of say, $5,000. This could be helpful for families who donate substantial sums to churches during the income year. Alternatively, Inland Revenue could do more to promote payroll giving as a means of enabling people to get credit for their donations sooner.

Comment

Officials consider that payroll giving is the appropriate mechanism for individuals to receive their donation tax credits during the year. While the proposed changes to donation tax credits allow people to submit receipts electronically via myIR during the year, it would not be appropriate in some circumstances to allow for a donation tax credit to be received prior to year end.

Payroll giving imposes compliance costs on employers and therefore offering payroll giving (and the possible range of donee organisations that it is set up for) is a choice for the employer which is most likely to be influenced by the input of employees. Inland Revenue is not currently planning to devote more resources to promoting payroll giving. Increasing public awareness and understanding of the proposed changes to the administration of individuals' income tax obligations is the higher priority and it is important that this message is not confused by adding further information around existing tax regimes.

Recommendation

That the submission be declined.

Issue: Donation tax credits for partnerships

Submission

(PwC)

Where a taxpayer is only entitled to a portion of the donation tax credits arising from the total amount of donations (for example, partners in a partnership), it would be preferable if the partnership itself could file a donation tax credit claim and have this flow through to each of the partners. This would streamline the donations tax credit claims process and is consistent with the intent of the proposed changes in the Bill.

Comment

Taxpayers are only allowed to claim their donation tax credits up to the level of their taxable income. Allowing the partnership to claim the donation tax credit and to flow the refunded amount through to the partners would mean that there would be no way of knowing whether this requirement had been met. This is because a taxpayer's earnings from a partnership may not be the taxpayer's only relevant tax information. If, for example, the taxpayer had a business interest that was generating losses this might offset any income from the partnership.

While officials agree this might make claiming donations tax credits easier for partners this is not sufficient to justify overriding the requirement that donation tax credits can only be claimed up to the level of a taxpayer's taxable income as this is important in managing fiscal risk in relation to donations.

Recommendation

That the submission be declined.

Issue: Confirmation of IRD numbers with income payers

Submission
(KPMG)

The submitter notes that the proposed new individuals' income tax model relies on income payers such as employers and banks having the right IRD number for employees and investors. They suggest that income payers should be able to confirm with Inland Revenue that the IRD number is correct. It is acknowledged this raises taxpayer secrecy concerns.

Comment

Officials agree that payers of income having the correct IRD number for employees and investors is a key building block in ensuring that income is attributed to the employee or investor who earned that income. A potential project for inclusion on the tax policy work programme (as resources permit), is a project to design a legislative process that would enable income payers to confirm with Inland Revenue that an employee's or investor's IRD number is correct. Such a proposal should be designed using the Generic Tax Policy Process.

Recommendation

That the submission be noted.

Issue: Impact on providers of personal tax summary intermediary services

Submission
(CPA Australia)

From a compliance services perspective, the removal of the need for the review of personal tax summaries and the lodgement of income tax returns to access tax refunds will negatively impact the providers of personal tax summary intermediary services and basic income tax return preparation services.

Comment

While officials acknowledge the likely impact these changes will have on providers of personal tax summary intermediary services, these changes will ensure that the benefits of automatic refunds can be provided to hundreds of thousands of taxpayers that are not getting refunds under the current system.

Recommendation

That the submission be noted.

Issue: Impact on tax agents

Submission
(EZ Refunz NZ Ltd)

The submitter recommends that this legislation must not be passed as it will hugely affect their business and hundreds of tax agents who solely run their business on the tax refunds dependent upon salary and wage earners.

Comment

The submitter is recommending that the proposed changes to the taxation of individuals who earn reportable income (salary and wages and/or investment income) not be enacted. These proposed changes repeal the current personal tax summary rules which provide the business opportunity for tax agents who solely run their business on the tax refunds dependent upon salary and wage earners. There are currently 32 personal tax summary intermediaries registered with Inland Revenue as tax agents. These intermediaries act for approximately 860,000 taxpayers including 471,000 personal tax summary filers, 67,000 IR3 tax return filers and 422,000 non-filers.

The Bill provides the framework for Inland Revenue to determine if an individual who earns reportable income is entitled to an end-of-year refund or tax to pay and will automatically issue that refund or require the payment of that tax to pay. There will be no need for the individual to determine whether or not they are required to request a personal tax summary.

An individual who earns reportable income can still use a tax agent to deal with their tax affairs with Inland Revenue if they choose.

Recommendation

That the submission be declined.

Issue: Non-reportable income threshold

Clause 21

Submission
(KPMG)

The non-reportable income threshold of $200, below which a taxpayer is not required to provide any income information for a tax year, should be increased to $500 or $1,000.

Comment

Officials disagree with the submitter. Providing a higher non-reportable income threshold raises equity concerns in the tax system. A person who earns all of their income in salary and wages will be taxed on all of their income whereas a person that earns most of their income in salary and wages but also earns other untaxed income up to the threshold will not be taxed on that. The current $200 threshold is intended to reduce compliance costs without giving rise to significant equity issues as it only allows a maximum of $66 of tax to not be paid (for a person

on a 33% marginal tax rate). Raising the threshold to $1,000 would allow up to $330 of tax not to be paid.

Increasing the threshold would also have fiscal implications for the Government.

Recommendation

That the submission be declined.

Issue: Drafting issues

Clause 21

Submission
(KPMG)

Section 22D(3)

Section 22D(3) refers to "other income" as an amount of income "paid or payable to the individual … other than their reportable income". Other income will include amounts that are never paid or payable. The provision should be amended to reflect that "other income" may include fictional or deemed income, such as FIF income, which is not "paid or payable".

Section 22D(6)(c)(iii)

This section refers to the passage of time under section 22I(2)(c). Section 22I(2)(c) does not require the passage of time. Instead, the Commissioner issues a default assessment. The provision should be amended to reflect the requirements of section 22I(2)(c).

Section 22G and 22I(3)

The Bill refers to an "assessment period", which is the period during which an assessment must be made by either the Commissioner or an individual. This period also covers the time during which an individual may be either required to confirm the information held by the Commissioner or provide further information. The period is better described as a "confirmation period" as that better describes the activity required. Consideration should also be given to including the definition of assessment period in section 22I(3) in section 22D as it is a key term.

Section 22K(1)

This provision is stated to be applied "without limiting" the list of items of other income.

Schedule 8, Table 1, Row 8 includes "Other income not otherwise included". The "without limiting" drafting is therefore confusing and unnecessary.

The provision also refers to "income other than reportable income". This is defined to be "other income" in section 22D(3). The inconsistent drafting suggests that "other income" may not be the right term to use. Otherwise, section 22K should use the defined term consistently.

Schedule 8, Table 1

Table 1 of schedule 8 lists the categories of "other income" that must be included in an adjusted account. The drafting of the types of income listed do not reflect how those types of income are ordinarily referred to in the tax legislation. For example, Row 2 refers to "overseas income" which is not a defined term. The Income Tax Act does contain the term "foreign-sourced amount".

Comment

Officials agree that the drafting suggestions raised are useful but note that some will become redundant if other proposed changes are accepted by the Committee. In particular, the changes suggested relating to the assessment period will not be applicable if the assessment period is removed.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Retrospective amendment to section RM 5 of the Income Tax Act 2007

Submission
(Matter raised by officials)

Section RM 5 and its prior equivalents require a taxpayer to confirm their income statement as correct before a refund over a certain threshold (currently $600) can be issued. The current application of section RM 5 means that, where a taxpayer dies and no administrator or executor is appointed, nobody can legally confirm the deceased's income statement as correct. There will usually be no administrator or executor appointed where the estate is of insufficient value to incentivise someone to incur the cost of these applications. This means that the refund will sit in Inland Revenue's system indefinitely, and is unable to be refunded.

A retrospective legislative amendment is recommended to section RM 5 and its predecessors to allow for someone to act on behalf of a deceased person to confirm a refund where no executor or administrator is appointed. It is proposed that this change apply for the period 1 April 2000 until 31 March 2019, which accords with the period in which the law of income statements was in force.

Recommendation

That the submission be accepted.

Issue: Allowing for the provision of "other income" information on behalf of deceased taxpayers

Submission
(Matter raised by officials)

Under the proposed changes to individuals' income tax, taxpayers who earn other income are required to provide that information to Inland Revenue. Where a taxpayer dies and there is no executor or administrator, there is nobody that is legally obliged to provide this information on behalf of the deceased.

Officials propose that the law should be amended to allow people from a list of prescribed persons, based on the same administrative settings behind the section RM 5 amendment mentioned above, to provide other income information on behalf of a deceased taxpayer. This can be provided to form part of the deceased's assessment where a person from this prescribed list has some other income information and the Commissioner is satisfied that it is correct.

Recommendation

That the submission be accepted.

Issue: Amending section RM 2 of the Income Tax Act 2007 – refunds for overpaid tax

Submission
(Matter raised by officials)

Section RM 2 of the Income Tax Act 2007 requires the Commissioner to refund an amount of overpaid tax to a person where the Commissioner is satisfied, or receives notice, that the person is entitled to the refund before the end of the 4 year period under section 108 of the Tax Administration Act 1994 (TAA) for the amendment of an assessment.

Ensuring the provisions apply consistently for back years

The way that section RM 2 currently applies serves to limit a taxpayer's ability to claim a refund from an amended assessment, not from the original return. This is consistent with the policy intent.

The law as it was in force from 1 October 2004 to 31 March 2013 is inconsistent with this policy intent and served to restrict the time bar for issuing refunds. If a refund was not paid out within the 4 year time period, then it was unable to be refunded. A retrospective legislative amendment is therefore recommended to bring this law into line with the current law.

Clarifying the law in section RM 2 of the Income Tax Act 2007

i. *Ensuring it is sufficiently clear that RM 2 only serves to limit a taxpayer's ability to claim from an amended return, not from the original return.*

A taxpayer's ability to claim a refund from an amended return and not from the original return, is not apparent from the plain wording of the provision. The current wording has generated a lot of confusion as to whether it limits a taxpayer's ability to claim from an original return, which is not the policy intent. In order to provide clarity, it is proposed that the law is amended to make it clear that the section serves to restrict a taxpayer's ability to claim a refund from an amended return, not from the original return.

ii. Clarifying the reference to the time bar

Section RM 2 references the 4 year period in section 108 of the TAA for the amendment of an assessment. Section 108 of the TAA was amended on 30 March 2017, with retrospective application from 3 May 2016, to include a second time bar for ancillary taxes and approved issuer levy (AIL). Given that there are now two time bar periods in section 108, and these two periods are slightly different, the reference to the "4 year period under section 108" as provided for in section RM 2 is ambiguous. Officials propose that section RM 2 be amended, with retrospective application from 3 May 2016, to provide certainty to the refund provisions with respect to the time bar.

Comment

Ensuring the provisions apply consistently for back years

Officials consider that a retrospective amendment is needed in order to ensure that the law applies consistently across time periods. As the law as it was in force from 1 October 2004 to 31 March 2013 is inconsistent with the current law, there are a large number of taxpayer refunds (or aged credits) that are unable to be refunded because they have effectively been time barred by the narrow application of section RM 2. A retrospective legislative amendment is sought to bring this period into line with the current law. This will allow for back year credits to be refunded, and will aid with the transition of income tax into Inland Revenue's new computer system.

Clarifying the law in section RM 2 of the Income Tax Act 2007

Officials support amending section RM 2 to make it clear that it only serves to limit a taxpayer's ability to claim from an amended return, not from the original return. This is necessary to ensure the policy intent behind the provision is clear.

Officials agree that section RM 2 should be amended with retrospective application to remove the reference to section 108 of the TAA and set out two separate time bar periods within section RM 2 for the issuing of refunds. This will provide certainty to the refund provisions, as the time bar period that applies to income tax differs slightly from the period that applies to ancillary taxes and AIL.

Recommendation

That the submission be accepted.

Issue: Clarifying the law in section RM 4 of the Income Tax Act 2007

Submission
(Matter raised by officials)

Section RM 4 of the Income Tax Act 2007 requires the Commissioner to refund an amount of overpaid tax that arises from an amended assessment that increased the amount of tax payable by the person where the 4 year period under section 108 of the Tax Administration Act 1994, beginning from the end of the tax year in which the assessment was amended, has not ended.

The way the section is currently worded means that an amount of overpaid tax that arises under section RM 4 cannot be refunded once the 4 year period has ended. The policy intent behind section RM 4 is that, where a taxpayer overpays tax as a result of an amended assessment that increased the amount of tax payable, the refund can be paid out at any time so long as the Commissioner is satisfied of the taxpayer's entitlement to that refund within the 4 year period from the amendment of the assessment. An amendment is therefore required to bring the law into line with the policy intent, and into line with the refund provision in section RM 2.

It is also noted that section RM 4 also refers to the "4 year period under section 108". As mentioned in the submission on section RM 2, there are two 4 year periods in section 108 of the Tax Administration Act 1994, and this reference is therefore ambiguous. An amendment is required to clarify that refunds that arise under section RM 4, whether in respect of income tax, or in respect of an ancillary tax or approved issuer levy statement, must use the time bar period that is intended for their respective tax type.

Recommendation

That the submission be accepted.

Issue: Time bar waiver

Submission
(Deloitte)

Deloitte submits that the wording in section 108B(1) needs to be clarified to ensure there is no ambiguity between the taxpayer and Commissioner when agreeing to a time bar waiver. The section provides that a waiver can be given for not more than 12 months and provides for an extension for a "further 6 months from the end of the 12-month period referred to in paragraph (a)". The ambiguity is that, if the first waiver is not for a 12-month period, and a lesser waiver is agreed, then the extension would not be able to be given at the expiration of the 12-month period as the time bar would have already passed.

Comment

Officials consider that removing "not more than" from 108B(1) so that the section provides for a 12-month waiver period in all instances will resolve this ambiguity.

Recommendation

That the submission be accepted.

Issue: Time bar drafting issue

Clause 70

Submission
(Deloitte)

Deloitte notes that the Bill repeals subsection 108(1A). It is necessary to also remove the reference to subsection 108(1A) from subsection 108B(3)(d) as a cross-referencing change.

Recommendation

That the submission be accepted.

Issue: Allowing a personal tax summary filer to claim Working for Families Tax Credits by filing a tax return

Submission
(Matter raised by officials)

Section 108(1A) of the Tax Administration Act 1994 prevents Inland Revenue from issuing a personal tax summary (PTS) if four years have passed since the end of the tax year that follows the tax year to which the PTS would apply. If someone who is a PTS filer wishes to claim Working for Families Tax Credit (WfFTC) entitlements for a period that the issue of a PTS is time barred, the person is unable to do so.

Comment

A legislative amendment is proposed to clarify that where a person is not required to file an income tax return, they can choose to do so after the time limit for issuing an income statement in order to obtain any WfFTC entitlements.

Recommendation

That the submission be accepted.

Issue: ACC payments subject to higher taxation

Submission
(Chartered Accountants Australia and New Zealand)

The submitter asks that further thought be given to how best to deal with income seasonality or lump sums taxed at a higher or lower rate due to timing alone (ACC lump sum payments which relate to an extended period can result in high taxation where marginal rate thresholds are exceeded).

Comment

Officials consider that the issues need to be looked at in a wider framework to ensure other payments of a similar nature are also considered as part of potential options to create an ability to spread payments over years to which they relate for the purposes of tax.

Officials note that this submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: ACC attendant care payments

Submission
(Olivershaw)

The Income Tax Act 2007 should be amended to exempt, with retrospective effect, backdated ACC payments reimbursing ACC beneficiaries for care they have paid for.

Comment

The submitter notes an issue where backdated personal service rehabilitation payments are made to ACC recipients (the claimant).

Example

2016–2017 Mary paid $5,200 to Mandy
2017–2018 Mary paid $5,200 to Mandy.

Mandy included this income in her tax return for these years and paid tax on this income at her marginal rate.

On 1 June 2018, Mary is paid $10,400 from ACC less withholding tax at 10.5% to cover personal service rehabilitation payments which ACC has calculated she was entitled to for the previous two tax years. She is also paid the $100 a week less withholding tax at 10.5% on an ongoing basis.

In the 2018–2019 year the back-payment received will be taxable to Mary as that amount is over what is paid to Mandy in that year.

If Mary files a return she will pay tax on $10,400 at her marginal rate.
Mandy would have also paid tax on the $5,200 paid each year at her marginal rate.

Effectively this amount is taxed in the hands of both Mary and Mandy.

If Mary was able to get the reimbursement tax free, the payment would only be taxed in the hands of Mandy in the year to which it relates/was paid.

Tax treatment of the payment by ACC

A personal services rehabilitation payment is treated as a schedular payment for the PAYE rules and tax at the rate of 10.5% must be withheld by ACC from the payment. Personal services rehabilitation payments are amounts paid under the Accident Compensation Act 2001 in providing key aspects of rehabilitation such as attendant care, child care, home help, training for independence and transport for independence.

Tax treatment in the hands of the claimant

Section CF 1 of the Income Tax Act 2007 provides that accident compensation payments are income, including payments personal services rehabilitation.

Section CW 35 of the Income Tax Act 2007 provides that personal service rehabilitation payments are exempt income of a claimant to the extent that they are on-paid to another person (a caregiver) for providing them a key aspect of rehabilitation services.

That is the amount that will be exempt if all the following three criteria are met:

- They are paid the amount under the Accident Compensation Act 2001.
- They pay an amount to another person for providing them in the income year a key aspect of social rehabilitation referred to in the definition of personal service rehabilitation payment.
- The amount paid is equal to or more than the amount of personal service rehabilitation payment for the income year after taking into account any amount of tax withheld.

In the situation where the claimant pays the caregiver an amount less than the amount paid for personal services rehabilitation payments, section DF 4 of the Income Tax Act 2007 allows the claimant a deduction for the amount paid to the caregiver.

Tax treatment in the hands of the provider of services (caregiver)

Payments made to the caregiver by the claimant for the provisions of these services are taxable in the hands of the caregiver.

Section LB 7 of the Income Tax Act 2007 gives the caregiver a credit for the tax withheld by ACC at the time of payment. This applies when all or more than the ACC payment is paid to the caregiver.

In the situation where the claimant retains part of the personal service rehabilitation payment, section LB 8 of the Income Tax Act 2007 shares the tax credit between the claimant and the caregiver pro-rated based on how the ACC payment is shared.

The concern is that the current legislation does not provide the right outcome if payments are provided after the year(s) in which the services are provided, that is, if the payments are backdated.

Three issues are created when a backdated payment is made to the claimant:

(a) The amount is not exempt income under section CW 35 in situations where the claimant has paid an amount equivalent or more than the ACC payment to the caregiver.

(b) There is no deduction under section DF 4 if some of the payment is on-paid to the caregiver.
(c) The caregiver will not have received a tax credit for the tax withheld by ACC when the amount is paid to the ACC recipient.

The effect of this is that the amount is effectively double taxed (taxed in both the hands of the carer when paid by ACC claimant and in the hands of the ACC claimant).

Officials agree that the legislation should be amended to cater for back-year payments to ensure that the payment is either exempt in the claimant's hand or he or she is entitled to a deduction where the claimant has made payments for rehabilitation services to a caregiver in back-years. In addition, the tax credit provisions should be amended to allow for the caregiver to receive a credit for the tax withheld by ACC.

Application date

The submitter suggests that, out of fairness, any proposed amendments should apply retrospectively to enable those ACC beneficiaries who have been double taxed to obtain a refund for the tax that has been paid in the past.

Officials consider that these proposed amendments should apply to back-year payments received with effect from the 2018–19 tax year. This coincides with the introduction of the new individual filing rules.

To deal with the double taxation issue, officials recommend that if the claimant can establish to the satisfaction of the Commissioner that tax has been paid on the payments to the caregiver during the back-years, the back-year payments should be treated as exempt income in the year the income was derived. This would mean that the claimant would be entitled to refund of the tax withheld.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: ACC attendant care workers

Clause 21

Submission
(Matter raised by officials)

New section 22J(2) of the Tax Administration Act 1994 provides that there is no obligation to provide income information for a tax year if the only income derived by an individual is income they derive providing personal services for which personal service rehabilitation payments are made, provided that the income is not more than $14,000. This section replicates an exception in current section 33C of the Tax Administration Act 1994. This type of exception was intended to take taxpayers out of being required to file a tax return where the right amount of tax had been paid and was part of the shift away from most people having to file a tax return in 1999–2000.

The proposed package of changes for individuals' income tax works to square up the tax position of all individuals that earn income to ensure that they are being taxed appropriately and are receiving their correct entitlements. The exception in new section 22J(2) would mean that this group of income earners would not have their tax position squared up and is therefore inappropriate under the proposed policy settings. Officials submit that the exception should be removed.

Recommendation

That the submission be accepted.

Issue: Non-resident passive income

Clause 21

Submission
(Matter raised by officials)

Non-resident passive income comprises income derived from New Zealand by a non-resident that consists of income such as dividends, interest or non-resident financial arrangement income (see section RF 2(3) of the Income Tax Act 2007). Under current tax law, a person who only earns non-resident passive income is treated as a non-filing taxpayer and is not required to file a tax return or be issued with a personal tax summary. This is because they pay non-resident withholding tax which is deducted at source and is considered to be a final tax.

By virtue of being included in proposed section 22J of the Tax Administration Act 1994, the draft legislation currently brings non-resident passive income earners into the new rules for individuals. Where a taxpayer only earns non-resident passive income, the intention is that they sit outside the individuals' proposals, as Inland Revenue does not want them filing a tax return. Officials therefore consider that a person who only earns non-resident passive income should be included in the definition for a non-filing taxpayer. This minimises the compliance and administration costs that would arise where taxpayers with only non-resident passive income were required to file a return.

Recommendation

That the submission be accepted.

Issue: Non-resident seasonal workers

Clause 21

Submission
(Matter raised by officials)

Non-resident seasonal workers are entitled to work in New Zealand for a set period of time and are taxed at a flat rate of 10.5%. This is treated as a final tax on their New Zealand-sourced income and is a deliberately simplified tax regime. Officials consider that non-resident seasonal workers should be included in the definition of a non-filing taxpayer. This minimises the compliance and administration costs faced by this group of workers.

Recommendation

That the submission be accepted.

Issue: Standard cost household services

Clause 21

Submission
(Matter raised by officials)

Officials recommend the removal of proposed section 22J(2)(b) of the Tax Administration Act 1994 as this income is exempt income under section CW 61(1) of the Income Tax Act 2007. Officials propose that the definition of other income should be updated to exclude exempt income as this will remove any obligation on individuals to provide information on their exempt income.

Recommendation

That the submission be accepted.

Modernising tax administration – Core aspects of the Tax Administration Act

OVERVIEW

The Tax Administration Act 1994 sets out the rules and processes for collecting and disbursing the revenue and payments administered by Inland Revenue. It plays a significant role in ensuring the right incentives are in place to influence compliance with tax laws. The efficiency and effectiveness of tax administration rules and processes is critical to maintaining fairness in the tax system.

The Bill includes a number of proposals to modernise core aspects of the Tax Administration Act 1994, including:

- extending the scope of the binding rulings regime by allowing Inland Revenue to issue rulings and provide certainty on more matters than it currently can;
- the introduction of a short-process rulings regime, which provides greater access to the binding rulings regime for small-to-medium sized enterprises;
- increasing the threshold that allows taxpayers to correct errors in subsequent returns for income tax, goods and services tax and fringe benefit tax;
- clarifying the types of third party service providers (in addition to tax agents) that Inland Revenue may offer special or extended service offerings to;
- providing the Commissioner of Inland Revenue with the ability to remedy legislative anomalies through an extension of the Commissioner's care and management powers;
- rewriting the information collection provisions in order to make them clearer and more navigable;
- narrowing the confidentiality rule from its coverage of all matters relating to the Inland Revenue Acts to more clearly target information about taxpayers;
- introducing a more flexible regulatory framework for information-sharing to assist with the provision of public service (building on existing rules); and
- allowing Inland Revenue to enter into agreements for information-sharing without the need for regulations where the sharing will be done with customer consent.

Twenty submissions were received on the proposed amendments. Submitters were generally supportive of the proposals to modernise tax administration and mainly focused on drafting or technical details, and wanting to expand some of the positive aspects of the proposals.

The main changes proposed are as follows:

- Increase the turnover threshold for taxpayers seeking a short-process ruling from $5 million to $20 million. The proposed tax at stake threshold of $1 million remains.
- Remove the proposal that extends the Commissioner's care and management powers to resolve legislative anomalies from the Bill. This will be redrafted in conjunction with the Legislation Design and Advisory Committee and reintroduced in a future tax bill, where it will be subject to a full consultation process.
- Include some additional privacy safeguards in the proposed repeat information collection regulation-making power and information sharing provisions.

Clauses 15, 99 and 102

Issue: Support for the proposals

Submission
(Accountants and Tax Agents Institute of New Zealand, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, CPA Australia, EY, Office of the Privacy Commissioner, Russell McVeagh)

Support for the intention to modernise the rules regarding Inland Revenue's information gathering powers and the confidentiality of information provided to Inland Revenue. *(Accountants and Tax Agents Institute of New Zealand)*

The submitter recognises that the law is being updated and is pleased to see safeguards included to ensure that recipients of taxpayer information are required to maintain the same level of confidentiality as Inland Revenue. *(Chartered Accountants Australia and New Zealand)*

Agree with the proposed modernisation of the information collection provisions. The ability to access the same data multiple times and for the regular collection of bulk data is a sensible improvement. *(CPA Australia)*

Broadly support the new regulation making power to allow IRD to collect bulk data and agree each of the built-in safeguards are necessary. *(EY)*

Agree that information relating to a particular taxpayer should be subject to a confidentiality obligation, whereas the current secrecy obligation in section 81 is arguably broader than necessary, in that it applies to "all matters" relating to the legislation Inland Revenue administers. The Group supports including in the definition of "sensitive revenue information" in proposed section 16C(3) information that could identify a taxpayer by process of deduction, and including commercially sensitive (though non-identifying) information in the definition. *(Corporate Taxpayers Group*, supported by *Russell McVeagh)*

Supports the Bill's intention to modernise and simplify the revenue system and makes several recommendations in relation to the collection, use, and disclosure of revenue information designed to enhance transparency, privacy considerations and to strengthen privacy safeguards. *(Office of the Privacy Commissioner)*

Comment

Officials welcome the support from submitters for the proposals, and note that considerable effort from these and a range of other submitters has gone into providing feedback on previous consultation on these proposals.

Recommendation

That the submissions be noted.

Issue: The definition of "revenue information"

Clause 5(54)

Submission
(Corporate Taxpayers Group, Russell McVeagh)

"Revenue information" means "information that is acquired, obtained, accessed, received by, or disclosed to, the Commissioner". This language may not include information that was created by Inland Revenue staff.

The words "acquired, obtained, accessed, received by, or disclosed to" in proposed section 16C(2) should be replaced with the words "held by".

Comment

Officials agree that the concept "held" may not be covered by the words currently included in proposed section 16C(2) and the addition of "held" would be of assistance.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Standard for information collection in proposed section 16B(2)(b)

Clause 15

Submission
(Deloitte)

In proposed section 16B(2)(b), the wording should be changed to read "considered probable to provide the information required". As this section deals with the fundamental privacy of taxpayers' financial information, a higher threshold for access should apply. The "likely to provide" level of standard conveys a "balance of probabilities" mentality.

Comment

Proposed section 16B(2) sets out the principles on which proposed subpart 3A is based. Proposed sections 17 to 17K of subpart 3A comprise a rewrite of the current information collection provisions, with the addition of sections 16, 16B and 16C setting out the purposes, principles and key terms on which the sections are based. The proposed purpose and principles section have been developed by reference to the concepts already contained in the legislation. The term "likely to provide the information required" is contained in the existing section 16 and carried over into proposed new section 17(1)(b). This is therefore a restatement of a standard already contained in the legislation, and there is no intended policy change in the rewriting of these provisions.

Recommendation

That the submission be declined.

Issue: Purposes of accessing property or documents

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Proposed section 17(1) should include a cross-reference to the purposes set out in proposed sections 16 to 16B so it is clear what the "purposes" of proposed section 17(1) are, or should include the same language as is included in proposed section 17B(1)(a)–(b).

Comment

Officials agree that the linkage between proposed section 17(1) and the purpose provision could be made clearer and propose changes to the revised tracked version of the Bill to reflect this.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Information requisitions in relation to offshore payments

Clause 15

Submission
(KPMG)

In proposed section 17F(2) it is unclear when information can be provided. The equivalent to the rewritten rule referred to establishing in the proceedings that a sufficient response was provided. We assume that is still what is intended.

In proposed section 17F(3) it is unclear as to its intended operation and its interaction with proposed section 17F(2).

Comment

Proposed section 17F is intended to be a redrafted version of current section 21 with no changes as to policy or operation. Officials agree that some aspects of the proposed rewrite may not adequately reflect the current section 21 and propose to provide amended drafting in the revised tracked version of the Bill.

Recommendation

That the submission be noted.

Issue: Amendments to proposed section 17G

Clause 15

Submission
(Corporate Taxpayers Group, KPMG)

A "satisfactory response" in proposed section 17G is not defined, nor is there a test of what is a satisfactory response. This should be a defined term. *(KPMG)*

The provision assumes that the information requested is actually held by the recipient of the request. *(KPMG)*

It should be made clear that a satisfactory response includes a response that the information requested does not exist. *(KPMG)*

Proposed section 17G(4) allows certain evidence to be admissible if it has not been provided to the Commissioner prior to an information deadline. The Group submits that each limb of proposed section 17G(4) should separately be sufficient to justify information being admissible. (*Corporate Taxpayers Group*)

Comment

Officials note that proposed section 17G is simply a renumbering of current section 21BA of the Tax Administration Act. Section 21BA was inserted by the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018. No change in policy or operation is intended for this section.

A "satisfactory response" is not defined in the section, however it does include, in 17G(1)(a) to (d), detail as to what constitutes an unsatisfactory response. As each case will be fact specific, officials do not consider a defined term is appropriate, beyond the detail already given in the section.

Recommendation

That the submission be declined.

Issue: Requirement that information be provided to a particular Inland Revenue office

Clause 15

Submission
(KPMG)

The Commissioner is entitled (proposed section 17B(3)(b)) to require information to be provided to a particular office. Although this should be obvious, and with technology less of an issue than historically, the Commissioner should do this on a "reasonable in the circumstances" basis.

Comment

Proposed section 17B(3)(b) carries over a requirement currently included in the information collection rules (current section 17(1D)). Officials agree that, as is currently the case, a reasonable approach would be applied to this requirement.

Recommendation

That the submission be noted.

Issue: Missing reference to tax advice documents

Clause 15

Submission
(KPMG)

Proposed section 17H(6) does not include a reference to "tax advice documents". This reference should be included to be consistent with the policy of the tax advice document rules.

Comment

Proposed section 17H(6) is a rewritten version of current section 17A(8) which does not contain any reference to "tax advice documents". A reference to "tax advice documents" is contained in proposed section 17H(5) which is current section 17A(7) rewritten. The rewritten section therefore reflects the current law and officials do not consider any amendment is required.

Recommendation

That the submission be declined.

Issue: Court ordered information which is not documented

Clause 15

Submission
(KPMG)

In proposed section 17H(8), it is unclear how information would not be in a document while still being able to be viewed and copied.

Comment

If information is undocumented and a Court orders a person to provide information under section 17H, subsection (8) provides that a person who has to provide the information must make it accessible to the Commissioner in the form of something that can be viewed and copied – that is, a document. In effect, the provision requires undocumented information to be documented so that it is accessible to the Commissioner.

Recommendation

That the submission be declined.

Issue: Repeat collection of external datasets power should be separate from existing information gathering powers

Clause 15

Submission
(Corporate Taxpayers Group)

The Committee should consider whether the repeat collection of external datasets should be explicitly carved out from Inland Revenue's existing information gathering powers.

Comment

The ability to acquire datasets is currently within the Commissioner's existing powers of information collection. While such collection can, and does already occur, proposed section 17L is intended to improve transparency, efficiency and certainty when that collection is sought on a regular, repeating basis. Ad hoc collection of datasets would continue to occur pursuant to the general collection powers. Consideration of an explicit carve out from the general information gathering power would be most appropriately carried out as part of the statutory review required by proposed section 17L(4). This requires consideration of the impacts of the proposed section, in consultation with the Privacy Commissioner, and in doing so the Commissioner of Inland Revenue must consider whether any amendments to the law are necessary or desirable.

Recommendation

That the submission be noted.

Issue: Purpose of dataset collection

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

The regulation-making power is for the collection of data necessary or relevant for "revenue purposes". No definition is given for this latter phrase. The current section 17 requires that the collection be "necessary or relevant for any purpose relating to the administration or enforcement of any of the Inland Revenue Acts or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner."

Proposed section 17L should include the same language as current section 17. The reference to "revenue purposes" is too vague. The text "revenue purposes" should be replaced with "any purpose relating to the administration or enforcement of any of the Inland Revenue Acts or for any purpose relating to the administration or enforcement of any matter arising from or connected with any other function lawfully conferred on the Commissioner."

Comment

Officials agree that that the term "revenue purposes" could be made clearer, either in the manner suggested by the submitter, or by linking to the proposed purposes section (proposed section 16). Officials will propose to make changes to the revised tracked version of the Bill to address this point.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Privacy Commissioner approval should be required before regulations are made under proposed section 17L

Clause 15

Submission
(Corporate Taxpayers Group)

The Minister of Revenue should be required to obtain the Privacy Commissioner's approval before recommending the making of regulations under proposed section 17L. It should not be possible to recommend a regulation to which the Privacy Commissioner has objected.

Comment

Before a regulation is made under proposed section 17L the Minister of Revenue must be satisfied that:

- the regulations are necessary for a purpose relating to the administration or enforcement of any of the Inland Revenue Acts (or the administration or enforcement of any matter arising from or connected with a function lawfully conferred on the Commissioner); and
- the proposed use of the information is consistent with the purposes of the Inland Revenue Acts.

A consultation process must be undertaken that includes the distribution of draft regulations and an explanation of the way in which the regulations would meet the above requirements to the Privacy Commissioner and other persons or organisations that the Commissioner of Inland Revenue considers it reasonable to consult with.

Officials consider that it would be unnecessary to require the Privacy Commissioner to approve the making of regulations under proposed section 17L and note that the views of the Privacy Commissioner will be acknowledged as part of the consultation process. Officials note that this is the same process that applies in the development of information sharing agreements.

In addition, any Cabinet papers containing proposals that have a privacy impact must contain information about those impacts and the views of the Privacy Commissioner. The Privacy Commissioner can also choose to comment separately. Inland Revenue's approach on proposals with privacy impacts is to work with the Privacy Commissioner and his officials to ensure any concerns are adequately addressed.

Recommendation

That the submission be declined.

Issue: Review of bulk data regulations should be required

Clause 15

Submission
(KPMG)

Proposed section 17L provides for a review of the operation of the section but does not provide for a review of the operation of the Regulations issued under the section. A review of the operation of the Regulations should also be required.

Comment

Proposed section 17L provides that the Commissioner must:

- review the operation of section 17L;
- assess the impact of the section, in consultation with the Privacy Commissioner;
- consider whether amendments to the law are necessary or desirable, and in particular, whether the section is needed; and
- report the findings to the Minster of Revenue.

Officials consider that the statutory review undertaken by Inland Revenue of section 17L will, in reviewing the operation of the section, also capture regulations that have been made under the provision. By way of example, officials refer to the statutory review of section 81BA of the Tax Administration Act 1994 carried out in 2017.

Any regulation made under proposed section 17L is subject to review by the Regulations Review Committee. The Committee act on Parliament’s behalf to ensure that delegated law-making powers are being used appropriately, and it examines all regulations, investigates complaints about regulations and reports its findings to the House and other committees on any issues it identifies.

Officials consider the existing review processes and the statutory review of the operation of proposed section 17L provide sufficient oversight. Officials do not consider it appropriate to amend proposed section 17L to include a requirement that Inland Revenue separately review the regulations issued under the section.

Recommendation

That the submission be declined.

Issue: Timeframe for post-implementation review of proposed section 17L

Clause 15

Submission
(Deloitte)

Five to six years to conduct a post-implementation review is too long. Due to the exponential growth of information and the digital economy, we recommend that the bulk data collection rules should be reviewed after two to three years.

Comment

Officials note that the process for developing, consulting and seeking approval for regulations under proposed section 17L will take some time. Reviewing the provision after two to three years may not provide for sufficient use of the provision taking into account the time to put regulations in place and the fact that data will only be provided periodically. Officials consider that a more meaningful post-implementation review would occur after five years (but before the conclusion of the sixth year) of the provision being in force.

The period of review is consistent with the timeframe previously imposed on Inland Revenue for a review of section 81BA of the Tax Administration Act 1994 (information sharing regulations).

Recommendation

That the submission be declined.

Issue: Consultation period on draft regulations for bulk data should be extended

Clause 15

Submission
(Corporate Taxpayers Group, Deloitte)

The consultation period for proposed regulations in relation to external datasets in proposed section 17L(3)(c)(ii) should be extended from four weeks to eight weeks. *(Deloitte)*

The consultation period in proposed section 17L(3)(c)(ii) should be at least eight weeks. *(Corporate Taxpayers Group)*

Comment

Officials agree that it is important there is sufficient time for consultation on any proposed regulations. However, officials consider that a mandatory consultation period of eight weeks would not be necessary in all cases. Officials consider that a more appropriate period for consultation is a minimum of six weeks. A six week period accords with the consultation period generally specified for policy proposals under the Generic Tax Policy Process.

Recommendation

That the submission be partly accepted, and the consultation period be extended to a minimum of six weeks.

Issue: Objection to the proposed process requiring regulations for bulk data requests

Clause 15

Submission
(Jim Gordon Tax Limited)

While we support the formalisation of ongoing data requests, we strongly object to the proposed process involving the Minister of Revenue and the making of regulations. This is, as it is currently, the Commissioner's business, not that of Parliament or the Minister. We have no objection to this being a public process so that the information about what datasets are being collected is made available – this is likely to encourage voluntary compliance.

Comment

Officials note the concerns of the submitter and agree that currently the collection of large datasets is a matter for the Commissioner of Inland Revenue. However, officials note that different forms of information collection are authorised in various forms in the revenue legislation, ranging from the wide powers granted to the Commissioner under the current section 17, to provisions that specify additional types of information to be provided on certain forms or returns such as those relating to employment and investment income information.

Given the sensitive nature of large datasets and the potential volume of information concerned, officials consider that, when it is proposed to collect the dataset(s) regularly, a more transparent process is warranted. The regulation-making process provides an appropriate balance between transparency and oversight and the flexibility needed to deal with the evolving availability and usability of information.

Recommendation

That the submission be declined.

Issue: Regulations should prescribe how information is necessary for revenue purposes

Clause 15

Submission
(Office of the Privacy Commissioner)

Proposed section 17L(2)(b) should require the regulations to prescribe how the information is necessary for revenue purposes.

Comment

Proposed section 17L contains a requirement that the Minister be satisfied that the regulations are necessary for a revenue purpose. The proposed section also requires that the consultation process include circulation of an explanation as to how the information sought is necessary for revenue purposes. While this information will therefore be available, officials agree that this information could also be required to be included in the regulation itself to improve transparency of the regulation (rather than needing to look at other sources to obtain the information).

Recommendation

That the submission be accepted.

Issue: Timing of review

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Proposed section 17L(5) which dictates the timing of the review of the regulation-making power contains an ambiguity. "6 years from that date" could refer to the date that is 6 years from the date that falls 5 years after the commencement date. The intention, presumably, is that the review should occur between 5 and 6 years after the commencement date. The text "that date" in proposed section 17L(5) should be replaced with "the commencement of this section".

Comment

Officials agree that the amendment suggested by the submitters would make the proposed provision clearer.

Recommendation

That the submission be accepted.

Issue: Information collected under powers should be traceable and only shared if specifically provided for

Clause 15

Submission
(Office of the Privacy Commissioner)

The personal information that Inland Revenue collects under sections 17, 17B and 17L should be explicitly tagged so it can be traced through Inland Revenue systems. Such information should only be shared under section 18E if it is explicitly provided for in an Order in Council.

Comment

Information held by Inland Revenue has metadata associated with it that includes details about how the information was obtained. Therefore all data is "tagged" meaning that its origin can be traced. This also allows tracing of the information through the system, including how and when it is accessed, combined, updated or altered.

Officials have discussed this submission with the Office of the Privacy Commissioner. The Office of the Privacy Commissioner would like consideration in determining whether information should be shared, as to what the provenance of that information is. That is, when considering a new information sharing agreement, that the Privacy Impact Assessment include consideration of where the data to be shared is likely to have been obtained from (direct from taxpayers, from third parties such as employers, via large datasets or under compulsion of section 17 for example). Officials agree that a criterion requiring such consideration can be built into the information sharing rules.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Additional privacy safeguards in proposed section 17L

Clause 15

Submission
(Office of the Privacy Commissioner)

The Office of the Privacy Commissioner submitted that proposed section 17L should also require that the Minister be satisfied that:

- the type and quantity of personal information to be collected under the agreement are no more than is necessary to facilitate the purposes of the Inland Revenue Acts and the functions lawfully conferred on the Commissioner; and
- the agreement does not unreasonably impinge on the privacy of individuals, and contains adequate safeguards to protect their privacy.

Comment

Officials agree that the proposed additional privacy safeguards are appropriate and note that these reflect similar safeguards in the Approved Information Sharing Agreement rules.

Recommendation

That the submission be accepted.

Issue: Reasonableness consideration in proposed section 17L

Clause 15

Submission
(KPMG)

The Minister of Revenue should also be required to take into account the reasonableness of the proposed regulation, including the frequency of provision of information to Inland Revenue.

Comment

Officials do not consider such a requirement is necessary given the criteria already contained in proposed section 17L. The Minister of Revenue must be satisfied that the proposed regulations are necessary for Inland Revenue's functions, and the regulations (which must be provided in draft for consultation) must specify the frequency and form of information to be reported. The regulations may also contain exemptions from some or all of the requirements for certain persons or classes of persons. Officials consider these requirements, alongside the additional criteria proposed by the Privacy Commissioner, are sufficient to ensure that regulations proposed are considered reasonable without need for additional express criteria to that effect.

Recommendation

That the submission be declined.

Issue: Parties to be included in consultation process for regulations in relation to bulk data

Clause 15

Submission
(ANZ, Corporate Taxpayers Group, EY, Financial Services Council New Zealand, KPMG)

A number of submitters suggested that the consultation process which must take place before a regulation is made under proposed section 17L should require consultation with the information holder(s) and the relevant industry association(s) if appropriate.

Comment

Officials consider that the requirement to consult with those parties that the Commissioner considers reasonable would implicitly include the holders of the data sought. However, officials agree that this requirement could be made explicit in proposed section 17L.

With regard to relevant industry associations, the Commissioner may not always be aware of all relevant bodies. However, where possible and appropriate, the Commissioner would seek to consult with such bodies. Officials do not therefore consider it is necessary to explicitly specify consultation with such bodies in the legislation.

Recommendation

That the submission regarding consulting with information holders is accepted and regarding consulting with industry bodies noted.

Issue: Consideration of cost in relation to bulk data regulations

Clause 15

Submission
(ANZ, Corporate Taxpayers Group, EY)

Some submitters suggested that the Minister of Revenue should be required to consider the potential compliance costs incurred by the information holder in providing the bulk data, and stated that the impact of a bulk data request on an information holder must be specifically considered before any regulation is recommended. *(ANZ, Corporate Taxpayers Group, EY)*

The impact of a bulk data request on an information request on an information holder must be specifically considered before any regulation is recommended. *(ANZ)*

The Minister should be satisfied that the information requested does not place an unreasonable burden or cost on the information holder. *(EY)*

Another submitter suggested that the Minister should be required to consider:

- the cost to the holder of complying with the request, including obtaining an estimate of costs of providing the data from the affected data holder;
- whether the value of the data sought is proportionate with that cost;
- whether the regulation is being made in a way that minimises cost;
- whether the cost of compliance would be unduly burdensome; and
- whether to compensate the data holder for the cost of compliance. *(Corporate Taxpayers Group)*

Comment

Officials recognise that provision of data can come with impacts and costs for those providing the data. Officials note, however, that the proposed regulation-making power is consistent with existing powers under which the Commissioner is not expressly required to consider cost. As a matter of practice, existing large dataset requests involve discussions with data holders to ensure balancing Inland Revenue's information needs with minimising the impact on the data holder. The mandatory consultation process prior to recommending regulations will ensure that data holders have the ability to raise any concerns about costs or other impacts and if desired make submissions regarding ways in which these might be minimised or mitigated.

Officials agree that consideration of impacts, such as costs on a data holder, is a factor that will be taken into account as regulations are developed and is a matter that affected parties are likely to submit on. Any such submissions will be reflected in the information provided to the Minister of Revenue when the Minister is considering recommending regulations. However, it should not be a determinative factor in whether the Minister recommends the making of regulations and therefore officials do not consider it should be specified as a criterion in proposed section 17L.

Recommendation

That the submission be noted regarding consideration of costs but declined with respect to making this a mandatory criterion in the legislation.

Issue: Public disclosure of bulk data to be collected

Clause 15

Submission
(EY, Financial Services Council New Zealand)

Inland Revenue must be required to publicly disclose a description of those datasets which it intends to collect on a regular basis so the affected third parties whose data is being requested are aware. The Australian Taxation Office already takes this approach.

Comment

A key aim of the proposed regulation-making power for this type of information collection is to improve transparency. Regulations made under the proposed power must be published. Inland Revenue will also update the current information regarding external datasets on its website to include regulations made under the proposed power as and when this occurs. Officials note that the mandatory consultation process prior to seeking a regulation must also include sharing the draft regulation and a description of why the information is considered necessary.

Recommendation

That the submission be accepted.

Issue: Protection of taxpayer privacy in relation to irrelevant information collected as part of a bulk dataset

Clause 15

Submission
(EY)

Taxpayer privacy should be protected in relation to irrelevant information held within the dataset.

Comment

Officials recognise the sensitive nature of this information and agree that protecting the privacy of those within bulk datasets is important. Access to data obtained from a dataset provider is limited to those Inland Revenue staff who require the information. Inland Revenue has strict access controls in place to prevent unauthorised access to personal information. Staff are prohibited from accessing, recording, or disclosing any customer's tax information except in the performance of their duties. System user monitoring and internal audit checks ensure that staff are adhering to the rules.

Recommendation

That the submission be noted.

Issue: Use of information collected for other revenue purposes

Clause 15

Submission
(Office of the Privacy Commissioner)

The submitter supports proposed section 17M in proposed subpart 3A that makes it clear that the Commissioner may use information collected for one revenue purpose for any other revenue purpose.

Often, the Commissioner receives information from a customer about a particular revenue product (for example, Working for Families Tax Credits), but that information is also relevant for other revenue purposes (for example, managing the customer's student loan account). I support the requirement that the Commissioner must make the most efficient use of information in order to fulfil her functions.

Comment

Officials welcome the support of the Privacy Commissioner for this provision and note that it is intended as a clarification of the current operational position of Inland Revenue.

Recommendation

That the submission be noted.

Issue: Use of information for other purposes

Clause 15

Submission
(Chartered Accountants Australia and New Zealand)

Proposed section 17M(3) should be amended to make it very clear the circumstances in which information provided for one purpose may be used for other purposes.

Comment

The proposed redrafting and updating of the information provisions aims to take a more principles-based approach to the legislation. Proposed new section 17M is intended to codify the current operational position of Inland Revenue, namely that information collected for one of its functions, may be used for any other function. Officials note that the Privacy Commissioner supports the inclusion of the proposed section 17M. This is primarily aimed at clarifying that information about customers supplied in relation to one product (for example, child support) can also be used in relation to another (for example, Working for Families tax credits).

Officials consider that providing extensive detail in the proposed section of when information may be reused would not be of assistance, and would be counter to the principles-based approach. Guidance and examples would, however, be provided as part of a *Tax Information Bulletin* if the proposed new section becomes law.

Officials note that the particular concern of the submitter is information provided to policy officials on a “no-names” basis to assist with policy development. Such information is not taxpayer-specific (in that it is “no names”) and is not provided in relation to a specific taxpayer. It is therefore difficult to see how this would translate to being used in some other context for another revenue purpose.

Recommendation

That the submission be declined.

Issue: Guidance on information aggregation

Clause 15

Submission
(Deloitte)

Inland Revenue should publish guidance to define what level of aggregation is required before confidential information no longer breaches subsections 16C(3)(a) or (b).

Comment

Officials agree that this is an area where guidance will be important to Inland Revenue staff and taxpayers. Some examples of how the new rules might be applied were included in earlier consultation material based on the Australian application of their rules. If the Bill is enacted, officials will include guidance in the *Tax Information Bulletin* on the application of the rules and updates will be made to guidance set out on Inland Revenue's website.

Recommendation

That the submission be accepted.

Issue: Disclosure should only be approved by officers with delegated authority

Clause 15

Submission
(Chartered Accountants Australia and New Zealand)

The submitter raises concerns about the proposal to keep confidential only information that could be used to identify a taxpayer. Due to the small size of the New Zealand economy, the risk of identifying specific taxpayers from aggregated information is high.

The proposed legislation does not include the appropriate safeguards. Proposed section 16C(4) should be amended so that only revenue officers with delegated authority are able to approve the release of aggregated information.

Comment

The definition of "revenue officer" set out in proposed section 16C(4) defines who is subject to the confidentiality rule (and associated penalties for breach). As set out in the following *Issue: Presumption of confidentiality*, decisions about releasing information will be largely unchanged for frontline staff. Decisions about aggregated information will be made at more senior levels and guidance will be issued to staff to ensure they remain aware of their obligations and where to direct requests. Decisions about releasing information generally, as with all decisions made under legislation by Inland Revenue staff, are subject to internal delegations as permitted by section 7 of the Tax Administration Act.

Recommendation

That the submission be declined.

Issue: Presumption of confidentiality

Submission
(Deloitte)

Officials should consider inserting an additional provision that creates a presumption of confidentiality for all information received by, and in all matters relating to, Inland Revenue (and the Inland Revenue Acts) until it is deemed that specific information or classes of information are able to be disclosed and shared.

Comment

The proposed presumption reflects the law as it currently stands, that is that Inland Revenue officers must maintain the secrecy of all matters relating to the Inland Revenue Acts, unless a specific exception applies. This can lead to situations where unnecessary effort is required to release information that does not relate to taxpayers (such as policy information or aggregated or statistical data), and in some cases the information is not able to be released, despite there being no risk to the privacy or commercial interests of taxpayers. The aim of the proposed changes is therefore to reduce this complexity, while ensuring taxpayer information remains protected.

In practice, for the majority of Inland Revenue staff, decisions about releasing information will be largely unchanged. For customer-facing staff, information requested is either largely specific taxpayer information (which remains protected subject to the same exceptions as currently, of primary relevance being the ability to provide a taxpayer with information about themselves), or information to help the taxpayer comply with their tax or social policy obligations. Updated guidance will be provided to all staff to ensure they are aware of their obligations and that information requests are handled by the appropriate officers. Official Information Act requests are centrally managed, as are requests from the media. Inland Revenue also has a centralised Information Hub that manages all information sharing with other agencies.

Recommendation

That the submission be declined.

Issue: Retention of obligation to keep taxpayer information confidential

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

The retention of a statutory obligation on the Commissioner of Inland Revenue to keep information in relation to a taxpayer confidential is an important corollary to the broad and

intrusive powers the Commissioner has to collect commercial and personal information with respect to individuals and businesses.

Comment

Officials agree that the confidentiality rule has long been seen as a balance for the information collection powers of the Commissioner, in addition to being seen as encouraging voluntary compliance and protecting taxpayer privacy.

Recommendation

That the submission be noted.

Issue: Withholding ground in proposed section 18(3)

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

The ground in proposed section 18(3) for the Commissioner to withhold information if the "release of the information would adversely affect the integrity of the tax system" is too broad and should be narrowed to only apply "for the protection of the public revenue".

Comment

Proposed section 18(3) provides a protection for revenue information that is not "sensitive revenue information" as defined in proposed section 16C (that is, not about a taxpayer), but is still highly sensitive and would affect the Crown's ability to collect revenue, if released. This would include information about matters such as audit or investigative techniques or strategies, compliance information, thresholds, analytical approaches and so on. The proposed grounds for withholding are where the release of the information would adversely affect the integrity of the tax system or prejudice the maintenance of the law.

"Integrity of the tax system" was considered the most appropriate ground upon which to base withholding, alongside maintenance of the law, given that all persons having obligations under the Inland Revenue Acts have an overarching responsibility to protect the integrity of the tax system. It is a concept already contained in the Tax Administration Act and includes the responsibilities of those administering the law to do so fairly, impartially, and according to law. While officials agree with the submitter that the protection should be appropriately targeted and no broader than necessary, officials consider that "integrity of the tax system" meets that requirement.

As the submitter has noted, "protection of the public revenue" is a concept contained in the Privacy Act. There is limited guidance as to the meaning of this phrase, and it is not a defined term in that Act. The Privacy Commissioner has considered its meaning in one case[2] (not relating to Inland Revenue), which takes a fairly narrow view of "public revenue", namely that it requires regular payments to a person or agency. Given the lack of certainty around the

[2] Case Note 2663 [1998] NZPrivCmr 6.

boundaries of this concept, and the well-established nature of "integrity of the tax system", officials consider "integrity of the tax system" is the appropriate standard to apply.

Recommendation

That the submission be declined.

Issue: Guidance on proposed section 18(3)

Clause 15

Submission
(Chartered Accountants Australia and New Zealand)

Detailed guidance should be published on proposed section 18(3). That is, examples of the types of information where disclosure would adversely affect the integrity of the tax system or prejudice the maintenance of the law.

Comment

Officials agree that additional guidance would be appropriate to assist taxpayers in understanding what might be withheld under this proposed provision. If the Bill is enacted, such guidance could be included, in the first instance, in a *Tax Information Bulletin*. Existing general guidance regarding information release on Inland Revenue's website will also be updated. Operational statements or standard practice statements may also subsequently be published on the operation of the proposed new information provisions.

Recommendation

That the submission be accepted.

Issue: Authorisation of on-disclosure by the Commissioner

Clause 15

Submission
(Matter raised by officials)

Section 18(2)(b) of the Tax Administration Act 1994 should also allow the Commissioner to authorise on-disclosure or use of sensitive revenue information by someone (not an Inland Revenue officer) in possession of that information. This reflects the position under the current law.

Comment

Currently section 87(1)(b) permits the Commissioner to authorise someone in possession of tax secret information to use or on-disclose that information. This "authorisation" language is not currently reflected in the proposed re-draft (proposed new 18(2)(b)). In situations where an

agreement is in place (which applies to all forms of inter-agency information sharing), the agreement will generally authorise use and any on-disclosure if necessary. However, there are situations, such as where someone is given access to information under current section 81(1B), where a formal agreement is not in place (although the person will have been required to sign a confidentiality certificate). In such situations, use or on-disclosure of the information should still be able to be disclosed where authorised by the Commissioner.

Recommendation

That the submission be accepted.

Issue: Disclosures for court proceedings

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Proposed section 18D(4)(b) does not preserve the current section 81(3). The function of current section 81(3) is to ensure that Inland Revenue officers are not required to produce any document if to do so would be inconsistent with current section 81 (the secrecy requirement).

In proposed section 18D(4), paragraph (b) should become new subsection (5) in the following form "(5) Section 18D(2) does not apply to require a revenue officer to produce a document in a court or tribunal…". Paragraph (a) should be consolidated into subsection (4) to read "(4) Section 18 does not prevent the disclosure of sensitive revenue information to a court or tribunal…".

Comment

Officials agree that the purpose of current section 81(3) is as detailed by the submitters and that there is no intention to change the purpose of this section in the proposed rewritten section 18D(4). Officials have reviewed the provisions and consider the proposed section 18D(4) as drafted does not alter the meaning.

Recommendation

That the submission be declined.

Issue: Disclosure of information to protect health and safety

Clause 15

Submission
(Office of the Privacy Commissioner)

The submitter supports the inclusion of proposed section 18J (Disclosure for risk and harm purposes) in the Tax Administration Act 1994, which provides for the override of tax secrecy rules to allow Inland Revenue to disclose sensitive revenue information when it considers this is necessary to prevent or lessen a serious threat to public health or public safety, or to the life or health of a person.

Proposed section 18J reproduces the "health and safety" disclosure exception in the Privacy Act that applies to other agencies. Normally, it is sufficient for an agency to rely on the Privacy Act exception but Inland Revenue requires a specific provision to overcome the tax secrecy limitations in the Tax Administration Act 1994.

Comment

Officials welcome the support of the Privacy Commissioner for the proposed amendment. As the Privacy Commissioner has stated, proposed section 18J replicates an exception in the Privacy Act. However, due to the specific confidentiality rules in the Tax Administration Act 1994, it must also be set out in the Tax Administration Act 1994 in order for it to apply to Inland Revenue.

Recommendation

That the submission be noted.

Issue: Repeal section 21 and remove proposed new section 17F

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Rewriting section 21(1) and enacting the rewritten provision as proposed section 17F(2) is not appropriate and instead section 21(1) should be repealed by the Bill and not rewritten. The current section is no longer necessary (in view of the Commissioner's other powers), and inappropriately denies taxpayers access to the Courts to test the lawfulness of the Commissioner's actions. *(Corporate Taxpayers Group)*

Existing section 21 should be repealed from the Tax Administration Act 1994 (and proposed section 17F should be removed from the Bill) as it is no longer necessary in light of the Commissioner's other powers, and denies taxpayers access to the Courts to test the lawfulness of an amended tax assessment in a way that is contrary to the New Zealand Bill of Rights Act 1990. The section is unnecessary as the Commissioner has other powers including the recently enacted 21BA in relation to information requested from large multinational groups. *(Russell McVeagh)*

Comment

There are no proposals in the Bill that change the intended policy of current section 21 of the Tax Administration Act 1994. The current section has been rewritten as proposed section 17F. Proposed section 227F makes it clear that there is no change to how the provision operates.

Officials note that it may be appropriate to consider expanding the scope of section 17G (currently section 21BA) so that it replaces section 17F (currently section 21) which applies to deductible payments to offshore persons. However, the scope of these two sections is not the same and therefore a number of amendments to proposed section 17G would be required to ensure the coverage of the amended section 17G matched that of 17F. Given the drafting requirements and the fact that this would represent a policy change, officials consider this should be recommended for consideration for a later tax Bill to allow submissions to be made on the drafting for this change. Officials note that this would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Proposed schedule 7 of the Tax Administration Act 1994 should be rewritten

Clause 102 and schedule 1

Submission
(KPMG)

The opportunity should be taken to rewrite proposed new schedule 8 (officials note this is actually referring to schedule 7 in the Bill) of the Tax Administration Act 1994 so that it is easier to follow and apply.

Comment

Proposed new schedule 7 of the Tax Administration Act 1994 contains the existing exceptions to confidentiality currently contained in Part 4 of the Act. Officials considered rewriting these provisions, however, it is expected that a number of them will be replaced over time by Approved Information Sharing Agreements or information sharing agreements under proposed new section 18F. Rewriting these provisions would require considerable resource and consultation. It was therefore considered more appropriate to focus on the overarching framework and the structure of the exceptions, rather than rewriting the detail at this time.

Recommendation

That the submission be declined.

Issue: Drafting amendments to proposed schedule 7

Clause 102 and schedule 1

Submission
(Matter raised by officials)

A minor error has been noted in the drafting of clause 42 of proposed new schedule 7. The provision refers to "residual income" when the correct term in the existing legislation is "other income". This should be amended to ensure the provision reflects what is currently in the Tax Administration Act 1994.

A further amendment is proposed to clauses 42 and 44 to reflect the correct parties to these information matching agreements – clause 42 should refer only to the Accident Compensation Corporation, and clause 44 to the Ministry of Justice.

Comment

Proposed new schedule 7 of the Tax Administration Act 1994 contains the existing exceptions to tax secrecy set out in the current section 81(4) and following. These provisions have been transferred to the proposed schedule 7 largely unchanged, however clauses 42 and 44 required combining of text set out in current section 81(4)(f) and sections 82, 85A and 85K. Section 81(4)(f) refers to both agencies and to all three of 82, 85A and 85K however 82 (proposed clause 42) need only refer to the Accident Compensation Corporation and 85A (proposed clause 44) to the Ministry of Justice.

Recommendation

That the submission be accepted.

Issue: Clarification regarding information to be disclosed under proposed schedule 7

Clause 102 and schedule 1

Submission
(Matter raised by officials)

As schedule 7 contains the existing exceptions to tax secrecy largely unmodified, there may be some inconsistency between the exceptions and the new confidentiality and disclosure rules contained in proposed section 18.

Comment

Schedule 7 sets out the exceptions currently contained in section 81(4) and the remainder of Part 4 of the Tax Administration Act. These exceptions have not been modified, as many have existing agreements or memoranda of understanding sitting beneath them that there is no immediate case to modify. In addition, it is expected that over time a number of these provisions will be replaced as cross-agency information sharing arrangements move with the more flexible regulation-based models.

These existing exceptions have been developed where the overarching secrecy rule applied to "all matters relating to the Revenue Acts". This Bill proposes to narrow what is covered by the confidentiality rule to "sensitive revenue information" – information that is about a taxpayer that identifies, could identify or is otherwise sensitive information. In some cases, this means the exceptions specifically authorise the disclosure of the broader "revenue information" (which essentially covers all information held by Inland Revenue), in addition to the narrower class of "sensitive revenue information".

In order to avoid any doubt or confusion about how the exceptions in schedule 7 relate to the proposed new general rule setting out what is confidential, officials recommend that a provision is added to clarify that the specific authorising of disclosures by the legacy exceptions in schedule 7 does not affect the general rule that only sensitive revenue information is covered by the new confidentiality rule.

Recommendation

That the submission be accepted.

Issue: Removal of unused information matching rule

Clause 102 and schedule 1

Submission
(Matter raised by officials)

Sub-clauses (2), (3), (4) and (5) of clause 47 in proposed new schedule 7 of The Tax Administration Act 1994 should be removed. These sub-clauses represent the operative part of current section 85H which is an information matching provision (relating to paid parental leave) that has not been utilised.

Comment

Current sections 85H and 85I deal with information matching and information use in relation to the paid parental leave scheme. Section 85H is an information matching provision as defined in the Privacy Act. It also contains definitions that are used for the purposes of section 85H and 85I.

The Office of the Privacy Commissioner and the Ministry of Justice have recently reviewed all information matching provisions to determine whether any changes are required. As part of the new Privacy Bill (currently before the Justice Select Committee), changes are being proposed to the information matching rules that will see information matching removed as a future tool for information sharing (as newer, more flexible models are preferred). Any existing information matching provisions that have not had underlying information matching agreements put into place will also not be able to be used.

Section 85H is an information matching provision that is not supported by an information matching agreement. The Privacy Commissioner has therefore recommended it be removed. Officials agree that this is appropriate as the provision is not in use, and there are no current plans to use it. Moreover, if the Privacy Bill passes with the proposed removal of the information matching rules from future use, the provision will no longer be able to be used. Should information sharing regarding paid parental leave be considered necessary in the future, agencies can explore doing so via one of the regulatory models, such as an approved information sharing agreement (AISA).

Recommendation

That the submission be accepted.

Issue: Removal of proposed schedule 7, clause 19

Clause 102 and schedule 1

Submission
(Matter raised by officials)

Proposed schedule 7, clause 19, is not required and should be removed.

Comment

Proposed schedule 7, clause 19, is current section 81(4)(j) renumbered. This provision is an exception to secrecy allowing the Commissioner to disclose information that is statistical or other general information that is in the public interest to communicate where the information does not reveal the identity of a taxpayer. The proposed changes to the coverage of the confidentiality rule mean that this exception would no longer be required as statistical and general information that does not identify a taxpayer would no longer be secret.

Recommendation

That the submission be accepted.

Issue: Minor drafting changes

Clauses 15 and 102, and schedule 1

Submission
(Matter raised by officials)

Officials have identified three minor drafting amendments required to ensure consistency between provisions. These are listed in the table below.

Provision	Proposed change	Comment
Clause 15 – proposed section 16B(4)(c)	Remove the words "in the general case"	These words are no longer required as they refer to clause 19 in schedule 7 which has been recommended for removal.
Schedule 1 (proposed new Schedule 7) clauses 2, 14, 20, 41 and 48	Replace "revenue information" with "sensitive revenue information"	These clauses should refer to "sensitive revenue information" consistent with the authorising provisions in proposed subpart 3A.
Clause 15 – proposed section 18F(1)	Replace "revenue information" with "sensitive revenue information or other information as applicable"	This proposed amendment matches the wording in the preceding provision 18E(1).

Recommendation

That the submission be accepted.

Issue: Consultation should be required with the Privacy Commissioner before consented information sharing agreements are entered into

Clause 15

Submission
(Office of the Privacy Commissioner)

Proposed section 18E(3) should provide for consultation with the Privacy Commissioner prior to the signing of any agreement.

Comment

Proposed section 18E(3) relates to agreements between agencies for the provision of public services, where consent will be obtained from the customer concerned. While these agreements, unlike other information sharing, will involve customer consent, officials agree that consultation with the Privacy Commissioner prior to agreements being entered into is appropriate.

Recommendation

That the submission be accepted.

Issue: Support for consent agreements

Clause 15

Submission
(Corporate Taxpayers Group)

The Group supports, as a general proposition, consent-based sharing of information between Government agencies. However, the Group notes that it will be important that appropriate safeguards are included to ensure that consent is meaningful and specific.

Comment

Officials agree that appropriate safeguards are important. As set out below in *Issue: Consented information sharing agreements should be supported by clear disclosure framework*, the proposed provision requires that the agreement stipulate a process to ensure consent is properly obtained and recorded.

Recommendation

That the submission be noted.

Issue: Consented information sharing agreements should be supported by clear disclosure framework

Clause 15

Submission
(Chartered Accountants Australia and New Zealand)

Proposed section 18E(3) should be supported by a clear disclosure framework so that taxpayers can make an informed decision about releasing information. The legislation should explicitly state that the agreement must include:

- how consent applies, if at all, to aggregate (summarised de-identified data);
- the duration of consent; and
- how the withdrawal of consent or correction of information may impact the use of information already generated and/or shared.

Comment

Proposed section 18E(3) relates to agreements between agencies for the provision of public services, where consent will be obtained from the customer concerned. Officials agree that a clear disclosure framework is important and that customers will need to be clearly informed what they are consenting to, how long the consent will last, and if relevant (in cases where the consent relates to more than a single information exchange), how they can withdraw their consent.

Proposed section 18E(3)(a)(iv) requires that any agreement stipulates a process to ensure that the consent is properly obtained and recorded, and proposed 18E(3)(a)(iii) requires an agreement to specify appropriate conditions for the security and use of this information. These agreements govern the sharing of sensitive revenue information and therefore do not deal with aggregate, summarised de-identified data. Officials therefore consider that the requirements already contained in proposed section 18E adequately address the issues raised by the submitter.

Recommendation

That the submission be declined.

Issue: Matters Minister must be satisfied with before recommending regulations under proposed section 18F

Clause 15

Submission
(Office of the Privacy Commissioner)

Before recommending regulations be made under proposed section 18F, the Minister of Revenue should be satisfied that:

- the type and quantity of personal information to be shared under the agreement are no more than is necessary to facilitate the provision of that public service or those public services;
- the agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy; and
- the mechanism being used to share the information is the most appropriate mechanism taking into account the type and quantity of personal information to be shared.

Comment

Officials note that the first two proposed criteria are similar to those contained in the Approved Information Sharing Agreement (AISA) rules. One aim of modernising the information sharing provision in the Tax Administration Act 1994 is to bring it more in line with the AISA rules. Officials therefore agree it is appropriate to include these criteria.

The final criterion proposed by the Privacy Commissioner is intended to reflect the aim of the proposed provision, namely to provide for information sharing where the information to be shared is primarily non-personal, and thus not best suited to using an AISA. Officials agree it is an appropriate consideration to include, subject to the minor amendment of referring to "information" rather than "personal information" as proposed.

Recommendation

That the submission be accepted, subject to officials' minor proposed alteration to the final proposed criteria.

Issue: Requirement for monitoring of public services purposes information sharing agreements by the Privacy Commissioner

Clause 15

Submission
(Office of the Privacy Commissioner)

Proposed section 18F should carry over the existing provision in section 81BA that provides for the monitoring of information sharing agreements by the Privacy Commissioner.

Comment

Officials agree that it is appropriate to carry over this requirement.

Recommendation

That the submission be accepted.

Issue: Support for consent agreements

Clause 15

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Proposed section 18F(1) should be amended to use semi-colons, accompanied with an "and" at the end of the penultimate paragraph. Alternatively, the words "each of the following criteria must be satisfied" could be added to proposed section 18F(1). Proposed section 18F(2) should be amended in a corresponding manner.

Comment

Officials agree that the criteria in proposed section 18F(1) and again in 18F(2) are intended to be cumulative (that is, all the criteria must be met) and will ensure the drafting reflects this in the revised tracked version of the Bill.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Further matter to be specified in proposed section 18F(2)

Clause 15

Submission
(Chartered Accountants Australia and New Zealand)

Proposed section 18F(2) should specify whether sharing information should only occur when a request has been instigated by the appropriate agency.

Comment

Proposed section 18F(2)(ii) requires that any information sharing agreement specifies how the information is to be provided or accessed. This will include setting out whether data is provided proactively by Inland Revenue, only in response to a request, or can be either. Officials consider the existing requirement is sufficient to address the issue raised by the submitter.

Recommendation

That the submission be declined.

Issue: Information sharing should only be permitted where the recipient is lawfully able to collect the information

Clause 15

Submission
(Corporate Taxpayers Group, Deloitte)

A regulation made under proposed section 18F should permit information-sharing only if the recipient is lawfully able to collect the information. This requirement is contained in the current section 81BA. We understand that it has been interpreted to require a direct and positive authority to collect or demand the information from the persons themselves. The lesser standard of the information being more easily or efficiently obtained from the Commissioner contained in proposed section 81F raises the concern that the regulation-making power may be used as a "back door" to use Inland Revenue's information collection powers.

Comment

As the submitters have noted, current section 81BA contains an express requirement that the agency receiving information be lawfully able to collect that information in their own right. As also noted, this has been interpreted to mean the recipient agency requires a direct and positive authority to collect the information and has therefore been overly restrictive.

One of the aims of the proposed changes to 81BA (proposed new section 18F) is to align the section more closely with the Approved Information Sharing Agreement rules in Part 9A of the Privacy Act. While Inland Revenue is able to, and does, use these rules for the sharing of primarily personal information, proposed section 18F is designed for those situations where the information to be shared is primarily non-personal. Part 9A of the Privacy Act does not include the "legally entitled" criteria, rather it hinges on the information being shared "for the provision of public services". Proposed section 18F has picked up this "provision of public services" criterion, as has proposed section 18E.

Proposed section 18F requires that the Minister of Revenue be satisfied, before making a recommendation for regulations, that regulations are necessary to achieve the purpose of providing public services, when:

- the sharing is intended to improve the ability of government to deliver efficient and effective services or enforce the law;
- the information is more easily obtained or verified from the Commissioner;
- it is not unreasonable or impractical to require the Commissioner to deliver the information;
- the nature of the sharing is proportionate to its purpose;
- the recipient has adequate protection for the information; and
- the sharing will not unduly inhibit future provision of information to the Commissioner.

In addition, the Privacy Commissioner has suggested the addition of three further criteria (see *Issue: Matters Minister must be satisfied of before recommending regulations under proposed section 18F*), which officials recommend accepting.

Officials consider that the proposed criteria provide sufficient protections to ensure agencies will only be able to access information for carrying out their public service functions. In particular, providing information that the recipient was not entitled to would not meet the reasonableness criteria, would not be proportionate, and would likely inhibit the provision of information to the Commissioner in future.

Recommendation

That the submission be noted but the inclusion of the previous specific criteria from section 81BA be declined.

Issue: Publication of rules and processes relating to information sharing

Submission
(Chartered Accountants Australia and New Zealand)

The Commissioner's sharing of commercial and aggregated information should be appropriately operationalised to ensure Inland Revenue officers with the appropriate expertise authorise the release of this type of information. There is a risk that taxpayers may be identified or commercially sensitive information inadvertently released dependent on the relevant dataset or disaggregation of information. Care will be required given the relative size of the New Zealand market.

These rules and processes should be published to maintain transparency.

Comment

Officials agree with the submitter that appropriately operationalising the proposed changes is very important. Inland Revenue is currently assessing the processes, operational material, and public material that will need to be updated if the changes proposed in this Bill become law. If the proposed changes progress, guidance on these matters will also be included in a *Tax Information Bulletin* following the passage of the Bill.

There are currently several published statements regarding aspects of the information and confidentially rules. These statements, along with information for staff and the more general information on the Inland Revenue website will need to be updated if the proposed changes come into effect.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Advise affected persons when sharing information

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

Inland Revenue should advise any affected person what data it has shared with other Government departments. (Such information should be available to taxpayers anyway, under the Official Information Act 1982.)

Comment

It is not usual practice to advise individual customers when information about them has been shared across government, for Inland Revenue or other departments. The volume of information that is shared across government would mean this could potentially be an onerous requirement for departments to comply with. Information sharing agreements do, however, generally have rules about notification prior to any adverse actions being taken as a result of information obtained through sharing agreements. Therefore, the customer is notified if action is to be taken as a result of information sharing. As the submitter notes, customers may make a request under the Official Information Act (or the Privacy Act) regarding the sharing of information about them. Officials consider the better approach is greater transparency about the arrangements under which information may be shared, so that customers are aware of the situations in which their data may be shared with other agencies (see following issue).

Recommendation

That the submission be declined.

Issue: Publication and reporting of annual statistics about data sharing

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

Inland Revenue should publish annual statistics providing a breakdown by Government department of the data it has shared with other departments. *(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)*

To encourage transparency, Inland Revenue should regularly report to Parliament on how much data it has shared with other Government departments, non-governmental third parties such as credit agencies, and overseas tax jurisdictions. *(Baucher Consulting Limited)*

Comment

Sharing carried out pursuant to Privacy Act information matching arrangements, and more recent developments, such as the Approved Information Sharing Agreements (AISA) and similar Order in Council authorised sharing under section 81BA of the Tax Administration Act 1994, aim for transparency. Information is made publicly available via the websites of the Privacy Commissioner (for information matching) and the relevant agencies (for AISAs and 81BA Orders in Council).

Inland Revenue is committed to making information available regarding its information sharing activities. Inland Revenue's website[3] currently contains information about all AISAs and section 81BA agreements, along with summary information about the Memoranda of Understanding that are in place with other agencies under the various legislative exceptions to tax secrecy (those current exceptions that are contained in proposed new schedule 7). In addition, the Annual Report contains information regarding new information sharing agreements entered into during the year in review, examples of summary outcomes from sharing arrangements, and detail of the exchanges conducted and outcomes achieved under Approved Information Sharing Agreements.

Recommendation

That the submission be noted.

Issue: Sharing information about those who suspend contributions to KiwiSaver

Submission
(Deloitte)

The savings contribution suspension for KiwiSaver supports taxpayers experiencing hardship to get back to a stable financial position before continuing contributions towards their retirement. Noting that the proposed changes to the KiwiSaver are concurrent with an update of the framework for the Commissioner's collection, use and disclosure of taxpayer information, officials may wish to ensure that proposed subpart 3A connects taxpayers who suspend their KiwiSaver contributions to social policy assistance and other Ministries that provide social support.

Alternatively, notifications sent to taxpayers about savings contribution suspensions should also provide information to those taxpayers about where they go for further information about government provided social support.

Comment

Inland Revenue does not collect information about why a person makes a decision to suspend contributions to their KiwiSaver scheme. As a person can temporarily suspend making contributions to their KiwiSaver scheme for reasons other than financial hardship, sharing information about a person's decision to suspend contributions with other government agencies that provide social support may not be appropriate in many cases.

The proposed information sharing framework will provide Inland Revenue with the ability to share information across government where taxpayers have provided consent, and where such information sharing has been approved by an Order in Council process which has been subject to consultation.

Recommendation

That the submission be declined.

[3] https://www.ird.govt.nz/aboutir/agreements/

Clauses 61 and 272–276

Issue: Support for short-process rulings

Submission
(EY)

The submitter welcomes the introduction of short-process rulings.

Recommendation

That the submission be noted.

Issue: Increase the application thresholds

Clause 61

Submission
(Chartered Accountants Australia and New Zealand, Deloitte New Zealand)

While we support the objectives of introducing a short-process binding rulings regime we consider that the proposed scope is too narrow. The qualifying thresholds should be increased to provide a wider reach. The time required to obtain a short-process ruling should also be specifically addressed. These recommendations would maximise the benefits of the proposed amendments for the SME sector. *(Chartered Accountants Australia and New Zealand)*

To make the regime more accessible to SMEs generally, we recommend that the thresholds may need to be set at $50 million (gross income) and $10 million (tax in question) respectively. We also recommend that along with materially increasing the application thresholds, officials should consider changing the test from "and" to "or". This will assist creating reasonable access to the new regime. *(Deloitte New Zealand)*

Comment

Officials agree that a higher turnover threshold is warranted and recommend that it be increased to $20 million. Because the turnover threshold is aimed at SMEs, the $20 million threshold would apply on a group basis (that is, if an applicant is a member of a group of companies, the group itself must satisfy the turnover threshold) so that larger entities with small subsidiaries would still be required to follow the existing process.

Because binding rulings are binding on the Commissioner of Inland Revenue but not the taxpayer, officials consider the $1 million tax threshold should be retained to limit the revenue risk of the new process. Officials also consider the $20 million and $1 million tests should remain cumulative,[4] as the short-process rulings system is, as noted, being set up for small to

[4] Meaning that both criterion need to be satisfied instead of using an "or" test as suggested by Deloitte.

medium-sized enterprises, rather than large entities which may otherwise want to use the process for minor matters.

Officials note that the Bill includes the ability for both the turnover threshold, and the "tax at stake" threshold to be changed by an Order in Council in the future if necessary.

Recommendation

That the submission be accepted, subject to officials' comment.

Issue: Timeframes for short-process rulings

Clause 61

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

The legislation should include a time limit for Inland Revenue to process a short-process ruling application. We consider that the short-process rulings regime will better meet its objectives if a maximum time limit of, say, six weeks, is provided for in the Regulations. If our submission is not accepted, we suggest that Inland Revenue operational guidelines/processes should include a maximum time limit to obtain a short-process ruling. *(Chartered Accountants Australia and New Zealand)*

More clarity should be provided regarding the timeframe for a short-process ruling to be issued. *(KPMG)*

Comment

The current rulings process does not have a legislative time limit and officials do not believe there is a need to prescribe a time limit for short-process rulings. However, Inland Revenue's standard is to provide rulings within three months from receipt of the application.

Inland Revenue will prepare guidelines which will similarly include a target timeframe for a short-process ruling to be issued. The current best estimate for this timeframe is six weeks.

As officials have noted, it is difficult to estimate the number of short-process ruling applications Inland Revenue might receive, which means that the estimated timeframe is based on a best guess of the resources required for short-process rulings.

Recommendation

That the submission in relation to publishing guidelines be accepted, subject to officials' comments.

Issue: Application of thresholds where there is more than one applicant

Clause 61

Submission
(Corporate Taxpayers Group, Deloitte, EY, KPMG)

It should be clarified whether an employer with annual gross income above the $5 million threshold can make an application for a short-process ruling on the application of tax laws to its employees. *(Corporate Taxpayers Group)*

Where there is more than one applicant for a short-process ruling, it should be clarified whether the income and tax thresholds apply individually to each applicant or collectively. *(KPMG)*

The legislation should clarify how the annual gross income requirement applies when two or more persons apply jointly for a short-process ruling. Where the short-process ruling is relevant to the tax obligations of each party, the annual gross income requirement should only need to be satisfied by one of the parties. The legislation should specify whether each party to the ruling must individually satisfy the annual gross income requirement, or whether it is only necessary for one person to satisfy this requirement. *(EY)*

We would value clarification as to whether the short-process rulings regime could be used by a taxpayer in relation to a specific matter where the person affected qualifies under section 91EL but the taxpayer does not. For example, could a company enquire about an employee share scheme issue or other shareholder issues on behalf of a shareholder where the shareholder stands to earn less than $1 million; or could a company seek clarification on a PAYE/FBT issue for a class of employees; or could a company seek clarification on a withholding tax issue for a director. *(Deloitte New Zealand)*

Comment

It is intended that the thresholds must be satisfied individually by each of the joint applicants where there are two or more persons who apply jointly for a short-process ruling.

The thresholds do not apply cumulatively to joint applicants. For example, if persons A and B (who are not members of a group of companies) are applying for a short-process ruling and each had annual gross income in the previous tax year of $15 million (that is, below the $20 million now being recommended), provided the other criterion of the tax being less than $1 million was met, they would not be precluded from the short-process rulings regime.

Officials do not consider the Bill needs to be amended to include specific rules as to the circumstances in which a person can apply for a ruling on behalf of another person. Ultimately it depends on whose tax affairs are the subject of the ruling.

For example, where a ruling is sought for a matter involving FBT or PAYE, the ruling relates to the affairs of the employer. This is because FBT and PAYE are obligations of the employer, and not the employees of the employer. In such cases, it is the employer that must satisfy the criteria for a short-process ruling. Conversely, if an employer applied for a ruling on behalf of an employee for a matter relating to the employee’s tax affairs, it is the employee who must satisfy the criteria for a short-process ruling.

Officials also note that a product ruling might be more appropriate where an employer is seeking a ruling that is to apply to all (or a class of) employees.

Recommendation

That the submissions be declined.

Issue: Separate definition of "short-process ruling" required

Submission
(Chartered Accountants Australia and New Zealand)

A separate and clear definition of a "short-process ruling" is required. Highlighting the difference between a full-process and a short-process ruling will emphasise the benefits of the regime and would encourage taxpayers to apply for a short-process ruling.

Comment

Officials do not believe that there is a need to include a separate definition of a "short-process ruling" in the Tax Administration Act 1994. There is no separate definition in terms of the other rulings Inland Revenue are able to provide, and officials consider that the differences between rulings products can be made clear in published guidance following enactment of the Bill.

Recommendation

That the submission be declined.

Issue: Person yet to come into legal existence

Clause 61

Submission
(Chartered Accountants Australia and New Zealand)

Proposed section 91EL should confirm whether a person who is yet to come into legal existence may apply for a short-process ruling.

Comment

The proposed rules require that in order for a person to qualify for a short-process ruling, the following criteria must be satisfied:

- The person's annual gross income for the tax year before that in which the application is made is $5 million (now proposed to be $20 million) or less.
- The person is seeking the ruling on a matter concerning a tax (other than provisional tax), duty, or levy that is expected to amount to less than $1 million.

If a person is not in legal existence (for example, where a company has not been incorporated) it would not be possible to satisfy the first criterion, because the person did not exist. Officials agree, however, that a person who is yet to come into legal existence should not be precluded from applying for a short-process ruling.

Officials recommend that, in the circumstances where a person has yet to come into legal existence, the person must have a reasonable expectation of having annual gross income (for the tax year that the ruling relates to) of $5 million or less, or as now proposed, $20 million or less. The $1 million cap on the tax involved would remain a requirement. This would ensure the regime is available to those that did not exist in earlier tax years.

Recommendation

That the submission be accepted.

Issue: Fees for a short-process ruling

Submission
(Accountants and Tax Agents Institute of New Zealand, Chartered Accountants Australia and New Zealand)

We suggest that Inland Revenue should aim to cap a fee for a private ruling at $2,500 plus GST, as part of enabling smaller businesses and enterprises to get more certainty in their tax affairs. *(Accountants and Tax Agents Institute of New Zealand)*

We support the proposal to reduce the fee for short-process rulings and to allow the Commissioner to set appropriate rates. *(Chartered Accountants Australia and New Zealand)*

Comment

The Bill gives the Commissioner of Inland Revenue discretion under the Tax Administration (Binding Rulings) Regulations 1999 to set fees for short-process rulings that are lower than the current fees for binding rulings ($280 plus GST on application and $140 plus GST per hour).

Officials agree that the fees for short-process rulings should be significantly lower. As part of the consultation process for implementing the regime, officials will consult with interested parties on their views of the appropriate fee level.

Recommendation

That the submission be noted.

Issue: Reasons for refusing a short-process ruling

Clause 61

Submission
(Corporate Taxpayers Group, Deloitte New Zealand)

The grounds on which the Commissioner can decline to make a short-process ruling should not include proposed section 91EK(2)(e), as paragraphs (a) to (d) should sufficiently limit the short-process ruling scheme. *(Corporate Taxpayers Group)*

Proposed section 91EK(2) gives the Commissioner too many opportunities to refuse to use the short-process rulings regime. We would like to see the Commissioner more committed to engaging in the rulings process for SMEs as it will support the overall integrity of the tax system. The exclusions in paragraphs (a), (b), (c) and (e) of proposed section 91EK(2) are all unnecessary exclusions from the regime. *(Deloitte New Zealand)*

Comment

Proposed section 91EK(2) includes a number of circumstances in which the Commissioner can refuse to issue a short-process ruling, namely if an application:

- raises an issue involving an apparent gap or deficiency in policy settings (proposed paragraph (a));
- is directly in opposition to an existing policy of the Commissioner or technical position taken by the Commissioner (proposed paragraph (b));
- raises an issue that has, or would have, significant implication or wide effect as a precedent (proposed paragraph (c));
- fails to provide sufficient information (proposed paragraph (d)); or
- raises a question that is better answered by the Commissioner through another process (proposed paragraph (e)).

Officials do not agree that the exclusions are unnecessary.

For exclusion (a), officials consider the short-process rulings regime should not deal with situations involving a gap or deficiency in policy settings, as these situations require more detailed analysis. Often these situations require extensive consultation to ensure the ruling is issued appropriately. Sometimes, applications can give rise to policy concerns or highlight the need for a legislative amendment. In these cases, officials expect that Inland Revenue would not be able to issue rulings within the timeframes envisaged for a short-process ruling.

Exclusions (b) and (c) are necessary because the short-process ruling process may be inappropriate for dealing with an issue that is either inconsistent with the Commissioner’s stated view of the law or has significant precedential impact as more detailed analysis may be required.

Officials consider that proposed paragraph (e) is important because it will enable the Commissioner to refuse to issue a short-process ruling in relation to applications which are highly complex, cover multiple interrelated issues, multiple legislative provisions or highly complex factual scenarios which are better addressed through the full rulings regime.

Officials do not agree that the inclusion of paragraph (e) could have the effect of undermining certainty, as this is still available to taxpayers through the full rulings regime. Further, there are likely to be instances where Inland Revenue is able to provide advice outside of a rulings regime, and officials expect paragraph (e) would enable the department to provide advice without having to charge a fee.

The purpose of the short-process rulings regime is to provide certainty to taxpayers in situations where the question(s), factual situation(s), and number of issues are clear in the rulings application without any requirement to include propositions of law or a draft ruling.

Recommendation

That the submission be declined.

Issue: Application date for short-process rulings

Clause 2

Submission
(Matter raised by officials)

Officials submit that the application date for the short-process rulings proposal be changed from the date of enactment to 1 October 2019.

Comment

It is proposed that the short-process rulings regime take effect from the date of enactment for the Bill. Officials recommend this be deferred to 1 October 2019.

This will give Inland Revenue sufficient time to implement and prepare for the changes. Specifically, it will ensure that there is the system capacity for implementation following the implementation of the next Business Transformation stage in April 2019. It will also ensure that the new regime does not coincide with Inland Revenue's peak return filing season.

Recommendation

That the submission be accepted.

EXTENDING THE SCOPE OF BINDING RULINGS

Clauses 54–60 and 64–67

Issue: Support for the proposal

Submission

(Accountants and Tax Agents Institute of New Zealand, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, EY, New Zealand Law Society, PwC)

The submitter expressed support for the proposal, specifically:

- the proposed amendments to remove the prohibition on ruling on a taxpayer's purpose;
- to allow more factual questions to be ruled on;
- to expand the ability to rule on financial arrangements; and
- to clarify the role of conditions and assumptions in the rulings process are sensible. *(Chartered Accountants Australia and New Zealand)*

The submitter supports the proposed changes and sees the ability to rule on a person's tax residence as potentially very useful. *(Accountants and Tax Agents Institute of New Zealand)*

The broadening of the circumstances in which a binding ruling can be given is welcomed. This will increase efficiency and taxpayers' confidence in the tax system. Further submissions are made on how the Group considers the proposals could be enhanced. *(Corporate Taxpayers Group)*

The submitter welcomes the extension to the scope of matters on which a taxpayer can apply for a private binding ruling. *(EY)*

The submitter supports the binding ruling simplification measures in the Bill. *(New Zealand Law Society)*

The submitter supports the proposed amendments to the extension of the scope of the existing regime, and the objective to clarify the use of conditions and assumptions in the rulings process. *(PwC)*

Recommendation

That the submissions be noted.

Issue: Use of an exhaustive list is too restrictive

Clause 55

Submission
(CPA Australia, KPMG, New Zealand Law Society)

Limiting the matters on which a private ruling and a short-process ruling can be made is restrictive, and the Commissioner should have a discretion to consider other matters outside the list provided. *(CPA Australia)*

Proposed section 91CB(1)(u) refers to residency and permanent establishment rulings for the purposes of a double tax treaty. Both of these concepts also apply for other purposes. Section 91CB(1)(u) should not be restricted to a double tax treaty purpose. *(KPMG)*

Proposed section 91CB of the Tax Administration Act should be extended to permit private or short-process rulings on "status" issues in the Goods and Services Tax Act 1985, such as whether a person is or is not GST resident, an associated person, a non-profit body, a public authority, or an absentee. *(New Zealand Law Society)*

Comment

Proposed section 91CB(1) was intended to be an exhaustive list of matters that the Commissioner would be able to issue rulings on without the need for an arrangement.

Officials agree that the list as currently drafted is too restrictive and that this should be expanded further to enable the Commissioner to issue rulings in relation to a person's "status" under both the Income Tax Acts and the Goods and Services Tax Act 1985.

However, officials consider a different drafting approach is warranted. The preferred approach would enable the Commissioner to issue a ruling as to whether a person meets the criteria based on any term that defines the "status" of a person, rather than aiming to provide a comprehensive list. The use of an exhaustive list runs the risk of being incomplete and heightens the risk of becoming out-of-date. Officials recommend the legislation provide examples to indicate what sorts of matters the Commissioner would be able to rule on – for example, such as whether a person is a tax resident, or whether they have a permanent or fixed establishment.

Recommendation

That the submission be accepted.

Issue: Binding rulings to remedy a legislative anomaly

Clause 9

Submission
(Corporate Taxpayers Group, Russell McVeagh)

Binding rulings should be permitted on the application of an action to remedy a legislative anomaly under proposed section 6C. Given the binding nature of regulations and

determinations, it would be appropriate to provide binding rulings in respect of taxation laws as modified by those instruments under the power proposed in section 6C, including administrative actions (as the Group has submitted that the Commissioner should be bound by administrative actions).

Comment

Officials note that this submission relates to the proposal in clause 9 of the Bill to extend the Commissioner's care and management powers to enable her to resolve legislative anomalies (proposed sections 6C to 6H of the Tax Administration Act 1994).

Because this submission is contingent on the scope and nature of the extended power, officials recommend that it should be resolved as part of the wider review of the proposal. See *Redrafting of the Commissioner's extended care and management powers for inclusion in the next available tax bill* below.

Recommendation

That the submission be noted.

Issue: Rulings and conditions and assumptions

Clause 59

Submission
(PwC)

Given the repeal of section 91EF(2), we query whether sections 91E(3) and 91EG(1)(b) should be retained. Specifically, there does not appear to be any explicit grounds in these sections for the Commissioner to decline to make a ruling that is subject to conditions.

We do not consider there should be any risk to the tax base in the Commissioner issuing rulings that are subject to conditions, and we do not consider that there are any policy grounds on which the Commissioner should be able to reject a ruling on this basis. We therefore submit that these sections should be repealed.

Alternatively, if there are circumstances in which the Commissioner should be able to decline to issue a ruling because it is stated as being subject to assumptions, it would be helpful for the legislation to clarify what these circumstances might be.

Comment

The Bill includes a proposal to remove the ability for the Commissioner to make assumptions about information which an applicant can provide in relation to a private ruling. This is because the term "assumption" is being replaced by "condition" where possible, as it is a clearer, more transparent term which is more reflective of current practice.

The Bill also proposes to amend section 91E(3) to enable the Commissioner to decline a private ruling if the Commissioner considers that the correctness of the ruling would depend on which conditions were stipulated about a future event or other matter. Officials consider this amendment should be retained as the Commissioner should not be expected to provide a ruling with conditions that cover every potential future event or other matter that might impact on the correctness of the ruling.

Officials consider the law is drafted in such a way that the Commissioner will issue rulings where possible, but should have the ability to decline to make a ruling where she is not satisfied that the ruling could be given on the facts available, even subject to conditions. Attempting to amend the law to set out all of the circumstances in which the Commissioner might decline to rule (where the requested ruling is subject to conditions) runs the risk that the omission of any circumstance would place the Commissioner in a position where she would be required to rule, and this could pose a risk to the tax base.

Recommendation

That the submission be declined.

Issue: Removing requirement for the Commissioner to rule in relation to an "arrangement" for certain matters

Clause 56

Submission
(Corporate Taxpayers Group, Russell McVeagh)

The Bill is broadening the binding rulings scheme to allow applications without an "arrangement". Proposed subsection 91E(4B) is not clear and could be confusing in its application, and amendments to each provision to not require an "arrangement" is preferred.

Sections 91E–91ED, 91EH and 91EI should be restated so as to allow a person to ask a question in relation to a binding ruling application without an "arrangement" (as contemplated for the proposed short-process rulings).

Further, the purpose of clause 57 (amending section 91EA) is unclear. Section 91EA could simply state "in accordance with the ruling".

Comment

Inserting subsection (4B) to section 91E of the Tax Administration Act 1994 ensures that references to an "arrangement" throughout the rulings provisions are ignored for the purposes of rulings issued by the Commissioner on matters in proposed section 91CB. This would enable the Commissioner to issue rulings on the status of a person, item or matter without there being a need for an arrangement.

Section 91EA outlines the effect of a private ruling. Officials agree that clause 57 of the Bill, which proposes to amend section 91EA, needs to make it clear that rulings apply not just in the context of an arrangement, but also in instances where a ruling has been issued for the matters described in proposed section 91CB where there is no arrangement.

Officials will consider the drafting suggestions made by the submitters for the revision tracked version of the Bill.

Recommendation

That the submission be considered for the revision tracked version of the Bill.

Clause 73

Issue: Support for the proposals

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

All submitters supported the proposal and/or the underlying objectives of the proposed amendments to extend the rule that allows taxpayers to correct errors in a subsequent return following discovery of the error, subject to certain thresholds and safeguards.

The Group supports supplementing the single monetary threshold in section 113A with an approach that relies, to some extent, on the significance of the error for the particular taxpayer. *(Corporate Taxpayers Group)*

We support the underlying objectives of the proposed amendments to allow the rules allowing the correction of errors in subsequent returns. *(Chartered Accountants Australia and New Zealand)*

We support making it easier for taxpayers to comply with their tax obligations by correcting errors in later tax returns. *(KPMG)*

Recommendation

That the submission be noted.

Issue: Threshold for minor errors should be increased further

Clause 73

Submission

(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte New Zealand, KPMG)

All submitters suggested that the threshold for allowing taxpayers to correct minor errors in a subsequent return should be increased beyond the current $1,000 limit.

The $1,000 threshold should be amended further to increase the "total discrepancy" limit to NZ$2,000. This will reduce the volume of administrative work for Inland Revenue under section 113. *(Deloitte New Zealand)*

Comment

The Bill proposes two separate thresholds that would enable taxpayers to correct errors in subsequent returns. The first threshold is an automatic threshold of up to $1,000, which is already in existing legislation, and the second threshold is the lesser of $10,000 or 2% of a

person's taxable income (in respect of income tax or fringe benefit tax) or output tax (in respect of goods and services tax).

If the threshold were increased further to $2,000 for example, it would allow relatively large errors for small taxpayers to be included in a subsequent return without Inland Revenue becoming aware of the error. Based on a $2,000 threshold, taxpayers could include errors up to a maximum adjustment of income or deductions of $7,142 for a company, $6,060 for an individual on the top personal tax rate and $15,333 for GST.

For smaller taxpayers, these amounts are relatively significant and may discourage first time accuracy which could harm the integrity of the tax system.

Larger taxpayers with larger errors will still be able to self-correct these errors provided the materiality thresholds which are proposed in this Bill are not exceeded.

Officials consider that the existing $1,000 threshold for smaller errors is appropriate, and note that the proposed materiality threshold in the Bill will enable more taxpayers to self-correct errors in subsequent returns.

Recommendation

That the submission be declined.

Issue: Remove requirement for the error to be "minor"

Clause 73

Submission
(Chartered Accountants Australia and New Zealand, KPMG)

The word "minor" in proposed section 113A(1)(a) should be removed. One of the objectives of the proposed amendment is to remove the "minor error" approach. The reference to minor errors in proposed section 113A(1)(a) is inconsistent with this objective, and is confusing. *(Chartered Accountants Australia and New Zealand)*

We consider it unnecessary to refer to "minor" errors in new section 113A(1)(a), when there is a clear threshold of $1,000 or less specified for automatically including an error in a subsequent return. This would be consistent with the amendment in the Bill, which proposes to change the heading for new section 113A from referring to "minor errors" to referring to "certain errors". *(KPMG)*

Comment

It is intended that an error will be a "minor" error for the purposes of section 113A where it satisfies the conditions of proposed subsection (1). That is, for a single return, the total discrepancy in the assessment caused by the error is not more than $1,000, and the error is in a return for income tax, fringe benefit tax or goods and services tax.

Officials agree that the word “minor” is unnecessary and should be removed from section 113A.

Recommendation

That the submission be accepted.

Issue: Application to approved issuer levy errors

Clause 73

Submission
(Corporate Taxpayers Group)

The proposed new section 113A should include the approved issuer levy in the list of taxes in subsections (1)(a) and (2). The exclusion of approved issuer levy (AIL) would otherwise be anomalous.

Comment

Section 113A of the Tax Administration Act 1994 was introduced in 2009 as part of a wider package of measures to help reduce compliance costs for small and medium-sized enterprises. The section applies to errors contained in returns for income tax, fringe benefit tax, and goods and services tax.

Approved issuers are able to pay interest to non-residents without deducting non-resident withholding tax (NRWT). Approved issuers are also required to pay a levy, calculated at the rate of 2 percent of the interest on a registered security. Officials consider the opportunity to make errors in an AIL statement seem to be relatively low when compared to the other types of taxes the rule currently covers.

Officials do not consider that extending the application of section 113A to cover approved issuer levy errors would be appropriate given the targeted group of taxpayers and the taxes that the rule is intended to apply to.

Recommendation

That the submission be declined.

Issue: Two-test materiality threshold should be increased

Clause 73

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte New Zealand)

Submitters have suggested that the proposed two-test materiality threshold for errors needs to be increased.

We recommend that the first limb of the threshold test (that is, the $10,000 monetary threshold) be removed. *(Chartered Accountants Australia and New Zealand)*

The threshold for an error to be material under proposed section 113A(2) should be higher (that is, the greater of 2% of taxable income for that period or $10,000) given the compliance costs incurred by larger businesses in making an adjustment to a previous period. *(Corporate Taxpayers Group, Deloitte New Zealand)*

Comment

Officials note that the proposed materiality threshold would reduce the compliance costs for all taxpayers for errors up to $10,000 (subject to the 2% threshold) by allowing them to include such errors in a subsequent return. This would remove the need for taxpayers to request to reopen the original assessment.

As a rough indication of the levels of errors to which the proposal could apply, data from the 2014 and 2015 income years suggests that a maximum adjustment threshold of $10,000 would include 97–98 percent of amendments by number and 84–86 percent of adjustments by value.

Increasing the threshold further at this stage may reduce the incentive for taxpayers to get their returns right the first time and could negatively impact the integrity of the tax system, as significant errors would not be brought directly to Inland Revenue's attention.

Officials also note that, in any case, Inland Revenue's Business Transformation should, in future, make it easier for taxpayers to correct past returns.

Recommendation

That the submission be declined.

Issue: Use of "taxable income" closes the rule off for too many taxpayers

Clause 73

Submission
(Chartered Accountants Australia and New Zealand, EY)

The proposed materiality threshold should take into account a taxpayer in a loss position. If the error is not in relation to GST, the proposed threshold will exclude a taxpayer in a loss position as materiality will be measured on taxable income. By definition, a taxpayer in a loss position will not have taxable income, or alternatively, they will have taxable income of zero or a negative amount. In this case, the total discrepancy will always exceed the proposed materiality threshold. *(Chartered Accountants Australia and New Zealand)*

In determining whether an error is non-material, total revenue or annual gross income should be used as opposed to taxable income. We consider that instead of taxable income, total revenue or annual gross income should be used. A taxpayer may have a net loss for the year but their total revenue could be large enough that the error in question may be immaterial. This approach would also align more closely with the use of output tax for amending GST returns, rather than GST payable. *(EY)*

Comment

Officials agree with submitters and recommend that proposed section 113A(4) should be amended to change references from "taxable income" to "annual gross income", which refers to a person's total assessable income for an income year. This would allow taxpayers who have taxable income of nil (or who have a net loss) to apply the rule, provided they have income for the period.

Recommendation

That the submission be accepted.

Clauses 5(36), 5(59), 14, 36, 79, 88(2), 213(27) and 213(31)

Issue: Support for the proposals

Submission
(Chartered Accountants Australia and New Zealand, Di Crawford-Errington, Klox Limited, Institute of Certified NZ Bookkeepers)

A number of submitters supported the proposal to introduce new provisions in the Tax Administration Act 1994 that provide a legislative basis for Inland Revenue to deal with a wider range of third parties in relation to the tax and social policy affairs of persons.

Submitters were particularly supportive of measures to extend access to Inland Revenue systems to third parties.

Recommendation

That the submission be noted.

Issue: Existing provisions for various third party providers

Clauses 14, 36 and 79

Submission
(Chartered Accountants Australia and New Zealand)

It is appropriate to bring together the existing provisions regarding third party providers with the new provisions.

Recommendation

That the submission be noted.

Issue: Recommendation for review following implementation

Submission
(CPA Australia)

CPA Australia acknowledges the need to extend the access of online services to third-party providers of tax services. CPA Australia recommends that the success of the proposed extended access be reviewed after several years.

Comment

Post implementation review is an existing part of the policy process.

In general, monitoring, evaluation and review of new legislation takes place under the Generic Tax Policy Process (GTPP). The GTPP is a multi-stage policy process that has been used to design tax policy in New Zealand since 1995. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation and the identification of remedial issues.

Officials also note that in practice, any changes identified as necessary following enactment would be added to the tax policy work programme, and proposals would go through the GTPP.

Recommendation

That the submission be noted.

Issue: Tax agent status should not be provided to employees of the employer

Clause 79

Submission
(Corporate Taxpayers Group)

The words "the employer of" should be inserted at the beginning of proposed section 124C(3)(b)(iii).

Comment

This would ensure that it is the *employer* who has tax agent status, and not the individual employee(s) of the employer who have tax agent status, consistent with the policy intent. However, officials recommend removing proposed section 124C(3)(b)(iii) as no similar provision exists in current section 34B, which includes the criteria a person must meet to become a tax agent.

Proposed section 124C is largely a rewrite of existing section 34B of the Tax Administration Act 1994 and it not intended to materially change the rules that relate to tax agents. Further, officials do not recommend making changes to the criteria that a person must meet in order to become a tax agent as part of this Bill.

Recommendation

That the submission be accepted.

Issue: Clarifying the criteria to become a tax agent

Clause 79

Submission
(Cone Marshall Limited)

We suggest that the drafting of section 124C(3) be amended so that it is clear that just one of the qualifications listed at section 124C(3)(b) must be satisfied. In its current form, the clause is drafted in such a way that it is not clear whether an "and" or "or" is implied after each number from (i) through (iv). It is clear that just one of these qualifications must be satisfied, therefore we propose, for the sake of clarity that "any of the following" should be inserted at section 124C(3)(b) so it reads "(b) are any of the following—…". Alternatively, "or" could be inserted following the colon at the end of each of the lines (i) through (iii).

Comment

Officials consider the provision as currently drafted achieves the intended policy outcome which is that a person is eligible to become listed as a tax agent if they prepare the returns of income required to be filed for 10 or more other persons, and are one or more of the following:

- a person carrying on a professional public practice;
- a person carrying on a business, occupation, or employment in which returns of income are prepared and filed;
- a person employed by a company that is a member of a group of companies, and returns of income are prepared and filed by the company for the group[5]; or
- the Māori Trustee.

A colon is used to separate items in a list of paragraphs if the items in the paragraphs are not linked conjunctively or disjunctively. The use of the colon in this provision is equivalent to introducing the list with the words "one of more of the following". This is a decision made by Inland Revenue drafters and applies consistently across tax legislation in New Zealand.

Recommendation

That the submission be declined.

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[5] Note officials recommend removing this from the Bill – see response to the submission *Tax agent status should not be provided to employees of the employer* above.

Issue: Allowing a corporate group to have its own tax agency list

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

Allowing a corporate group to have its own tax agency list will be welcomed by large taxpayers. Proposed section 124C(3) would allow an additional means to become a tax agent. It is proposed that an employee of a group of companies could become a tax agent for the group. This will be welcomed by large taxpayers, many of whom would prefer to have their own agency list.

Comment

Officials note that corporate groups are not currently precluded from maintaining separate tax agency lists and that the addition of proposed section 124C(3)(b)(iii) is not necessary to facilitate this.

On a related note, officials consider it more appropriate, such as the case now, to provide tax agent status to the employer instead of individual employees of the employer. Officials note that where an employee also satisfies the criteria to become a tax agent in their own right, they also have the ability to obtain tax agent status from Inland Revenue if they choose to do so.

Recommendation

That the submission be noted.

Issue: Returns to be prepared and filed by the company for the group

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

The rule should not require that the company prepares the returns but only that the company is responsible for filing the returns. Large corporates have a wide range of arrangements for completing their tax returns. This is dependent on many factors, including:

- number of returns;
- level of complexity; and
- balance date.

In the case of the last point, the balance date determines how long the company has to file its returns. Those with December balance dates have 18 months, whereas those with September balance dates have only six months. Those with complex returns and a short filing time will generally need assistance to prepare returns, even if ultimate responsibility for the return filing is retained by the company.

Chartered Accountants Australia and New Zealand do not believe the rule should require the company to prepare the returns, but only that the company be responsible for filing the return.

Comment

Proposed section 124C is intended to largely mirror current section 34B of the Tax Administration Act 1994 which contains the rules and requirements that relate to a person becoming a tax agent.

To that end, officials disagree with the submission that the Bill should remove the requirement that returns be "prepared" and filed by a person seeking tax agent status. The "prepared" requirement has been longstanding (since 1985) and a departure from this has not been considered as part of the proposals in the Bill to modernise the rules for third parties and intermediaries.

Recommendation

That the submission be declined.

Issue: Clarification over 12-month period to provide updates

Clause 79

Submission
(Corporate Taxpayers Group)

It should be made clear that the information requirements in subsection 124E(3) should give tax agents and representatives a 12-month period to provide necessary updates.

Comment

Proposed section 124E(1) includes a requirement that non-individual applications from prospective tax agents and representatives need to provide information to Inland Revenue about natural persons closely associated with the entity – for example, a partnership needs to provide the name of each partner in the partnership.

Proposed section 124E(3) is intended to deal with situations where that information becomes out-dated (for example, where a partner leaves a partnership and is replaced by someone else) and gives the entity 12 months from the date of the change to update the information with Inland Revenue. This is consistent with the current rules for tax agents.

Officials agree that the rule in proposed section 124E(3) should be rewritten to make this clearer.

Recommendation

That the submission be accepted.

Issue: Information requirements for tax agents and representatives if non-natural persons

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

The information requirements proposed for non-natural persons in proposed section 124F are appropriate. We agree that Inland Revenue should require additional information from non-natural persons and support the proposal to tailor the requirements depending on entity type.

Recommendation

That the submission be noted.

Issue: Setting up a nominated person electronically through myIR

Submission
(Chartered Accountants Australia and New Zealand)

We support the proposal to allow a formal nomination for a representative person and we believe the information requirements are appropriate. The notification should be able to be done electronically through myIR.

Comment

Officials believe the information requirements for a prospective nominated person need to be relaxed to ensure they achieve the intended policy outcome and have recommended relaxing these. See the matter raised by officials on *Information required to be provided about nominated persons* below.

Taxpayers will be able to set up a nominated person electronically through myIR.

Recommendation

That the submission be noted.

Issue: Information required to be provided about nominated persons

Clause 79

Submission
(Matter raised by officials)

Proposed section 124F(1)(b)(iii) requires a person to provide Inland Revenue with the name, contact address, tax file number, and date of birth of the person they are nominating to act on their behalf.

These criteria should be relaxed as there will be situations where the nominator does not hold all of these details in relation to a nominee, but the Commissioner can still be satisfied that the person being nominated is the intended person.

Comment

Officials recognise that, as is the case currently, there are instances where a person may not have all of the information needed in order to satisfy the proposed requirements. In some circumstances, a person nominating another person may not know that person's IRD number, date of birth or hold the person's current contact address. This information was originally proposed as a means of enabling the Commissioner to verify that the person being nominated was the intended person.

Officials consider that the requirements should be relaxed and changed to require only the person's full name, and any other information necessary for the Commissioner to identify the intended person. This could still be, for example, the person's date of birth and location, but may not include the person's IRD number. Officials note there may be instances where the nominated person does not have an IRD number, as they could be a family member who resides overseas for example. It is not the intent to prevent a person without an IRD number from being a nominated person.

Recommendation

That the submission be accepted.

Issue: Commissioner right to remove someone as a tax agent

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

It is appropriate and timely to give the Commissioner the right to remove someone as a tax agent. We agree that this right should be codified and not simply an administrative practice. We believe the criteria for removal are appropriate.

Comment

Section 34B of the Tax Administration Act 1994 currently enables the Commissioner to remove or deny a person tax agent status. There are no changes proposed in the Bill in relation to how these rules will continue to work.

Recommendation

That the submission be noted.

Issue: Commissioner discretion to refuse to list a person as a "nominated person"

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

It is appropriate to give the Commissioner a discretion to refuse to list a person as a "nominated person".

We agree with the proposed rule to restrict tax agents from acting as a "nominated person" for those who are not family members, but only if a person is able to have more than one representative for their tax matters at any one point in time. For example, a second representative for a different tax type or for a particular issue or in respect of tax positions taken in a particular period.

Comment

The proposal will enable the Commissioner to disallow a person's status as a nominated person if the Commissioner considers that:

- the person is acting in a fee-earning or other professional capacity, or if the person is acting for multiple persons whether in a fee-earning or other capacity; and
- continuing to allow the person to act on behalf of another person in relation to their tax or social policy affairs would adversely affect the integrity of the tax system.

However, this does not apply if the person is acting on behalf of their spouse, civil union partner, de facto partner, or a relative within two degrees of relationship.

It will be possible for a person to have more than one representative at any point in time. For example, a person may have a tax agent for their income tax and Working for Families tax credits matters, and that would not prevent them from also having a nominated person in relation to their income tax and Working for Families tax credits matters.

Recommendation

That the submission be noted.

Issue: Commissioner right to remove someone as a "nominated person"

Clause 79

Submission
(Chartered Accountants Australia and New Zealand, CPA Australia)

It is appropriate to give the Commissioner the right to remove someone as a "nominated person". We agree that the right should be codified and not simply an administrative practice and we believe the criteria for removal are appropriate. *(Chartered Accountants Australia and New Zealand)*

The proposed amendments to withhold approval, or disallow a nominated person to act for them in relation to their tax affairs or social policy entitlements is sensible to protect the integrity of the tax system. *(CPA Australia)*

Recommendation

That the submission be noted.

Issue: Drafting for the proposed discretion to disallow persons as nominated persons

Clause 79

Submission
(Russell McVeagh)

The language of proposed paragraph 124G(3)(a) is unduly complex: "the person is a person other than a person referred to in subsection (4) who is acting…".

Proposed paragraph 124G(3)(a) should be split into two paragraphs to read:

(a) the person is not a person referred to in subsection (4); and
(b) the person is acting…"

Comment

Officials agree that the drafting of proposed section 124G(3)(a) could be simplified and will consider this for the revision tracked version of the Bill.

Recommendation

That the submission be considered for the revision tracked version of the Bill.

Issue: Refusing a nominated person in situations of suspected financial abuse

Clause 79

Submission
(CPA Australia)

The Commissioner's discretion to withhold approval or disallow a nominated person to act on behalf of another taxpayer should extend to protection of the taxpayer in situations of suspected financial abuse.

Comment

Officials consider the Bill as currently drafted would enable the Commissioner to disallow a person's status as a nominated person in situations of suspected financial abuse.

If the Commissioner suspected there were occurrences of financial abuse occurring, in those circumstances continuing to allow the person to act on behalf of other person(s) would adversely affect the integrity of the tax system and the current proposal would allow the Commissioner to remove a person as a nominated person if continuing to allow them to act on behalf of others would adversely affect the integrity of the tax system.

The proposal does not allow the Commissioner to remove a person acting as a nominated person if they are acting on behalf of their spouse, civil union partner or de facto partner, or a relative within two degrees of relationship.

Examples of other situations where the Commissioner could exercise this discretion to remove a person from being a nominated person because of "integrity of the tax system" reasons will be published in a *Tax Information Bulletin* following enactment of the Bill.

Recommendation

That the submission be declined.

Issue: Notification of refusal, disallowance or removal from list

Clause 79

Submission
(Chartered Accountants Australia and New Zealand)

We support the proposal to require the Commissioner to notify a person of either:

- her refusal to list them as a tax agent;
- the reasons for an exercise of her discretion to disallow the person as a representative or nominated person; or
- the reasons for an exercise of her discretion to remove them from the list of tax agents.

Recommendation

That the submission be noted.

Issue: Dispute rights in relation to being a tax agent, representative and/or nominated person

Clause 88(2)

Submission
(Matter raised by officials)

The new sections that provide the rules for tax agents, representatives and nominated persons in proposed Part 7B of the Tax Administration Act 1994 have been excluded from section 138E(1)(e)(iv).

This has inadvertently created dispute rights in relation to the Commissioner's powers to approve, decline, or revoke a person's status as a tax agent, representative or nominated person which was not intentional.

Comment

The Tax Administration Act 1994 does not currently confer dispute rights to a person in relation to their status as a tax agent. Officials recommend ensuring that this continues and that, consistent with the rules that relate to tax agents, a person does not have dispute rights in relation to their status as a nominated person or as a representative.

It is important that decisions made by the Commissioner in relation to a person's status are not disputable decisions as administrative decisions made by the Commissioner should – as with every other government agency – be subject to administrative review applications. No special system is required in tax legislation to achieve this. The purpose of the disputes regime is not to provide taxpayers with the ability to dispute decisions made by the Commissioner on administrative matters.

Recommendation

That the submission be accepted.

Clause 9

Issue: Suggested changes to the drafting of sections 6 and 6A

Submission
(Adele Isaacs)

As section 6A is to apply "despite anything in the Inland Revenue Acts", a literal interpretation of the section is that it will apply despite section 6, which clearly is "in the Inland Revenue Acts". If it is intended that the Commissioner endeavours to protect the integrity of the tax system while exercising her section 6A duty of care and management, the wording of clause 9 should be improved.

That section 6A requires the Commissioner to act "within the law" is often cited as the reason section 6A is subject to section 6. Though this is a pragmatic approach, it is unsatisfactory. It is possible to ignore section 6 and still be acting "within the law" under section 6A, if it applies "despite anything".

Adele Isaacs submits that the Bill provides an opportunity to rectify the issue neatly and recommends the three following amendments:

- "includes" in proposed section 6(2) should be changed to "reflects";
- "despite anything in the Inland Revenue Acts" should be removed from proposed section 6A(2); and
- "duty" in proposed section 6A(2) should be changed to "endeavour".

Comment

Sections 6 and 6A of the Tax Administration Act 1994 were inserted following the Richardson Committee's report of the former section 4 of the Inland Revenue Department Act 1974. The changes incorporated the following features in the Tax Administration Act 1994:

- protection of the "integrity of the tax system" including a clear definition of what is sought to be protected (section 6);
- explicit recognition of the Commissioner of Inland Revenue's need to operate within limited resources in the care and management of all of the functions committed to the charge of the Commissioner (section 6A);

Section 6 requires every Minister and every officer of any Government agency who has responsibilities under any Act in relation to the collection of taxes and other functions imposed by the Inland Revenue Acts at all times to use their best endeavours to protect the integrity of the tax system. The term "integrity of the tax system" was purposefully defined inclusively with reference to six factors, and consequently ensures that regard may be given to other non-prescribed factors relevant to a particular case. The matters included in the definition relate to fairness, impartiality, and confidentiality, among other things.

In broad terms, section 6A provides that the Commissioner of Inland Revenue has a discretion in managing limited resources as to the best means of obtaining the highest net return practicable having regard to resources available and the costs of collection. In exercising this discretion, the Commissioner must also consider potential impacts on the integrity of the tax system and taxpayer compliance, especially voluntary compliance.

The Bill does not contain proposals to change the scope or nature of existing sections 6 and 6A, which have remained unchanged since they were introduced in 1995. The proposals in the Bill seek to extend the Commissioner's care and management role by providing her with the ability to pursue or make modifications to tax legislation to remedy "legislative anomalies" (as defined) subject to clear constraints.

Officials will consider the points raised by the submitter, but consider that given the critical role of sections 6 and 6A, it would be inappropriate to make the changes suggested to the provisions at this stage without the changes being included separately in the Government's tax policy work programme and subject to the full Generic Tax Policy Process.

Recommendation

That the submission be noted.

Issue: Proposal to extend the Commissioner of Inland Revenue's care and management powers

Clause 9

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, EY, Financial Services Council, KPMG, Russell McVeagh)

A number of submitters commented on the proposal in the Bill to extend the Commissioner's care and management powers to resolve legislative anomalies. The main points raised by submitters were:

- general support for the proposal;
- the importance of the modifications being effectively administered, and the Commissioner of Inland Revenue's powers not being unduly read down;
- extending the power if necessary to allow for easier ways to comply with provisions that have high compliance costs;
- the ability for modifications to apply on a retrospective basis;
- the legal status, including the binding nature, of modifications; and
- various other concerns with the wording of the draft legislation.

Recommendation

That the submissions be noted.

Issue: Redrafting of the Commissioner’s extended care and management powers for inclusion in the next available tax bill

Clause 9

Submission

(Matter raised by officials)

As suggested by the Finance and Expenditure Committee, officials have been working with the Legislation Design and Advisory Committee on the drafting of the proposal to extend the Commissioner’s care and management powers to enable her to remedy legislative anomalies.

This is likely to lead to a full redraft of proposed sections 6C to 6H of the Tax Administration Act 1994, which provide for the extension of the Commissioner’s care and management powers.

Comment

Submissions made to the Finance and Expenditure Committee on the proposed extension of the Commissioner’s care and management powers were focused on the detailed drafting in the Bill as well as the objectives of the provisions. As noted, officials are discussing a full redraft of the provisions currently in proposed sections 6C to 6H of the Bill with the Legislation Design and Advisory Committee. Officials do not consider, however, that there is sufficient time to undertake full consultation on the redraft unless the proposed provisions are removed from this Bill and brought back in a later bill. As a number of submissions were made on the technical detail of the proposal, officials consider it would be of benefit to submitters and Inland Revenue to ensure subsequent redrafted legislation is consulted on.

The redraft under discussion by officials contains significantly different wording to express the scope of the power than that used in the Bill for the purposes of clarifying and streamlining the drafting, and ensuring that the provisions are consistent with the Legislation Design and Advisory Committee guidelines. That said, there is no intention to change the intended scope of the power set out in the Bill. It is still proposed that the power will have the effect of remedying legislative anomalies, being gaps or inconsistencies within tax legislation that produce an outcome which is inconsistent with the intended policy outcome. It is also intended that the significant constraints on the power relating to limiting the size of the issue, the modification’s period of application, optionality for the taxpayer, consultation and publication requirements would be retained.

Also under discussion is a change to the processes for a modification. It is intended that the Order in Council process would be retained for the purposes of making a modification, but under discussion with the Legislation Design and Advisory Committee is that instead of providing the Commissioner with a determination-making power and the ability to undertake an administrative action, an exemption-making power could be used instead. An exemption-making power would enable the Commissioner to issue exemptions, with terms and conditions that outline variations to the provisions, or how the provisions should apply.

To ensure the provisions reflect the intended policy outcome, are consistent with the Legislation Design and Advisory Committee guidelines, are well understood, and are subject to a full consultation process, officials recommend that proposed sections 6C to 6H of the Bill are removed and a redrafted version is reintroduced in the next available tax bill or, if necessary, at the Finance and Expenditure Committee stage as a Supplementary Order Paper to the next

available tax bill. Officials estimate that this would involve a delay or around six months for the provisions to commence.

Recommendation

That the submission be accepted.

Modernising tax administration – Other items

OVERPAYMENTS OF PAYE INCOME NOT REPAID

Clauses 119, 194–198, 213(24) and 213(33)

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand)

Support the proposed amendment to clarify the legislation that an overpayment of employment income subject to PAYE which is not repaid remains taxable as PAYE income.

Recommendation

That the submission be noted.

Issue: Clarification required when employee agrees to repay

Clause 119

Submission
(PwC)

We recommend explicit clarification that where an employee agrees to repay their employer for a PAYE income overpayment, that the overpayment is not income of the employee.

From a practical perspective, overpayments will be taxed when initially made. Often employers enter into agreements with employees to pay back the after tax money overpaid over a defined period. Under the proposals, the employer would be required to make an adjustment each time the employee makes a repayment, rather than one initial adjustment when the repayment plan is agreed with the employee.

Notwithstanding the administrative compliance associated with this, it could also have flow on effects to any social assistance, child support or working for families tax credits the employee receives. While this may be an incentive to repay the money, it could also place additional pressure on the employer/employee relationship. This may be exacerbated if an employer overpays an employee near the end of a tax year, and the employee does not repay until the following tax year.

As such, we also suggest there is some clarity around the timing of when the adjustment should be made. For example, if the overpayment is made during February 2018, and the employee repays in one lump sum during April 2018, would the employer adjust the February 2018 PAYE return?

Accordingly, we also suggest that Inland Revenue provides guidance on how repayments should be processed through the payroll and returned to Inland Revenue (with calculation examples).

Comment

The proposed amendment is aimed at reduced compliance costs for employers and follows consultation on the PAYE error correction and adjustment issues paper which was released in August 2017.

The submitter raises an example of an overpayment made in February which the employee repays in one lump sum two months later in April. There is a legislative provision to provide for how errors may be corrected by Order in Council. If the proposed legislation is enacted, new regulations will need to be made to recognise the change in how these overpayments should be treated. These regulations will provide clarification around when adjustments may be made in relation to different types of errors. To date, the agreed general principles of error correction for PAYE adjustments would allow for adjustments to be made in a subsequent return, which in this case would provide for it to be returned in April, or in the return where the error originally occurred.

Officials agree there are likely to be many cases where an overpayment is repaid by the employee in instalments over time. Officials have discussed this situation with the Specialist Advisor to the Committee and agree that employers should have the option of reporting overpayments as not PAYE income once sufficient agreement is made with the employee. Alternatively, the employer may wish to report amounts of the overpayment as repaid (and therefore not an unrepaid overpayment which is subject to PAYE) on an iterative basis as the overpayment is paid back.

Officials will provide further guidance once the proposed provision is enacted, including examples setting out proposed adjustments for various scenarios.

Recommendation

That the submission be accepted.

Issue: Overpayment made by ACC or MSD

Submission
(Matters raised by officials)

Officials have considered the impact of the proposed amendment on overpayments made from taxable payments made by ACC and MSD to ensure the amendment is appropriate for these payments and does not impose any undue administrative costs. This consideration included the current legislative provisions and that unlike employers, ACC and MSD are able to offset overpayments from current assistance without the client’s permission, subject to guidelines relating to hardship.

Section 251 of the Accident Compensation Act identifies when an overpayment made is non-recoverable. This provides a similar (although not identical) concept to when an overpayment is repaid/not repaid and allows us to distinguish between overpayments made by ACC which are recoverable or non-recoverable. The Income Tax Act already excludes an overpayment of accident compensation which remains recoverable from the definition of taxable income.

There is no equivalent exclusion of recoverable overpayments from MSD from the definition of taxable income. In addition, MSD systems operate differently to employers' systems, and most overpayments are recovered over time. Given the small number of write-offs that could be affected and their low value, officials consider that the costs of implementing the proposed amendment for overpayments of taxable social security benefits, student allowance and New Zealand Superannuation/Veterans Pension cannot be justified and officials recommend excluding these from the scope of the proposed amendment, accordingly.

Officials recommend that the taxable status of overpayments of accident compensation payments should be clarified as follows:

- Overpayments of accident compensation payments which are deemed non-recoverable under section 251 of the Accident Compensation Act 2001 should be defined as an unrepaid PAYE-related overpayment and as such be subject to PAYE in line with the proposed amendment.
- Overpayments of accident compensation payments that are repaid or recoverable are not an unrepaid PAYE-related overpayment.

In addition, the provision should be amended to ensure overpayments of taxable social security benefits, student allowance and New Zealand Superannuation/Veterans Pension paid by MSD are excluded from the proposed amendment.

Recommendation

That the submission be accepted.

Issue: Drafting issue

Clause 194

Submission
(Matter raised by officials)

Officials consider that clause 194 is unnecessary and should be deleted.

Clause 194 of the bill proposes to amend section RD 3 of the Income Tax Act 2007 to include an "unrepaid PAYE income overpayment" within the meaning of "PAYE income payment". Officials consider that this amendment is redundant as clause 198 of the Bill inserts new section RD 8B which specifies that an "unrepaid PAYE income payment" is, in all cases, treated as one of the three existing types of "PAYE income payment": salary or wages, extra pay, or a schedular payment.

Therefore, the proposed section RD 8B makes it clear that an "unrepaid PAYE income overpayment" is a "PAYE income payment" and the amendments to section RD 3 (clause 194) are not required and should be deleted.

Recommendation

That the submission be accepted.

OVERPAYMENTS AND EMPLOYEE-RELATED LOANS

Clauses 126 and 198

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand, AMP)

Support the proposed amendment to clarify the legislation that an overpayment of employment income subject to PAYE does not amount to an employment-related loan on which a fringe benefit arises.

Recommendation

That the submission be noted.

Issue: Employment related loans should also include write-backs on commissions

Clause 126

Submission
(AMP)

Section CX 10 should be amended to confirm a debt arising from a write-back of insurance commission (schedular payment) is also excluded from the definition of employment-related loans.

This is an analogous situation to a loan owing from commission write-back.

The submitter therefore suggests that a specific exclusion in section CX 10(2) is added so that an employee-related loan does not exist where the debt arises from a schedular payment subsequently written back. No change to the proposed PAYE-related overpayment definition is required.

Comment

Clause 126 amends section CX 10 of the Income Tax Act so that an overpayment of employment income subject to PAYE does not amount to an employment-related loan on which a fringe benefit arises. This proposed amendment clarifies the status of overpayments repaid over time. This supports the amendment in clause 198 of the Bill which clarifies that an overpayment of PAYE income is still subject to PAYE. Clause 198 inserts new section RD 8B which provides the definition and treatment for a PAYE-related overpayment. The definition of a PAYE-related overpayment requires that the employee is not beneficially entitled to the amount.

The amendment is intended to prevent FBT from applying when an overpayment has been made in error and an agreement is reached with the employee to subsequently pay back the overpayment over time.

In the case of a commission write-back, an insurance agent is initially beneficially entitled to the commission payment, but that beneficial entitlement is subsequently reversed. This is a feature of the agreement between the insurance agency and the insurance agent and may occur regularly, rather than as the result of an error as in the case of a PAYE related overpayment. Accordingly, officials consider that this is not analogous to the situation which officials are proposing to exclude from being subject to FBT on employment-related loans.

Recommendation

That the submission be declined.

MID-YEAR ENTRY TO THE ACCOUNTING INCOME METHOD

Clauses 190–192

Issue: Support for the proposal

Submission
(Accountants & Tax Agents Institute of New Zealand, Chartered Accountants Australia and New Zealand, KPMG)

Support the proposal to allow taxpayers to enter the accounting income method (AIM) during an income year.

Recommendation

That the submission be noted.

Issue: The requirement to prepare and file a statement of activity with each payment should be reviewed

Submission
(Accountants & Tax Agents Institute of New Zealand, KPMG)

That the requirement for AIM taxpayers to prepare and file a statement of activity with each payment should be reviewed with a view to lowering compliance costs of the AIM method.

Comment

It is important that there is visibility over the calculation of AIM payments to Inland Revenue. Filing a statement of activity should be an automatic process that is largely done through the accounting software being used by the taxpayer. Officials are continuing to work on improvements to the AIM provisional tax method and will consider this submission as part of that future work.

Recommendation

That the submission be declined.

Issue: Improve AIM or simplify provisional tax

Clause 190

Submission
(EY, KPMG)

Allowing mid-year entry into AIM is unlikely to encourage a significant number of taxpayers to make the switch to AIM. Further changes are required to improve AIM or to simplify provisional tax in another way.

In particular, AIM could be simplified by reducing the number of tax adjustments and number of payments required.

Comment

Officials are continuing to work on improvements to the AIM provisional tax method and will consider this submission as part of that future work.

Recommendation

That the submission be declined.

Issue: Clarifying the application date

Clause 2

Submission
(Chartered Accountants Australia and New Zealand, EY)

The application date should be clarified. The application date for the proposal in the *Commentary* to the Bill states that the proposal will be effective for the 2019–20 income year. The Bill has an application date of Royal assent.

Comment

Officials agree that the application date for these clauses should be the 2019–20 and subsequent income years.

Recommendation

That the submission be accepted.

CORRECTING UNINTENDED PROVISIONAL TAX AND USE-OF-MONEY INTEREST RULES CHANGES

Clause 76

Issue: Support for the proposal

Submission
(Corporate Taxpayers Group, Deloitte)

The submitters are generally supportive of the proposed amendment.

Recommendation

That the submission be noted.

Issue: Opposing the retrospective application date

Clause 2

Submission
(Corporate Taxpayers Group, Deloitte)

The submitters are not supportive of any retrospective law that goes against the principle of certainty. Tax rules should be as certain as possible and they need to be administered and interpreted by Inland Revenue consistently and speedily.

Comment

This proposal seeks to clarify the current legislation to ensure it is applied as it always was intended to apply. Officials consider the current wording of the legislation gives the same outcome as the proposed amendment. However, officials are aware of some taxpayers who have challenged that interpretation and have received a cancellation of use-of-money interest (UOMI) on the basis of an alternative interpretation of the legislation. There are a very small number of taxpayers in this situation.

Officials consider it is not detrimental to taxpayers to apply the proposal retrospectively, as the proposal is clarifying the policy intention and providing certainty to taxpayers on how the legislation should be applied. Those who have had UOMI applied will have no change to their position and those who have challenged the current legislation will also have no change to their position because of the savings provision. This provides more certainty to taxpayers.

Recommendation

That the submission be declined.

Issue: Opposing the policy intent of the proposal

Clause 76

Submission

(Chartered Accountants Australia and New Zealand, EY)

The submitters understand the rationale for the proposal but do not support the policy intent that the amendment seeks to confirm. Charging UOMI from a date when there is no provisional tax liability unfairly penalises a taxpayer who has complied with the law.

Comment

This amendment clarifies the application of the UOMI rules to a certain factual situation where a taxpayer has had residual income tax of less than $2,500 in year one and more than $2,500 in year two but has not filed a tax return for that year because of an extension of time arrangement. This means that they are only required to pay provisional tax in one or two instalments depending on when they file their income tax return for the year. Practically, the issue only arises for taxpayers who have residual income tax greater than $60,000.

The amendment clarifies the policy intention that UOMI should apply from the first instalment date for that year and not the dates of the instalments. UOMI is not a penalty but is a charge for the use of money (either by the taxpayer or the Government). It has always been a feature of the UOMI rules that, except for a specified number of instances, UOMI has always applied over the three instalments as it is a use of money charge and the taxpayer has had use of money over that entire period and not just the dates they were required to make an instalment.

Recommendation

That the submission be declined.

Clause 75

Issue: Support for the proposal

Submission
(Corporate Taxpayers Group)

The submitter is generally supportive of the proposed amendment.

Recommendation

That the submission be noted.

Issue: Unclear that use-of-money interest charged will always be less than current

Clause 75

Submission
(Chartered Accountants Australia and New Zealand, EY)

Submitters do not consider that the proposed payment allocation rule will result in the same or less use-of-money interest (UOMI) charged to a taxpayer's account than under the current rules.

Comment

Under the current payment allocation rule payments are allocated to UOMI before core tax. Under the proposed payment allocation rule in most cases the amount of UOMI charged will remain the same but in some circumstances a larger proportion of a taxpayer's payment will be allocated to core tax rather than UOMI than is currently the case. This will result in less UOMI charged under the proposed rule than currently.

The situation where this will most likely occur is when a taxpayer receives a reassessment which results in a recalculation of UOMI. In that case payments which have previously been allocated will not be reallocated to UOMI first as is currently the case.

> **Example**
>
> A taxpayer who is assessed with GST of $1,000 and who does not pay that amount and incurs UOMI of $10[6] makes a payment of $910. That payment will be allocated first to the $10 of UOMI first then to the core tax of $1,000 which will leave a balance of core tax owing of $100 which will continue to accrue UOMI.
>
> A month after that the taxpayer receives a reassessment for this period increasing the GST liability by $200 to $1,200. The UOMI is recalculated to be $15 on the increased liability.

[6] The amounts of UOMI in this example are for illustrative purposes only and is not calculated precisely to keep the example simple.

Current rule

Under the current treatment the original reassessment is reversed and replaced with the new assessment of $1,200 and the UOMI of $15. The payment is then allocated to those amounts.

This will mean the payment of $910 will be allocated to $15 of UOMI and $895 will be allocated to core tax. This will leave a balance of $305 of core tax which will continue to accrue UOMI. This is represented by the $200 reassessment amount, the original underpayment of $100 and $5 of additional core tax which results because of the UOMI first rule as $5 of the payment is now allocated to the additional UOMI rather than core tax.

Proposed rule

Under the proposed allocation rule, this reallocation will not occur as the reassessment is not reversed and replaced. The "delta", or change in the assessment, is added as a separate billing item within the account. Under the proposed allocation rule the $910 payment is not disturbed as the reassessment is not reversed and replaced. The original assessment of $1,000 and the UOMI relating to that of $10 is not disturbed. The payment remains allocated $10 to the UOMI and $900 to core tax.

An additional delta is added to that reassessment of $200 and the additional UOMI of $5. UOMI therefore continues to accrue on $300 of core tax. This is represented by the original short payment of $100 and the $200 of additional assessment (the delta). This amount accruing UOMI is $5 less of core tax than under the current rule. The next payment made by the taxpayer will be allocated to UOMI relating to the $100 original debt, the $100 original core tax, the UOMI relating to the $200 delta and finally the $200 delta.

By not reallocating the payment to a replacement reassessment, it is impossible to have more UOMI accruing than under the current method. In most cases the amount of UOMI calculated will, however, be the same as under the previous method but in some cases it will be less.

Credit reassessments do not follow this "delta" model and continue to be reversed and replaced. This will mean there is no change to the UOMI calculated where there is a downward reassessment for a taxpayer.

Given this, it is impossible for a taxpayer to be charged more UOMI under the proposed rule than the current allocation rule.

Recommendation

That the submission be declined.

Issue: Include use-of-money calculation in section 120F example

Clause 75

Submission
(Chartered Accountants Australia and New Zealand)

The example in proposed section 120F should include the calculations of UOMI charged.

Comment

The example to section 120F was designed to illustrate the way in which a payment would be allocated between UOMI and core tax and the numbers used were for illustrative purposes only.

Officials considered it would unduly complicate the example to show actual calculations of UOMI applying as the main point of the example, being the payment allocation rule, would be lost in the complexity of the calculations.

Officials have discussed this issue with the submitter and have agreed to insert a clause that "UOMI calculations in the example are illustrative only" to retain the simplicity of the example.

Recommendation

That the submission be declined, subject to officials' comments.

Issue: Provisional tax payment allocation rule

Clause 75

Submission
(Matter raised by officials)

Provisional tax payments have their own separate allocation rule. This rule essentially requires that all payments made by a provisional taxpayer are allocated to core tax before use-of-money interest (UOMI) until the date terminal tax is due.

This rule does not fit with the usual payment allocation rule which generally requires payments to be allocated to UOMI before core tax. The general rule ensures that there is never a balance of UOMI left in an account as that amount has no due date and does not incur further UOMI.

This amendment alters the provisional tax payment allocation rule to more closely align with the general rule and simplifies the system design so that only one payment allocation rule exists after the calculation of UOMI.

This proposed amendment was not able to be included in the original version of the Bill because the issue was discovered as part of the detailed work for the next phase of Inland Revenue's Business Transformation implementation. This detailed design is ongoing.

Comment

Clause 75 of the Bill contains a change to the general payment allocation rule in section 120F which first allocates payments to the oldest billing item within an account period although retaining the current rule that UOMI is always paid prior to core tax.

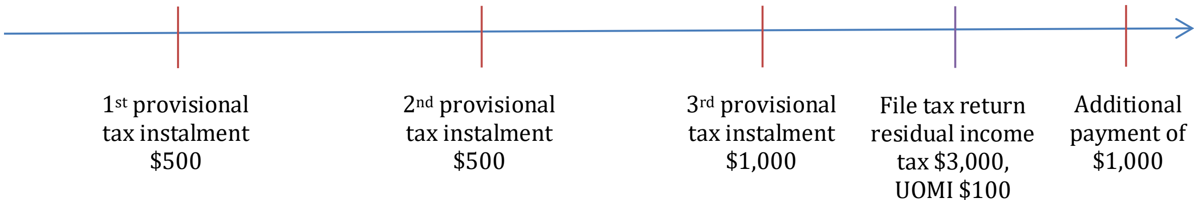
A separate payment allocation rule exists for provisional tax payments in section 120L of the Tax Administration Act 1994. This rule essentially applies any payment made prior to terminal tax date to core tax notwithstanding there may be UOMI charged on the account. UOMI is charged to the account only when the taxpayer files their income tax return. The return gives Inland Revenue sufficient information to calculate any UOMI.

To simplify the system design within Inland Revenue's new technology platform, only one payment allocation rule can exist after UOMI has been charged on the period. The current provisional tax payment allocation rules contain two rules after the calculation of UOMI.

There are also a number of inconsistencies with the current payment allocation rule for provisional tax with the general position that UOMI should be paid first. Under the current rule, a number of cases have arisen where debts owed by taxpayers only include UOMI which is not desirable as UOMI has no due date and does not compound so the incentive to pay that debt is reduced.

It is proposed to address these inconsistencies and simplify payment allocation rules for taxpayers by adopting the general rule for payments made for income tax after the final instalment date for provisional tax for that taxpayer. This change will ensure that no debit balance of UOMI is left in the period and that it aligns the payment allocation rules.

The change in the allocation rule can be illustrated as follows:



Current rule

The final payment of $1,000 would be apportioned totally to core tax rather than to UOMI first. This will leave a UOMI balance in the taxpayers account of $100 which has no due date and does not incur further UOMI.

Proposed rule

Under the proposed rule, any payments made after the third instalment will be apportioned to UOMI prior to core tax, as is the usual payment allocation rule. In this example, the $1,000 will be apportioned to $100 of UOMI and $900 of core tax which will leave a balance of $100 of core tax which will continue to incur UOMI until that amount is paid.

This change will be applicable for payments made after the date that release three of Business Transformation goes live.

Recommendation

That the submission be accepted.

UPDATE OF OBSOLETE CROSS-REFERENCE

Clause 207–210

Issue: Support for proposed repeal

Submission
(Chartered Accountants Australia and New Zealand)

Support for the repeal of obsolete cross-references to section 120K of the Tax Administration Act 1994.

Recommendation

That the submission be noted.

Issue: Section RM 31 has been repealed

Clause 210

Submission
(Chartered Accountants Australia and New Zealand)

The Bill refers to section RM 31(3) of the Income Tax Act 2007 having a cross reference to repealed section 120K of the Tax Administration Act 1994. Section RM 31(3) was repealed with effect from 30 March 2017.

Comment

As the removal of the cross reference will be retrospective to the date it was originally removed officials consider that to provide clarity the cross reference should still be removed to ensure that it is clear over that intervening period which rule applied. Officials agree that this is unlikely to affect any taxpayers in practical terms.

Recommendation

That the submission be declined.

Issue: Application date clarification

Clause 2

Submission
(Chartered Accountants Australia and New Zealand)

The proposed application date should be clarified in the Bill.

Comment

The application date for these clauses in the Bill does not align with the application date referred to in the *Commentary*.

Section 120K was repealed effective 1 October 2007 with application for the 2008–09 and later income years.

Officials recommend the application date be aligned with the wording of the repeal of section 120K.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Incremental late payment penalties on imputation and Māori Authority credit accounts

Submission

(Matter raised by officials)

As part of Budget 2016, incremental late payment penalties were removed from goods and services tax, income tax and working for families tax credit overpayment debts. Inland Revenue research showed that in some situations, incremental late payment penalties can discourage taxpayers from resolving large tax debts. Officials are continuing to work on the suitability of removing incremental late payment penalties from all other tax types.

Within Inland Revenue's new technology platform START, the system design for imputation and Māori Authority credit accounts will differ from that in FIRST[7]. In FIRST they are treated as separate tax types – in separate tax accounts. Whereas in START, these credit accounts are intended to be integrated as part of a single income tax account. Due to this, the imposition of incremental late payment penalties on debit balances in imputation and Māori Authority credit accounts will be inconsistent, as income tax debts will not incur these incremental late payment penalties. Currently, START will require some complex programming in order to accommodate this inconsistency.

In order to standardise the treatment of penalties and optimise the system, officials recommend removing incremental penalties on debit balances in those accounts for release three of Business Transformation.

This proposed amendment was not able to be included in the original version of the Bill because the issue was discovered as part of the detailed design of the next release of the START platform. This detailed design is ongoing.

Comment

When a taxpayer fails to pay their tax on time they are charged an initial late payment penalty of 1% of the outstanding tax the day after the due date for payment, a further 4% seven days after the due date and incremental late payment penalties of 1% per month thereafter until the unpaid tax is resolved.

From 1 April 2017 incremental late payment penalties are no longer imposed on goods and services tax, income tax and working for families tax credit overpayment debts.

New Zealand's imputation regime ensures that the double taxation of income is reduced or eliminated for New Zealand residents by allowing companies and Māori Authorities to attach imputation or Māori Authority credits to distributions made to shareholders/members which offsets, partially or fully, the tax liability on the distributions.

[7] Future Inland Revenue System Technology – the heritage technology platform.

One of the fundamental rules of the imputation regime is that a taxpayer cannot attach more credits than they have paid in income tax (debit balance). A debit balance after 31 March of each year may incur "further income tax" which is the amount of the debit, plus a 10% penalty. Further income tax is also currently subject to incremental late payment penalties of 1% of the remaining balance per month. In the FIRST system, further income tax is treated as a separate tax type which interacts with the income tax account when payments are made in a cumbersome manner.

In an effort to simplify how START will administer imputation and Māori Authority credit accounts, it is proposed that in the START platform design "further income tax" is not held in a separate tax type but rather integrated into the income tax accounts for taxpayers.

Integrating these tax accounts will simplify the system as well as billing for taxpayers, however, because incremental penalties continue to exist for "further income tax" but not "income tax", this integration will be problematic. While officials continue their work on the remaining incremental late payment penalties, this system design has accelerated the need to remove these penalties from "further income tax" for release three of Business Transformation.

As well, the proposed amendment includes incremental late payment penalties on any overdue imputation additional tax. While currently taxpayers could incur incremental late payment penalties on overdue imputation additional tax amounts, in practice affected taxpayers self-manage this potential liability within their imputation credit accounts. This includes prepaying tax in order to generate sufficient imputation credits to ensure a liability is not generated from a debit balance.

This change will apply to further income tax imposed in the 2018–19 and later tax years.

Recommendation

That the submission be accepted.

Issue: Alter the time a credit becomes available for certain income tax returns filed early

Submission
(Matter raised by officials)

An income tax credit that results from tax that has been over deducted or withheld should be available from the day after the date that an income tax return for the period is filed when that return is filed before the due date.

Comment

The Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 altered the date that a credit was available for GST purposes, aligning the date a credit could be used with the date the GST return relating to the credit was filed. Currently, an issue exists for those taxpayers who have too much tax deducted or withheld and whose annual income tax return has been filed early. This could be due to death, migration or insolvency.

For those taxpayers, the credit may not be available to them until sometime after they file their tax return which can delay the settlement of estates and dissolution of companies. Inland Revenue has been using a manual work-around to deal with these cases, however, officials recommend a more permanent legislative solution be made to facilitate the earlier use of these credits.

It is proposed that the current rule for GST returns which are filed early be replicated for income tax returns. The availability of the credit would then align to the date the return is filed in the case of returns filed early. It is not appropriate to fully adopt the rules for GST returns due to extension of time arrangements for income tax returns. This change will only affect income tax returns filed before the due date.

This change will apply for credits arising from income tax returns filed after 1 April 2019.

This proposed amendment was not able to be included in the original version of the Bill because the issue was discovered as part of the detailed design of the next phase of Inland Revenue's Business Transformation implementation. This detailed design is ongoing.

Recommendation

That the submission be accepted.

Other policy matters

Clauses 216 and 231–237

Based on recommendations made in the Retirement Commissioner's December 2016 review of retirement income policies, the Bill proposes the following changes to KiwiSaver legislative settings:

- introduce additional KiwiSaver contribution rates of 6% and 10%;
- reduce the maximum contributions holiday period from five years to one year;
- change the name of "contributions holiday" to "savings suspension";
- allow over 65 year olds to opt-in to KiwiSaver; and
- remove the five year lock-in period.

The proposed changes are aimed at improving the effectiveness of KiwiSaver in helping New Zealanders save for their retirement, and to make KiwiSaver accessible to more New Zealanders.

In line with the timing of most of the KiwiSaver changes in the Bill (1 April 2019), the "member tax credit" will be renamed the "Government contribution". The current name has caused some confusion and the new name will improve understanding of KiwiSaver benefits. This name change is not included in the Bill, as it does not require legislative change.

Issue: Support for the proposals

Submission
(AMP, Anthony Harper, Chartered Accountants Australia and New Zealand, Claire Matthews, Corporate Taxpayers Group, Financial Services Council, PwC)

Some submitters supported the KiwiSaver enhancements included in the Bill. *(AMP, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, PwC)*

One submitter supported reducing the contributions holiday period from five years to one year and changing the name of the "contributions holiday" to "savings suspension". *(Claire Matthews)*

One submitter strongly supports the KiwiSaver enhancements included in the Bill. Despite their support, the submitter had some minor comments on the proposals, which are outlined in their submissions included below. *(Anthony Harper)*

One submitter supports the KiwiSaver enhancements included in the Bill. Despite their support they also submitted that further fundamental changes to KiwiSaver are also required. *(Financial Services Council)*

Recommendation

That the submitters' support be noted.

Issue: Fundamental changes to KiwiSaver

Submission
(Financial Services Council)

The submitter believes more fundamental changes to KiwiSaver are required to provide better outcomes for KiwiSaver members and increase the financial wellbeing of New Zealanders. On 6 September 2018 the submitter released a report recommending further changes to KiwiSaver, which has been made publicly available.

Comment

As fundamental changes to KiwiSaver are being proposed, such changes would require prioritising and resourcing as part of the Government's wider work programme.

Recommendation

That the submission be declined.

Issue: Allowing over 65 year olds to join and removing the five year lock-in period

Clause 231

Submission
(Claire Matthews)

The submitter did not object to allowing over 65 year olds to join KiwiSaver or the removal of the five year lock-in period. However, they did not believe there was any particular value in allowing over 65 year olds to join KiwiSaver and noted that non-KiwiSaver members currently aged between 65–75 years old would have already had the opportunity to join prior to reaching the age of 65.

Comment

Officials consider that over 65 year olds would benefit from KiwiSaver as a provider of low-cost managed funds. The change also recognises that there are a number of over 65 year olds who are still in paid employment, who may still want to make contributions towards their retirement.

While officials accept non-KiwiSaver members currently in the 65–75 age bracket would have previously had the opportunity to join, for most of these people KiwiSaver would have been a relativity new product when they had the opportunity to become a member. Therefore, they may not have realised the benefits of KiwiSaver membership for people in the over 65 age bracket.

Recommendation

That the submission be noted.

Issue: Notification of the changes to payroll software providers

Submission
(PwC)

The submitter notes that the KiwiSaver proposals included in the Bill would require changes to payroll systems. As changes to payroll systems can take some time, the submitter recommends that Inland Revenue notify payroll software providers about the proposed changes immediately.

Comment

Inland Revenue officials have notified payroll software provider intermediaries about the changes. These intermediaries are responsible for notifying payroll software providers about the changes. The changes will also be included in draft payroll specifications issued to payroll software providers before the end of 2018.

Recommendation

That the submission be noted.

Issue: Flexibility of employee contribution rates

Clause 234

Submission
(Claire Matthews)

The submitter supports the introduction of the additional 6% and 10% employee contribution rates. However, they submit contribution rates should be more flexible and KiwiSaver members should be allowed to contribute at any rate above 3%, with contribution rates being set in 0.5% increments (as the financial impact of a 1% or more increase, may discourage members from increasing their contribution rate at all).

Comment

KiwiSaver has always provided a limited number of contribution rates for employees. There is a trade-off between providing flexibility for members and ensuring the scheme remains simple for members, with low administrative and compliance costs for employers. Allowing members to contribute at any rate above 3% would increase compliance costs for employers (especially for smaller employers not using payroll software) and would require payroll software providers to make significant modifications to their systems.

Officials believe the proposed additional 6% and 10% rates introduce sufficient flexibility for members, without over-complicating the KiwiSaver employee contribution rules.

Recommendation

That the submission be declined.

Issue: Upper age of entitlement for compulsory employer contributions

Submission
(Claire Matthews)

The rationale for the rule preventing over 65 year olds from being entitled to compulsory employer contributions is unclear and inequitable. Therefore, this rule should be repealed.

Comment

The upper age limit for compulsory employer contributions is aligned with the age KiwiSaver members are able to withdraw their savings (that is, 65 years old). The rationale for this is that requiring compulsory employer contributions for over 65 year olds which can be immediately withdrawn would not be consistent with the purpose of this incentive, which is to encourage long-term retirement savings.

Officials also note that the upper age of entitlement to compulsory employer contributions is aligned with the maximum age of entitlement to the member tax credit (which is also 65), and is consistent with KiwiSaver settings for members under the age of 18 (who are also not entitled to compulsory employer contributions).

Recommendation

That the submission be declined.

Issue: The date KiwiSaver changes in the Bill come into effect

Clause 2

Submission
(Anthony Harper)

Currently the majority of the KiwiSaver changes in the Bill come into effect on 1 April 2019, however the proposals to allow over 65 year olds to join KiwiSaver and removal of the lock-in period come into effect on 1 July 2019. The submitter recommends that all the KiwiSaver changes in the Bill should come into effect on the same date, as a single application date may be easier for members to understand and reduce some of the administrative complexity for KiwiSaver scheme providers when implementing the changes.

Comment

The additional employee contribution rates will require changes to payroll software. As updated payroll specifications have effect on 1 April each year, it is desirable for the additional employee contribution rates to also come into effect on this date in order to reduce complexity for employers and payroll providers.

Removing the five year lock-in period requires a change to how the currently named member tax credit is calculated. This is because once the lock-in period is repealed, over 60 year olds joining will not be entitled to the member tax credit for their first five years of KiwiSaver membership. As the member tax credit is calculated on the basis of contributions made during the financial year (ending 30 June), it would not be possible to accurately estimate the fiscal impact of the change if an application date other than 1 July is used.

However, officials recognise that having two different application dates for the changes increases the administrative burden on KiwiSaver scheme providers. To address this concern, officials recommend a provision be inserted in the KiwiSaver Act which will grant transitional relief to KiwiSaver scheme providers whose product disclosure statements or material information filed on the Disclose Register is non-compliant prior to all the KiwiSaver changes in the Bill coming into effect.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Grandparenting of the lock-in period

Clause 236

Submission
(Anthony Harper)

The submitter supports the removal of the five year lock-in period. However, they believe the grandparenting provision in the Bill, which provides that over 60 year olds who join KiwiSaver prior to the removal of the lock-in period coming into effect would remain locked-in for the duration of the five year period, should be removed. The submitter proposes that this rule adds unnecessary complexity.

Comment

The objective of having simple KiwiSaver rules must be balanced against the need to ensure that removing the lock-in period does not result in any current KiwiSaver members being worse off. During the lock-in period, members are entitled to receive the member tax credit and compulsory employer contributions, even after they have reached the age of 65. If the lock-in period was repealed without the introduction of grandparenting provisions, it would result in over 60 year olds who are already KiwiSaver members being entitled to less benefits than when they joined KiwiSaver.

Recommendation

That the submission be declined.

Issue: Technical drafting issues

Clause 236

Submission
(Anthony Harper)

If the grandparenting requirement for the lock-in period is to remain, then the legislative wording used in the proposed grandparenting provisions should be aligned with the slightly different language used in the proposed general withdrawal age rule. It is submitted that the slightly different language used in these provisions could give rise to debate over whether there are different withdrawal entitlements available under the different rules.

Comment

Officials agree. The wording used in the general withdrawal age rule and the grandparenting rule should be consistent.

Recommendation

That the submission be accepted.

Submission
(Anthony Harper)

The following amendments to the nomenclature changes (relating to renaming the "contributions holiday" "savings suspension") are submitted:

- the provision amending section 105(2) of the KiwiSaver Act should refer to "contribution holiday" being replaced with "savings suspension" in each place the term appears;
- the provision amending section 109 of the KiwiSaver Act does not need to amend the cross-heading before that section, as this cross-heading is amended earlier in the schedule of the Bill containing the nomenclature amendments; and
- the provision amending section 109 of the KiwiSaver Act should also replace the reference in this section to "holiday" with "suspension".

Comment

Officials agree. These submissions will ensure the term "contributions holiday" is replaced by "savings suspension" in each place it appears in the KiwiSaver Act.

Recommendation

That the submission be accepted.

Issue: Early withdrawals for members with life-shortening congenital disorders

Submission
(Joan Fairhall)

The KiwiSaver withdrawal rules should be amended so KiwiSaver members with congenital conditions causing premature aging are able to withdrawal their savings early on their retirement from work, as due to their life-shortening condition they are unlikely to be able to enjoy the benefit of their savings at the KiwiSaver withdrawal age (currently 65 years old).

Comment

The KiwiSaver withdrawal age is aligned with the New Zealand Superannuation qualification age (65 year olds). However, there may be situations when it is in the member's best interest to be able to access their KiwiSaver funds earlier than at 65 years old. These are the situations the early withdrawal rules in the KiwiSaver Act are intended to cover. Officials note that the current early withdrawal rules (for the purchase of first home and in cases of financial hardship and serious illness), may not be sufficient to capture members with life-shortening congenital conditions.

Officials recognise there is an issue with members who have life shortening congenital disorders being unable to access their funds when they would benefit from them. However, to ensure the best outcome is reached, this issue would need to go through the full policy process, including public consultation. This would help ensure that any changes made to early withdrawal rules serve all individuals in situations necessitating early access to their savings and that the scope of early withdrawals is not unintentionally opened up too widely.

Recommendation

That the submission be declined.

Issue: Early withdrawals for members with family history of early death

Submission
(John Henry)

The KiwiSaver withdrawal rules should be amended so that KiwiSaver members with a family history of early death are permitted to withdraw their savings at the age of 60 years old, rather than the current KiwiSaver withdrawal age of 65 years old.

Comment

As noted above in the officials' comment on the Fairhall submission, it is recognised that there are some circumstances where early withdrawals from KiwiSaver are in the members' best interest. However, these situations are generally supported by clear evidence (generally medical or financial) that the member requires the benefit of their savings prior to the KiwiSaver withdrawal age.

Permitting early withdrawals on the basis of a family history of early death would be an extension of the current scope of the KiwiSaver early withdrawal policy, as a member's family medical history will not necessarily be indicative of when the member themselves will receive the most benefit from access to their KiwiSaver funds. Therefore, this submission raises issues that would require prioritising and resourcing as part of the wider Government work programme.

Recommendation

That the submission be declined.

Issue: KiwiSaver providers educating members about financial literacy

Submission
(Claire Matthews)

There is evidence of low financial literacy in New Zealand. To address this issue, KiwiSaver providers should be required to provide members with financial education. This would also address issues about KiwiSaver fees being too high, as members would receive better value for money for the fees they pay.

Comment

KiwiSaver scheme providers already have responsibilities to educate members on matters relating to the investment of their savings. There are also existing public institutions (such as the Commission for Financial Capability) who provide financial literacy education services, which are available to all New Zealanders.

Whether KiwiSaver providers are appropriately placed to provide general education about financial literacy, raises issues that would require prioritisation and resourcing as part of the wider Government work programme.

Recommendation

That the submission be declined.

Issue: Introduce a minimum age at which the opt-out provisions apply from

Submission
(Claire Matthews)

The KiwiSaver Act should be amended so individuals starting their first post-secondary school job are unable to opt-out of KiwiSaver, or alternatively only individuals over a certain age should be able to opt-out of KiwiSaver. The submitter notes that while an argument against compulsory KiwiSaver membership is that some individuals are not in a financial position to contribute 3% of their salary and wages, they believe this argument is weaker when applied to someone starting fulltime employment for the first time.

Comment

The ability to opt-out is a core KiwiSaver policy setting. Any amendment that made KiwiSaver compulsory for a certain group of New Zealanders would change the objective and design of the scheme; as the purpose of the opt-out provisions is that some people might decide KiwiSaver is not appropriate for them and choose to save in a different way. As this submission would be a fundamental change to KiwiSaver settings, it raises issues that would require prioritising and resourcing as part of the wider Government work programme.

Officials would also have concerns that limiting compulsion to individuals entering the workforce would not fully address the potential for compulsory KiwiSaver membership to adversely impact individuals' financial position. On first entering the workforce, individuals typically earn a lower salary than when more advanced in their careers. Therefore, compulsory membership in this cohort may require individuals to reduce their spending on essential items in the short term, which could result in increased levels of hardship in this group.

Recommendation

That the submission be declined.

Issue: No further changes should be made to KiwiSaver for five years

Submission

(Claire Matthews)

To the exclusion of the KiwiSaver changes proposed in the Bill and the additional KiwiSaver changes recommended by the submitter (which are outlined above), the submitter has also suggested the Government should not make further changes to KiwiSaver for the next five years.

Comment

Officials recognise there is a benefit in KiwiSaver settings remaining stable for a period of time. However, this needs to be balanced against ensuring that KiwiSaver remains fit for purpose and reflects current Government priorities. Therefore, officials do not believe it is appropriate to commit to making no further changes to KiwiSaver in the next five years.

Recommendation

That the submission be declined.

Issue: Transfer of savings from KiwiSaver schemes to complying funds

Submission
(UniSaver Limited)

KiwiSaver members should be permitted to directly transfer their KiwiSaver savings to a complying superannuation fund, prior to the member reaching the KiwiSaver withdrawal age. This would allow members to consolidate their savings in a complying fund and receive the benefit of the low fees these funds often offer.

Comment

Officials note that this submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme. This issue would need to go through the full policy process, including consultation. In particular, as the proposal would involve the transfer of funds from KiwiSaver schemes to complying funds, consultation with KiwiSaver providers would be desirable.

Recommendation

That the submission be declined.

Issue: Transitional relief for non-compliance for KiwiSaver scheme providers

Submission
(Chapman Tripp)

The submitter proposes a provision be inserted in the Bill granting transitional relief to KiwiSaver scheme providers who are non-compliant with product disclosure statement requirements or other material information required to be filed on the Disclose Register under the Financial Market Conduct Act 2013, as result of the KiwiSaver changes proposed in the Bill. The submitter notes that similar relief from non-compliance provisions have accompanied previous KiwiSaver changes, citing section 239 of the KiwiSaver Act as an example.

The submitter suggests that relief for non-compliant disclosure statements should continue for at least six months after the last date KiwiSaver changes in the Bill are expected to come into effect (that is 1 July 2019) and relief for non-compliance related to other material information filed on the Disclose Register should continue for at least three months after the last changes in the Bill have come into effect.

Comment

Officials agree that it is appropriate to grant KiwiSaver scheme providers a short period of relief for non-compliance with product disclosure statement requirements or other material information required to be filed on the Disclose Register, resulting from the enactment of the KiwiSaver changes in the Bill. Officials recommend a provision be inserted in the KiwiSaver Act to this effect, which grants KiwiSaver scheme providers transitional relief until 1 September 2019. This would mitigate any administrative burden for KiwiSaver scheme providers associated with the KiwiSaver changes in the Bill having two different application dates. It would also provide an additional two month grace period, which would address any issues

providers may have with aligning new documentation with a specific application date (that is 1 July).

Subsequent to the commencement of the first set of KiwiSaver changes in the Bill (on 1 April 2019), the period of relief officials are recommending would give KiwiSaver scheme providers five months to make the necessary changes to product disclosure statements and other documentation before they would risk incurring penalties for non-compliance with the Financial Market Conduct Act 2013. This period would allow sufficient time for their internal due diligence and sign-off processes to be completed.

Officials also note that the relief period permitted under section 239 of the KiwiSaver Act was granted during the transition between the Securities Act 1978 and the Finance Market Conduct Act 2013. Therefore, it is likely the longer relief period was granted to allow KiwiSaver providers to align updates related to changes to the KiwiSaver Act, with their transition to the Finance Market Conduct Act 2013 more generally.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Support for Bill changes

Clauses 124, 213(26), 219, 222(3), 224, and schedule 2

Submission
(Chartered Accountants Australia and New Zealand, Deloitte (Auckland), Deloitte (Wellington), Simpson Grierson)

Submitters support the proposed changes, subject to their other submissions, as set out below.

Recommendation

That the submission be noted.

Issue: Application date

Clauses 124, 213(26), 219, 222(3), 224, and schedule 2

Submission
(Chartered Accountants Australia and New Zealand, Deloitte (Auckland), Deloitte (Wellington), Simpson Grierson)

The application date for these clauses should be backdated to 1 April 2009, or if this is not considered appropriate, a specific earlier date of commencement should be set, such as the date the Bill was introduced. *(Chartered Accountants Australia and New Zealand, Deloitte (Auckland))*

The amendments should apply from the earliest possible date – either the date of introduction of the Bill or the start of the 2019 tax year. *(Deloitte (Wellington))*

The application date should be backdated (no date specified), or income and GST positions taken by PPCCCs based on the presumption of being public authorities should be explicitly protected or grand-parented. *(Simpson Grierson)*

Comment

The Bill proposes that the amendments come into force on the date of enactment. Earlier application was considered unnecessary as Inland Revenue is applying its administrative discretion to treat the companies as if they were still public authorities until the legislative changes are enacted.

Submitters have some residual doubts about whether this approach would extend to entities that have been established since Crown Law provided its narrower interpretation of who qualifies to be a public authority, as those entities will have had no history of being considered to be a public authority. Inland Revenue has specifically written to the relevant companies to provide them with an assurance they will be treated as public authorities pending the law change, which should be sufficient in practice.

The alternative of backdating the amendments would be complex, as the companies were established at different times and a number predate when schedule 4A of the Public Finance Act 1989 came into effect (18 July 2013). For example, one submitter has suggested backdating the legislation to 1 April 2009, 2009 being the year their client company was established, but such a date would be of no relevance to any of the other companies on the proposed schedule.

Backdating for the period of the statute bar (in effect 4–5 years), would mean an application date of the 2014–15 income year, but there is still a risk as Inland Revenue is not limited to just auditing back that far when no return has been filed.

Similarly, backdating to 2015 when Crown Law made its interpretation, would be of benefit for those companies formed after that date (which is the focus of the submitters) but would not provide legislative certainty for the companies established before 2015.

A further complication is that one of the companies has been filing tax returns and paying tax. Backdating the amendments would mean this company would be able to claim back any income tax it has paid. This is of no real benefit to anyone as it is a Crown controlled entity, and the company would incur additional compliance costs if it had to amend its previous tax returns. To avoid those costs, its past tax positions should be preserved. This approach should then be applied to all the companies in the schedule.

On balance, given the above complexities, officials recommend keeping the date of enactment as the application date.

Recommendation

That the submission be declined.

Issue: Requirement that subsidiaries also need to be listed in schedule 35

Clauses 124

Submission
(Chartered Accountants Australia and New Zealand, Deloitte (Auckland), Deloitte (Wellington))

Only parent entities should be required to be listed in the proposed new schedule 35 of the Income Tax Act 2007; 100% owned subsidiaries should automatically qualify.

Comment

Under the proposal in the Bill, to qualify as a PPCCC a company must:

- be listed in schedule 4A of the Public Finance Act 1989, or be a subsidiary of a company listed in schedule 4A;
- have only local authorities as its other shareholders – that is, it cannot have private sector shareholders; and

- have as its primary purpose the carrying out one of the Government's public policy objectives. Any profit has to be subsidiary to the public policy objective. This requirement distinguishes a PPCCC from state-owned enterprises, whose primary purpose is to make a profit.

The reason for specifically listing subsidiaries of schedule 4A companies rather than considering them to be automatically covered if the parent is listed in the schedule is so that there is a public record of all parties that are claiming the exemption. The alternative would be that the parent or its subsidiary self-assesses that the subsidiary meets the above requirements.

One submitter has indicated that Crown Infrastructure Partners Limited is likely to establish a significant number of 100% owned subsidiaries over the coming years if its model of funding the infrastructure for housing developments proves successful. This would mean that the proposed new schedule 35 of the Income Tax Act 2007 would require frequent updating just to include the subsidiaries.

Given the above, officials accept that the schedule could become unwieldy, and that instead a 100% owned subsidiary of a company listed in schedule 35 should be able to self-assess whether it also meets the requirement that its primary purpose is the carrying on of a public policy objective of the Government. This approach would not apply to partly-owned subsidiaries.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: GST provision should be extended

Clause 224

Submission
(Simpson Grierson)

The GST aspects of the changes should go further, in order to ensure that the GST treatment of PPCCCs remains equivalent to the GST treatment of public authorities.

This includes, for example, the exclusion of public authorities from the "company" definition in section 2(1) of the Good and Services Act 1985 which, amongst other things, buttresses the position that corporate public authorities are not "associated" for GST purposes. The same exclusion should apply to PPCCCs.

Comment

Officials agree with the submission that PPCCCs should be excluded from the definition of "company" in the Goods and Services Tax Act 1985. This will ensure that a PPCCC is not considered to be an associated person with any other government owned/controlled entity for GST purposes. A flow-on implication is that the PPCCCs should be added to the Act's definition of "person".

The simplest way to achieve these changes is to include PPCCCs in the definition of "public authority" in the Goods and Services Tax Act 1985.

Recommendation

That the submission be accepted, subject to officials' comments.

SCHEDULE 32: OVERSEAS DONEE STATUS

Clause 218

Submission
(Matter raised by officials)

The Bill inserts NVADER, a registered charity, as a donee organisation for the purposes of the Income Tax Act 2007. The trustees advise that the name of the charity has changed to LIFT International with effect from 20 March 2018.

The Bill also inserts Talkingtech Foundation Trust, a registered charity, as a donee organisation for the purposes of the Income Tax Act 2007. The trustees advise that the name of the charity has changed to Flow Foundation with effect from 4 September 2018.

Recommendation

That the submission be accepted. Clause 218 should be amended by substituting the reference to NVADER with LIFT International with effect from 1 April 2018, the date the charity is granted overseas donee status. Clause 218 should also be amended by substituting the reference to Talkingtech Foundation Trust to Flow Foundation with effect from 4 September 2018, the date the charity changed its name.

FRINGE BENEFIT TAX ON EMPLOYMENT RELATED LOANS – MARKET INTEREST RATE

Clause 201

Issue: Support for the proposals

Submission
(ANZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The submitters all expressed support for the proposed alternative definition of market interest that could be used by banks and other money lenders for calculating FBT on employment related loans.

Recommendation

That the submitters' support be noted.

Issue: Application date

Clause 2(22)

Submission
(ANZ, Corporate Taxpayers Group)

The proposed application date is FBT payment periods beginning on or after 1 April 2019. The submitters considered that the application date should be retrospective.

The application date should be:

- the date of the Bill's introduction; *(ANZ)*
- 1 April 2018. *(Corporate Taxpayers Group)*

The submissions noted that the over-taxation of employment related loans has been a longstanding issue and therefore retrospective application may be appropriate.

Comment

While the over-taxation of employment related loans under the existing definition of market interest is a longstanding issue, the proposed changes should not be given retrospective effect. Changes to tax legislation are generally only given retrospective application if they address a revenue risk, fill a gap in a regime, or fix an obvious error. The proposed new market interest definition does none of these and therefore retrospective application would not be appropriate.

Recommendation

That the submissions be declined.

Issue: Loans made around the same time that an employee received a loan

Clause 201

Submission
(Chartered Accountants Australia and New Zealand)

The proposed legislation states that only loans made to customers during the quarter in which the loan is provided to the employee (the loan quarter), or during the preceding quarter if the rate for the loan quarter is not able to be calculated, may be used for calculating the market interest rate.

The submitter supports this proposal, but considers that more clarity is required. In particular, they note that the term "loan quarter" is not separately defined, so they have assumed it refers to the FBT quarter in which the loan is offered. They recommend that this be confirmed. Furthermore, they recommend that guidance confirm that the market rate may be determined from loans offered to customers at any time in the loan quarter, including after a loan was given to an employee.

Comment

Quarter is defined in section YA 1 to refer to a period of 3 consecutive calendar months that ends on the last day of March, June, September or December. Clarification that loans received by customers at any time in the loan quarter, including after a loan is given to an employee, will be included in the *Tax Information Bulletin* published after enactment of the Bill.

Officials note that an employer who can calculate the market rate from the loan quarter, but only after incurring significant costs, may be prohibited from calculating the market rate using the quarter prior to the loan quarter. Officials therefore recommend an amendment to the Bill to allow the quarter immediately prior to the loan quarter to be used for calculating the market rate when it is not reasonably practicable to calculate the rate for the loan quarter.

Recommendation

That the submission be noted, subject to officials' comment.

Clauses 169–173, 213(9), 213(13), 213(20) and 213(28)

Issue: Support for policy

Submission
(Deloitte, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, FlexiGroup Limited, Jim Gordon Tax Limited, KPMG, PwC, Russell McVeagh, Trustee Corporations Association, EY)

Submitters expressed broad support for the policy. In particular:

- The extension of the securitisation regime to non-financial institutions. *(Deloitte, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, FlexiGroup Limited, Jim Gordon Tax Limited, KPMG, PwC, Russell McVeagh, Trustee Corporations Association)*
- The relaxation of the requirement for IFRS reporting and the inclusion of a broader range of assets in the regime. *(KPMG)*
- The elective nature of the expanded regime. *(EY, Corporate Taxpayers Group, KPMG, Trustee Corporations Association)*

Recommendation

That the submission be noted.

Issue: Requirement for IFRS consolidation

Clauses 170 and 171

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, FlexiGroup Limited, KPMG)

It is clear from the *Commentary* on the Bill that the rules are intended to apply where the securitised assets are recognised in the consolidated financial statements of the originator or another company in the originator's wholly-owned group. The draft legislation is not as clear, as it requires the assets of the Debt Funding Special Purpose Vehicle (DFSPV) to be treated as the "person's" assets for financial reporting purposes. This is relevant to proposed sections HR 9 and HR 9BA. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, FlexiGroup Limited, KPMG)*

The drafting should be clarified to explicitly refer to the assets being recognised in the consolidated financial statements of a wholly-owned group company. *(Chartered Accountants Australia and New Zealand)*

The relevant drafting could be changed to "treated as their assets or included in the consolidated financial statements that the person is included in, for financial reporting purposes". *(Corporate Taxpayers Group, Deloitte, FlexiGroup Limited)*

Comment

Officials agree with this submission. The reason for requiring the DFSPV to be included in the accounts of the originator is to ensure the DFSPV is sufficiently owned by the originator in substance (which is required for consolidation under the financial reporting standards). This is to prevent the proposed securitisation regime being used to effect an in-substance sale of the securitised assets.

However, this requirement for common economic ownership and control would also be met if the DFSPV was included in the consolidated accounts prepared by the originator or another member of the originator's wholly-owned group. This would allow the new securitisation regime to still be available when the consolidated financial accounts are prepared by another member of the originator's group, while still ensuring common economic ownership and control of the originator and the DFSPV.

In this regard, officials consider that the consolidated accounts need to be prepared by either the originator or another wholly-owned group member. It is not sufficient for the assets to simply be recognised in consolidated accounts that include the originator. This is because the financial reporting standards only require that a company be 50% commonly owned for consolidation. Officials consider that this 50% common ownership between the originator and the entity preparing the consolidated accounts is insufficient to ensure that the originator and the DFSPV are have common economic ownership.

Accordingly, officials recommend that sections HR 9 and HR 9BA be redrafted to additionally refer to the DFSPV's assets being recognised in the consolidated financial accounts prepared by the originator or another company in the originator's wholly-owned group.

Recommendation

That the submission be accepted.

Issue: Requirement for IFRS audit of the "debt funding special purpose vehicle"

Clauses 170 and 171

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, FlexiGroup Limited)

Consistent with the above submission, the paragraph (f) requirement in the definition of debt funding special purpose vehicle (DFSPV) should be relaxed. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, FlexiGroup Limited)*

The definition should allow for the DSPFV's assets to be recognised in audited IFRS consolidated financial statements of a wholly-owned group company. *(Chartered Accountants Australia and New Zealand)*

Paragraph (f) of the definition of DFSPV should be amended to "has financial statements that are prepared using IFRS or is included in consolidated financial statements that are prepared using IFRS [and are audited]." *(Corporate Taxpayers Group, Deloitte, FlexiGroup Limited)*

Comment

Under the Bill, paragraph (f) of the definition of a DFSPV requires that the DFSPV "has financial statements that are prepared using IFRS and are audited". This requirement was included when the securitisation regime was first widened in 2010, so that financial institutions could use it for their covered bond programmes. The narrower drafting of paragraph (f) was in part intended to restrict the type of entities to whom the expanded securitisation regime could apply. However, this is no longer appropriate given the policy decision to expand the securitisation regime to corporate securitisations.

Accordingly, officials recommend that paragraph (f) be widened to only require the DFSPV's assets to be included in the consolidated financial statements of the originator or another wholly-owned group member that are prepared using IFRS and audited.

Recommendation

That the submission be accepted.

Issue: Application to existing arrangements

Clause 172

Submission
(Chartered Accountants Australia and New Zealand, KPMG, Corporate Taxpayers Group, Deloitte, FlexiGroup Limited, Trustee Corporations Association)

The election rule in section HR 9B needs to be amended to enable existing entities or arrangements to benefit from the new rules. As drafted, the rule requires an election to be made in the first return after the originator transferred assets to the DFSPV. This rule should also allow for an election to be made in the first return after the new rules come into force.

Comment

Officials agree with this submission. The new rules should be available for qualifying corporate securitisations entered into before the new rules come into effect. Accordingly, officials recommend that proposed section HB 9B be amended to provide that:

- an originator can elect into the new rules for existing securitisations; and

- any election for an existing securitisation takes effect from the beginning of the income year in which the originator returns the income and expenditure of the DFSPV (being an income year starting on or after the date the Act comes into force).

Officials also recommend that a rule be included to set out the tax consequences of an originator electing to apply the rules to an existing securitisation. In the absence of such a rule, the DFSPV (which until the election has been treated as the owner of the assets) would be treated as transferring the securitised assets back to the originator for tax purposes. This would be administratively complex and could give rise to adverse tax consequences.

To avoid this, officials recommend that the originator be treated as effectively "stepping into the shoes" of the DFSPV when it elects into the regime for existing securitisations, and that no income or expenditure arise as a result of the deemed transfer. Officials note that this is also how the deemed transfer of financial arrangements and excepted arrangements is treated for partners in partnerships under section HG 8.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Transitional rule for entry into regime

Clause 170

Submission
(Chartered Accountants Australia and New Zealand)

The rule should also include a transitional rule that deems the person to have always carried on the DFSPV's activity consistent with the financial arrangement rules in section FO 12 of the Income Tax Act 1997 dealing with wholly owned group amalgamations.

Comment

This transitional rule appears to be relevant only for originators that elect to apply the new regime to existing securitisations. This is because for new securitisations the regime will result in the originator being treated as carrying on the DFSPV's activity from the date the DFSPV acquires the securitised assets.

For existing securitisations, officials have recommended a transitional rule with a similar effect to that requested by the submitter in response to the previous submission. This rule should address the submitter's concern in relation to the application of the regime to existing securitisations.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Election into the regime – rule applies per securitisation vehicle

Clause 170

Submission
(Jim Gordon Tax Limited)

The election into the securitisation regime, in relation to a wholly-owned group of companies, should be for all securitisation vehicles, not per securitisation vehicle. Otherwise it would be possible to elect into the regime for securitisations where the transfer of the assets would cause taxable income to the originator, but not elect in where the originator makes a tax loss on the transfer of the assets.

Comment

Officials have discussed this matter with the Specialist Advisor to the Finance and Expenditure Committee. The submitter's concern relates to the income or expenditure that would arise from the transfer of the securitised assets upon election into the securitisation regime. For new securitisations, the originator will be treated as continuing to own the assets, so there will be no transfer of the assets for tax purposes (and so no income or expenditure). For existing securitisations, officials have recommended a transitional rule that would also prevent any income or expenditure from arising on election into the regime (by treating the originator as stepping into the shoes of the DFSPV in respect of the transferred assets).

Accordingly, if this recommendation for the transitional rule is accepted, no income or expenditure would arise for a taxpayer on election into the regime. Consequently, there would be no need for a rule preventing taxpayers from electing into the regime on a per-securitisation basis.

Recommendation

That the submission be declined, subject to officials' comments.

Issue: Financial arrangement rules – consistent use of spreading method

Submission
(Corporate Taxpayers Group, Deloitte, FlexiGroup Limited)

An amendment is required to the financial arrangement rules to ensure that the consistency requirements of the financial arrangement rules do not impact the DFSPV's financial arrangements. Instead, the originator should be able to elect to use a spreading method under the financial arrangement rules that the DFSPV would have been entitled to use were it treated as a separate entity for tax purposes.

Comment

The consistency requirements for the financial arrangement rules require that a taxpayer use the same spreading method for all the financial arrangements to which that method applies. The reason for this requirement is to stop taxpayers from choosing different spreading methods for

different financial arrangements in order to minimise their tax. The consistency requirements are set out in sections EW 24 to EW 25B.

Officials note that the DFSPV is a separate legal entity to the originator. In addition, the DFSPV will carry on a different type of activity from the originator, and so other types of spreading methods may be more appropriate for it. Given this, officials consider that the originator should be allowed to use a different spreading method for the financial arrangements it transfers to the DFSPV. There also does not seem to be a material risk of the originator using the concession to minimise its tax liabilities for certain financial arrangements, given that it must transfer those financial arrangements to the DFSPV as part of a securitisation in order for the concession to be available. Accordingly, the originator should be able to elect to use a spreading method under the financial arrangement rules for a financial arrangement it transfers to the DFSPV if the DFSPV would have been entitled to use that spreading method were it not subject to the securitisation regime.

Recommendation

That the submission be accepted.

Issue: Thin capitalisation – applicability of on-lending concession

Submission
(Corporate Taxpayers Group, FlexiGroup Limited)

There needs to be consistency between the thin capitalisation rules and the proposed changes to securitisations. The thin capitalisation rules were recently extended to apply the on-lending concession to securitisation trusts where they might hold derivatives. Under the proposed new rules, where the originator/corporate is treated as holding the derivative, this provision should also be extended to allow the company to qualify for the on-lending concession in the same way. The Group submits that this could be effected by adding to section FE 13(1)(d)(ii) "is the trustee of a trust [or a company that has made an election under HR 9BA]".

Comment

The recent amendment to the on-lending concession provided an exception to the requirement that the relevant financial arrangement provided funds to the taxpayer (the securitisation vehicle in this scenario). This amendment was included due to an issue as to whether a financial arrangement transferred to a securitisation vehicle could still be eligible for the on-lending concession. The issue was whether the securitisation vehicle provided funds to a person (as required by section FE 13(1)(d) of the on-lending concession) if it simply acquired the relevant financial arrangement from the originator after its creation. There was an argument that only the originator could provide funds to the other person, on the basis that the funds were provided when the financial arrangement was first entered into. This issue meant that a securitisation vehicle might not be able to access the on-lending concession where the originator could.

However, the proposed securitisation regime provides that the relevant financial arrangement is treated as still being owned by the originator. Accordingly the issue that the on-lending concession amendment was aimed at does not arise where the new securitisation regime applies. Therefore, officials consider that no amendment is necessary.

Recommendation

That the submission be declined.

Issue: Thin capitalisation – extension of on-lending concession to lessors

Submission
(FlexiGroup Limited)

The on-lending concession should be extended to non-bank/finance companies that provide leasing products (and other non-loan financial products). These leasing products are used as a form of financing in the same way as a loan, but do not fall within the on-lending concession. This gives other participants an unfair thin capitalisation advantage, due to the risk-weighted asset approach to thin capitalisation – which does not differentiate between loans and other financing products (like a lease).

Comment

While this submission may raise a valid policy issue, it is beyond the scope of the current amendments. If this submission were to be progressed, it would need to be through a separate policy process that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Ceasing to be a debt funding special purpose vehicle

Clause 173

Submission
(PwC, Russell McVeagh, Trustee Corporations Association)

The drafting of proposed section HR 10(3) provides for contingencies that will not arise, and is unnecessarily complicated as a result. It should be redrafted to clarify its effect.

There should be specific provision that the special purpose vehicle is treated as assuming all liabilities of the vehicle in consideration for a market value payment. In addition, the arrangement should be treated as entered into (and liabilities treated as assumed) on the date the vehicle ceases to be a special purpose vehicle and there should be a market value consideration treated as being paid by, or to, the special purpose vehicle for entering into the arrangement or assuming the relevant liability.

Comment

Officials agree that section HR 10(3) should be redrafted to clarify its effect. Officials also agree that the effect of the provision should be as set out in the second paragraph of the submission, as this was the original policy intent for the provision. Accordingly, section HR 10(3) should be drafted to make it clear that, on an unwind, the DFSPV is treated as disposing of its assets and liabilities for market value and the originator should be treated as acquiring those assets for their market value.

Recommendation

That the submission be accepted.

Issue: Person treated as holding DFSPV's assets

Clause 170

Submission
(Bell Gully)

Section HR 9 should be amended to clarify whether, in a situation where a company other than the originator is treated for financial reporting purposes as holding the assets of the DFSVP (the consolidating entity), the tax liabilities resulting from the attribution required by section HR 9(a) to (d) are the tax liabilities of the originator or the consolidating entity.

Comment

The intention is for only the originator to be treated as holding the assets of the DFSPV for tax purposes. This was stated in the *Commentary* to the Bill (on page 108). However, the proposed provisions currently provide that the assets could be held by either the originator, or the person into whose accounts the assets of the originator are consolidated for financial reporting purposes (for example, in proposed section HR 9 and HR 9BA). Therefore, the proposed provisions should be amended so they only provide for the originator to be treated as holding the assets of the DSPV for tax purposes.

Subsequent references in the proposed provisions to "a person" should then be changed to "the originator" where appropriate. This will also improve the readability of the legislation.

As a consequence of this change, and to improve readability, officials also recommend that the requirement for IFRS consolidation should be moved to the definition of an originator.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Application to non-residents

Clause 170

Submission
(Bell Gully)

Section HR 9 should be amended to clarify how it applies where the person subject to the attribution of property, arrangements, status and intention of the debt funding special purpose vehicle (DFSPV) under section HR 9(a) to (d) is a non-resident.

Under the current drafting, section HR 9 could treat the DFSPV's assets as held by the entity which prepares consolidated financial statements that include those assets. That entity could be a non-resident, in which case a number of unintended tax consequences could arise. In particular, an underlying debtor may, unwittingly, be making a payment of interest for tax purposes to a non-resident entity and technically be liable to pay NRWT. This is in contrast to the current situation where the debtor is making an interest payment to a resident trustee that is almost always the holder of an RWT exemption certificate.

Comment

Officials agree with this submission. Officials consider that the regime should only apply to New Zealand tax residents. Therefore both the originators and the DFSPV should all be required to be New Zealand residents (although the entity which prepares consolidated financial statements that include the assets of the DFSPV could still be a non-resident). This is to avoid the issues raised in the above submission. It also ensures any transfers of financial arrangements outside the New Zealand tax base (that is, to a foreign securitisation vehicle) remain taxable under the Income Tax Act 2007. Further, allowing the overseas originator to be non-resident could give rise to double non-taxation. This is because New Zealand would treat the overseas originator as continuing to hold the assets and derive the corresponding interest income, while the foreign jurisdiction would treat the DFSPV in New Zealand as holding the assets, and so also not tax the corresponding interest income.

Further if a DFSPV was a non-resident, then New Zealand likely would not be able to collect any tax payable by that DFSPV under proposed section HR 10 if it stopped being subject to the regime.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Definition of a DFSPV

Clause 213(9)

Submission
(Bell Gully)

Where a securitisation vehicle operates to raise funds by issuing securities backed by its assets, it is arguably unclear whether the reference to "funds" in paragraph (c) is a reference to the proceeds of issuing the securities, or to income derived by the securitisation vehicle as a result of holding assets. Based on the scheme of the definition, it should logically be the latter. However, paragraph (c) should nonetheless be clarified to confirm that "funds" is a reference to income derived by the securitisation vehicle as a result of holding assets, and not the proceeds of issuing securities.

As currently drafted, paragraph (d)(ii) of the definition of "debt funding special purpose vehicle" requires that the securitisation vehicle "raise funds by issuing securities backed by its assets". It is arguably unclear whether a securitisation vehicle would satisfy this requirement where it issued notes to the originator in consideration for receivables, as, in such circumstances, arguably no funds are raised from issuing the notes. Paragraph (d)(ii) should therefore be amended to clarify that a securitisation vehicle will "raise funds" in circumstances where it issues notes in consideration for receivables.

Comment

In relation to paragraph (c) of the definition of a DFSPV, officials agree that the current drafting could be improved. The paragraph was intended to limit a DFSPV's funding to that for obtaining the securitised assets, or amounts incidental to its purpose, such as an overdraft for financial reporting purposes. While such funds arguably do relate to the assets, officials agree this could be usefully clarified. Accordingly, paragraph (c) should be amended to make it clear that the "funds" referred to include those provided to the DFSPV in order for it to acquire the securitised assets. The paragraph should also continue to apply to any income received by the DFSPV from the assets.

Paragraph (d)(ii) requires the DFSPV to raise funds by issuing securities backed by its assets. The opening words of the definition of a DFSPV provide that its paragraphs are applied ignoring section HR 9 (which provides for the DFSPV's assets to be treated as still owned by the originator). Accordingly, paragraph (d)(ii) is applied from the perspective of the DFSPV as a separate legal entity from the originator. This means that if the DFSPV issues securities to the originator, then the DFSPV is still raising funds for itself. As a result, officials do not consider that any amendment is required to paragraph (d)(ii).

Recommendation

That the submission in relation to clarifying paragraph (c) be accepted, subject to officials' comments.

Issue: Multiple originators

Clause 169

Submission
(Trustee Corporations Association)

The opening language of clause 169 refers to a "person, who is the originator of another company." There will often be more than one originator in a corporate securitisation. Accordingly, clause 169 needs to be expanded to accommodate this. We submit that references to "the originator" be replaced by "an originator".

Comment

Officials understand it is common for a securitisation vehicle to receive assets from more than one group company. Accordingly, officials recommend that the proposed regime be amended to allow for this. To do this, the regime should provide for each originator to continue to be treated as owning the financial arrangements that it transferred to the DFSPV.

However, officials consider that only members of the same wholly-owned group should be allowed to transfer assets to the DFSPV. This is because the regime is not intended to apply to an in-substance sale of a receivable, which would be the effect of a transfer by a non-group member.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Allow the DFSPV to borrow

Clause 213(9)

Submission
(Trustee Corporations Association)

In order to meet the criteria for being a DFSPV in the context of non-bank securitisation vehicles, a company or trustee of a trust must meet the criteria in subparagraph d(ii) of the definition being an entity that operates to "raise funds by issuing securities backed by its assets".

The majority of New Zealand non-bank securitisations originate with warehoused bank debt rather than through the issue of securities. Even those securitisations that issue securities often also have some bank debt as a liquidity facility. We submit that the definition of "debt funding special purpose vehicle" be expanded to accommodate this by amending (d)(ii) of the definition to "raise funds by issuing securities or otherwise borrowing money backed by its assets".

Comment

Officials agree with this submission. The large majority of securitisations involve bank debt rather than the issues of securities to the public. Accordingly, limiting the regime to the issue of securities would significantly reduce its availability, particularly for smaller originators. Further, when securities are issued, officials understand it is currently often only to a limited group of institutional investors rather than to the retail public. Finally, there are no tax issues which arise from allowing the regime to be used for bank debt.

Recommendation

That the submission be accepted.

Issue: Application date

Clause 2

Submission
(Matter raised by officials)

The proposed amendments will need to apply on an income year basis. This is because, for existing securitisations that elect into the regime, the DFSPV would otherwise be treated as owning the assets for part of the income year and the originator would be treated as owning them for the other part. Accordingly, officials recommend an application date clause be included in the Bill to provide for the amendments to apply for income years commencing on or after the Bill comes into force.

Recommendation

That the submission be accepted.

Clauses 105–109, 120, 121, 154 and 155

Issue: Support for the proposals

Submission
(Deloitte)

The submitter supports the amendments to exclude Housing New Zealand Corporation from the land tainting rules.

Comment

Officials welcome support for the proposals.

Recommendation

That the submissions be noted.

Issue: Drafting issue – section CB 11

Clause 107

Submission
(Deloitte)

There is a drafting error in clause 107 of the Bill which means that the exclusion from section CB 11 for both Housing New Zealand and local authorities does not apply. New subclause CB 11(3) needs to be overriding subsection (1) rather than subsection (2).

Comment

Officials agree with the submitter that clause 107 contains a drafting error.

The drafting error arose from another amendment to section CB 11 that occurred simultaneously with, but independently of, the changes for Housing New Zealand Group, in order to correct a faulty expression of the policy intent arising from the rewrite of the Income Tax Act 1994.

Officials disagree with the submitter's suggested solution. The rewrite change merges the current section CB 11(1) and (2) into a new section CB 11(1). If the Housing New Zealand related amendment in section CB 11(3) were to override subsection (1), the exclusion for Housing New Zealand and local authorities would be wider than intended. Instead of just providing an exclusion from the associated person tainting provision, it would also provide an exclusion from the provision that taints the building entity itself.

Officials propose to amend section CB 11 so that it only provides the Housing New Zealand Group with an exclusion from the associated person tainting provision, consistent with the original policy intent.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Extension of exemption to all taxpayers

Clause 109

Submission
(Chartered Accountants Australia and New Zealand)

The exemption should be extended to all taxpayers and should not be specific to the Housing New Zealand Group.

The problem identified is an issue that is faced by many taxpayers. A sale of a property in the taxpayer's rental or personal portfolio may become taxable under the land tainting rules because of the development or building activities of an associated person despite there having been no intention to undermine the rules and not being ordinarily taxable under the land sale rules.

An exemption specific to Housing New Zealand is unprincipled and creates an uneven playing field.

Comment

Officials note that this submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

NOISE MITIGATION EXPENDITURE

Clauses 115, 130, 139, 140, 141, 142, 143, 213 and 215

Issue: Support for the proposed amendment

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Queenstown Airport, Russell McVeagh)

A number of submitters supported the proposed amendments to allow expenditure incurred for remediating noise to be deductible on the same basis as other pollution remediation expenditure.

One submitter noted that the amendment will create fairness and will “level the playing field” for deductions for pollution remediation expenditure. (*Corporate Taxpayers Group*)

Recommendation

That the submission be noted.

Issue: The proposed application date is appropriate

Clause 2

Submission
(Russel McVeagh, Queenstown Airport)

The submitters support the proposed application date for the proposed amendments (2018–19 and later income years). If the application date were delayed until after the Bill is enacted, businesses may be incentivised to delay undertaking noise mitigation work until the clarification in the law takes effect. This would be disadvantageous both to affected businesses and the communities in which they operate.

Recommendation

That the submission be noted.

Issue: Black hole expenditure

Submission
(Corporate Taxpayers Group)

The submitter endorses the Government's work to date on the tax treatment of feasibility and other black hole expenditure, and encourages the completion of that work.

Comment

A project considering the tax treatment of feasibility and black hole expenditure is on the Government's tax policy work programme, released May 2018. Officials understand and acknowledge the submitter's interest in that project being completed.

Recommendation

That the submission be noted.

ADVERSE EVENT SCHEME

Clauses 114, 128, 131,135–138, 185 and 213

Issue: Repeal of the adverse event scheme

Submission
(Chartered Accountants Australia and New Zealand)

The adverse event scheme should not be repealed.

Comment

The proposed repeal of the adverse event scheme arises from a review of whether a module should be developed within Inland Revenue's digital platform as part of the Business Transformation project. The particular concern raised was the cost of building and maintaining that module for so few taxpayers. As a result of this question, consultation on whether the adverse event scheme was undertaken with key stakeholders, including Chartered Accountants Australia and New Zealand (CAANZ), Federated Farmers and the Ministry for Primary Industries.

During that consultation process, submissions were received from Federated Farmers of New Zealand, the Ministry for Primary Industries, and CAANZ. All submitters acknowledged the following:

- The policy objectives for deferring tax on forced sales due to an adverse event are able to be achieved within the main scheme.
- The terms of the current adverse event scheme are inflexible, it has a low-level of use and, consequently, the scheme is largely redundant.
- Most farmers already use the main scheme for localised adverse events that result in forced sales of livestock.
- The ability to use main income equalisation scheme for forced sales of livestock due to localised adverse events is consistent with the objectives of the Primary Sector Recovery Policy administered by the Ministry for Primary Industries.
- The proposed repeal of the adverse event scheme will reduce administration costs and eliminate the potential for confusion between the main scheme and the adverse event scheme.
- It is preferable to have one common interest rate for all income equalisation schemes.
- The adverse event scheme and the main income equalisation scheme operate in very similar ways.

Officials consider the proposed repeal of the adverse event scheme does not prevent a taxpayer from obtaining a deferral of tax on forced sales of income due to an adverse event. Following the proposed repeal, this deferral of tax would be available through the main income equalisation scheme (the main scheme).

During the consultation phase, the Ministry of Primary Industries (MPI) agreed that the rationalisation of the adverse event scheme with the main scheme remains consistent with, and continues to be factored into the Primary Sector Recovery Policy administered by MPI. This recovery policy guides Government decisions on recovery assistance following adverse climatic events, natural disasters and biosecurity incursions impacting on farms.

Under this policy, MPI classifies adverse events under one of the scales of adverse event:

- localised events;
- medium scale events; or
- large scale events.

These classifications help the Government decide what assistance will be available in addition to existing measures such as the deferral of tax for income earned from forced disposals of livestock.

Points considered during the consultation phase

During the consultation phase, the main differences between the main scheme and the adverse event scheme were identified as follows:

- The ability to make deposits after year end and also to obtain refunds from within the same year.
- Obtain a refund, at any time, by right under the adverse event scheme.
- The difference in interest rate payable on deposits (6.5% p.a. for the adverse event scheme versus 3% for the main scheme).

In relation to these differences, officials note that:

- the main scheme's existing rules already permit deposits to be made after year end and refunds to be obtained from the main scheme during an income year; and
- during consultation, both Federated Farmers and CAANZ acknowledged that the discretionary refund mechanism in the main scheme for adverse events had always been exercised in favour of the farmer. No change in that process would be expected.

In its submission on the Bill, CAANZ notes that there have been few instances of adverse events in recent years and a number of their members have clients who have signalled they may make deposits into the adverse event scheme account as a result of the recent M. Bovis outbreak.

With respect to CAANZ's comments in their submission on the Bill, officials observe that there have been a number of instances of adverse events since 2010 for which deposits could have been made for stock losses, (including forced sales). These adverse events include drought, major flooding, snow and other storm damage. Despite the number of such localised events, there has been little uptake in deposits in the adverse event scheme in that period.

Officials consider that any renewed interest in the scheme, as suggested in CAANZ's submission, might be related to the high interest rate for the scheme (6.5% p.a.), as compared to the rate under the main scheme (3% p.a.).

As part of the proposed repeal, officials recommend that the Income Tax (Adverse Event Income Equalisation Scheme Rate of Interest) Regulations 1995 be revoked. If the scheme is not repealed, officials would recommend a review of the interest rate to ensure that the rate is not out of line with commercial interest rates for deposits.

Officials consider that the cost of retaining a separate system for relatively few numbers of farmers has little policy justification for the following reasons:

- Federated Farmers indicated their support for the repeal of the adverse event scheme during the consultation phase, and they have not made any contrary submission to the proposed repeal of the adverse event scheme.
- The main scheme has the necessary elements to ensure that farmers may obtain a deferral of tax on income arising from forced disposals of livestock.
- The high rate of interest for adverse event deposits is significantly out of line with commercial deposit rates.
- During the consultation phase, CAANZ and Federated Farmers supported all income equalisation schemes having only one interest rate.
- The historic low level of uptake for the adverse event scheme since its inception.

Recommendation

That the submission be declined.

Issue: Deposits be allowed up to taxpayer filing date

Clause 138

Submission
(Chartered Accountants Australia and New Zealand)

Deposits into the adverse events scheme should be allowed up to the taxpayer's filing date.

Comment

This option is already available under the main scheme. Officials consider that, given the low numbers using the scheme since its inception, it would be more efficient to consolidate the adverse events scheme with the main scheme rather than retaining and amending the adverse event scheme.

Amending the scheme would require a module to be designed and incorporated into the digital platform emerging under the Business Transformation project. Officials consider the historic numbers of farmers using the scheme do not justify a separate module being developed for inclusion in Inland Revenue's digital platform.

Officials consider that repealing the adverse event scheme is consistent with views expressed by CAANZ and Federated Farmers during the consultation phase under the Generic Tax Policy Process.

Recommendation

That the submission be declined.

Issue: Deposits allowed up to 6 months after balance date

Clause 138

Submission
(Chartered Accountants Australia and New Zealand)

Deposits into the adverse event scheme should be allowed up to 6 months after balance date.

Comment

Officials note that deposits to the main scheme are already allowed up to 6 months after balance date, so there is no need to make any further amendment to the adverse event scheme.

Recommendation

That the submission be declined.

Issue: Payments by method other than cheque

Submission
(Chartered Accountants Australia and New Zealand)

Payments into the schemes should be allowed by methods other than cheque.

Comment

There does not appear to be any regulatory requirement that a deposit to an income equalisation scheme must be made by cheque. While administrative practice generally involves a cheque being paid by the taxpayer, deposits may be made by electronic methods. Officials have referred this submission to the project team for modernising the tax administration system to consider in relation to deposits for all income equalisation schemes.

Recommendation

That the submission be noted.

Issue: Synchronising of interest regimes

Submission
(Chartered Accountants Australia and New Zealand)

The interest regimes for the two schemes should be synchronised.

Comment

Officials agree with the tenor of the submission. However, the outcome proposed would be achieved by the proposed repeal of the adverse event scheme and its consolidation into the main scheme.

Recommendation

That the submission be noted.

Issue: Interest rates set with reference to current market rates

Submission
(Chartered Accountants Australia and New Zealand)

The interest rates for both schemes should be set with reference to current market rates.

Comment

Officials consider this submission has some merit, but note that it raises a policy matter that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Provisions to be dealt with as part of the livestock rules

Submission
(Chartered Accountants Australia and New Zealand)

The provisions to allow taxpayers to deal with adverse events should be dealt with as part of the livestock rules.

Comment

Officials consider that the submission raises a policy matter that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Further amendments are made to the main scheme

Submission

(Chartered Accountants Australia and New Zealand)

The adverse events scheme should be repealed only after further amendments are made to the main scheme, including:

- interest should be payable from day one for those deposits transferred from the main scheme;
- the Commissioner should be required to refund the deposit on application rather than needing to exercise a discretion to do so; and
- amendments should be made to deal with the replacement of livestock following an adverse event.

Comment

Officials do not agree that interest should be payable from day one for deposits transferred from the adverse event scheme into the main scheme. Under the proposed amendments, a deposit made to the adverse events scheme is transferred to the main scheme at the end of the income year in which the deposit is made. Under the current law, a deposit made to the adverse events scheme (which has not been refunded) is transferred to the main scheme 12 months after it was deposited. Under both the proposed amendment and the current law, the transferred deposit will earn interest in the main scheme only if it has been retained in the main scheme for at least 12 further months.

However, CAANZ has clarified that this submission relates to situations where a deposit is made to the adverse event scheme account and, as a result of the proposed repeal of the scheme, the deposit would be transferred to the main scheme before the expiry of the 12 month period.

CAANZ comments that taxpayers may be disadvantaged, in terms of interest payable on deposits into the adverse events scheme that are transferred into the main scheme on repeal. Officials' records show that there were not active depositors at the time the Bill was introduced and so officials consider that taxpayers have sufficient notice of the proposal to repeal the adverse event scheme from the beginning of the income year after enactment. For example, if the Bill is enacted on 30 March 2019, the adverse event scheme for taxpayers having a standard balance date of 31 March will be repealed from 1 April 2019.

Clause 152 provides for the transfer of balances of the repealed adverse account. For a balance date of 31 March, if the adverse event scheme is retained, any deposit to the adverse event scheme during the year 31 March 2019 will automatically transfer to the main scheme on 1 April 2019. This transfer mechanism is well understood and in relation to the crediting of interest to deposits:

- interest credited to the adverse event scheme account ceases when the deposit is refunded or transferred to the main scheme; and
- interest on a balance transferred to the main scheme is payable under the terms of the main scheme. Interest is payable in the main scheme only if the deposit has been retained within the main income equalisation account for at least 12 months to attract interest.

Officials consider that the submission may be potentially seeking to broaden the benefit available for a person who makes a deposit to the adverse event scheme. Officials view is that this submission could be seeking a change in policy settings for interest payable in the main scheme that would not apply to any automatic transfer into the main scheme from an adverse event account. Given the timeframe between introduction of the Bill and the likely effective date of repeal of the Bill for taxpayers, officials do not consider the proposed amendments will affect entitlements to interest on deposits made to the adverse event scheme or for subsequent transfers of deposits to the main scheme.

Officials do not agree that there should be a statutory right of refund from the main scheme for deposits relating to adverse events. This is an unnecessary measure given the Commissioner's long-standing practice of favourably dealing with such applications.

Recommendation

That the submission be declined

Issue: Repeal of adverse event income equalisation scheme

Clause 138

Submission
(Jim Gordon Tax Limited)

That the adverse events income equalisation scheme be repealed because of its lack of flexibility when compared with the income equalisation scheme.

Comment

Officials agree with the submission.

Recommendation

That the submission be noted.

Clause 225B, Supplementary Order Paper No. 74

Issue: General comments

Submission
(Deloitte)

Deloitte appreciates that the SOP has considered a number of its original submission points on the May 2018 officials' issues paper, *GST on assets sold by non-profit bodies*, including the 24 month transition period and limiting operating expenditures counted to the last seven years.

Given the changes to the GST Act will affect a large number of non-profit bodies, Deloitte considers it will be useful to have clear and detailed guidance on the rules and their intended application published as soon as possible.

Comment

Officials note that, with the agreement of the Committee, further discussions have been undertaken with submitters on the issues paper in relation to the draft legislation in the SOP. The submitters involved in these discussions were Deloitte, the New Zealand Law Society and the Interchurch Bureau.

Officials acknowledge the need for, and are working to provide, clear guidance on the rules and their intended application as soon as possible.

Recommendation

That the submission be noted.

Issue: Remove the limitation of section 20(3K) to the apportionment rules

Clause 225B, Supplementary Order Paper No. 74

Submission
(Deloitte)

Replace the reference to section 20(3), (3C) and (3J) with "for the purposes of this Act".

Comment

Officials agree that the core relevant provision which allows non-profit bodies to claim GST on all expenses, except to the extent that they relate to exempt supplies or are not part of a taxable activity, should not be confined in application to the provisions in the GST Act concerning apportionment. Officials therefore recommend removing the references to sections 20(3), (3C) and (3J).

As a matter of drafting style, officials do not consider the words “for the purposes of this Act” are necessary.

Recommendation

That the submission be accepted, subject to officials’ comments.

Issue: The taxable supplies concept

Submission
(Deloitte)

Insert an additional proviso to ensure that going forward all assets are included in a non-profit body’s taxable activity where they are used for that taxable activity, or not used for the taxable activity but GST input tax has been claimed.

Comment

The main purpose of the changes proposed in the SOP is to make it clear that when input tax deductions have been claimed by a non-profit body in respect of an asset that GST is payable when the asset is sold or an event equivalent to a sale (such as receipt of an insurance payment) occurs.

Officials therefore agree that the SOP needs to ensure that this is clear and are therefore recommending the inclusion of specific charging provisions in the legislation.

Recommendation

That the submission be accepted.

Issue: Apply section 20(3K) retrospectively back to 15 May 2018

Clause 225B, Supplementary Order Paper No. 74

Submission
(Deloitte)

To give effect to Inland Revenue’s desired changes, proposed subsection 20(3K) should be applied retrospectively to all non-profit bodies except where a tax position has already been taken prior to 15 May 2018.

Comment

Officials note that the draft section 20(3KB)(2) already prohibits a non-profit body from taking a different tax position in relation to an asset from that taken before 15 May 2018. This seems to achieve the same outcome as the submission, and officials do not therefore consider the suggested change to be necessary. If taxpayers have taken a position contrary to that in the proposals, there should be no negative implications of this since Inland Revenue has

acknowledged that contrary position as a valid one as noted in the officials' issues paper and related policy papers.

Recommendation

That the submission be declined.

Issue: Clarification under section 88 that output tax payable equals the GST previously paid

Clause 228B, Supplementary Order Paper No. 74

Submission
(Deloitte)

There is a risk that subsection 88(4) could be interpreted to mean the "consideration in money" is the amount of input tax calculated under section 20(3K) – that is, 15% of 15%. For Inland Revenue risk protection, this section could be reworded to specifically identify that output tax payable equates to the GST input tax previously claimed, for non-profit bodies making an election under section 88(4).

Comment

Officials agree it is important to ensure that the legislation is not misinterpreted in the way described and will consider the suggestion for the tracked version of the Bill.

Recommendation

That the submission be noted.

Issue: Removal of sections 88(6)(b)(ii) and (iii)

Clause 228B, Supplementary Order Paper No. 74

Submission
(Deloitte)

On the basis that Inland Revenue has determined that this change needs to be made, Deloitte generally agrees with the anti-avoidance effect of subsections (6) and (7) but recommend that subsection 88(6)(b)(ii) and (iii) be removed.

Comment

The purpose of section 88(6) is to ensure that where a non-profit body makes an election to remove an asset from the GST base by paying any GST previously claimed and deregisters for GST, they cannot then transfer the asset as a second-hand good (which can include land) so that an associated recipient is able to claim a GST credit based on market value. The rule ensures that, in certain such cases, by limiting the credit for the purchaser to the amount paid under the

election, the GST effect is neutral. The cases affected include supplies to associates, to other non-profit bodies and to associates of other non-profit bodies that are made within 5 years of the election. It is necessary to include other non-profit bodies because they may have similar non-profit objectives as the supplying NPB but not be associated – for example, a large charitable organisation addressing poverty issues that decides to absorb a number of smaller entities with similar purposes. Associates of other non-profit bodies are also included in the provision as otherwise it would be too easy to avoid the application of the associated persons and other non-profit bodies paragraphs by inserting an intermediary body.

Recommendation

That the submission be declined.

Issue: Provide a minimum threshold

Clause 225B and 228B, Supplementary Order Paper No. 74

Submission
(Deloitte)

The Bill should include a minimum threshold in relation to sections 20(3K), 20(3KB) and 88.

Comment

Under the heading below, "operational arrangement with Inland Revenue", officials have recommended that estimates of the GST in question be able to be submitted to Inland Revenue when an election is being made which should reduce some of the compliance cost concern that appears to be underpinning this submission.

Officials also note that there is no requirement to include any asset in the election. It can just continue to be included in the taxable activity so that, under the proposals, GST can be paid where a supply of the asset is made as input tax deductions are likely to have been able to be claimed.

Recommendation

That the submission be declined.

Issue: Operational arrangement with Inland Revenue

Submission
(Deloitte)

Non-profit bodies will find it very helpful to have an operational arrangement with Inland Revenue to submit calculations of the proposed elective repayment of GST input tax claimed to Inland Revenue for verification, before making the election and returning output tax in the next GST return.

Comment

There would be nothing in the proposals that prohibits a non-profit body from seeking Inland Revenue's view on its calculations. Inland Revenue plans to provide guidance on how the new rules would apply which should address a range of concerns.

A more significant point is that officials consider that the legislation should allow for reasonable estimates to be made of the amount of GST paid for the purposes of the election. Since records are only required to be kept for 7 years it may be difficult for a non-profit body to determine the GST paid for capital expenses that are required to be included in the election outside of that 7 year period. It is also possible that not all records will in fact be held by a non-profit body for the required 7 year period. Therefore, officials consider that the ability to estimate (with the agreement of the Commissioner) should apply to both capital and operating expenses.

Recommendation

That the submission be declined, but that the legislation allow for reasonable estimates of GST input tax deductions claimed to be made.

Issue: Assets never treated as part of a taxable activity

Submission
(Matter raised by officials)

In discussion with the New Zealand Law Society and submitters on the issues paper, clarity is needed about the application of the proposals to a GST-registered non-profit body which has always treated an asset as not being part of any taxable activity and therefore not claimed any input tax deductions for GST relating directly to that asset. An example of this is cultural assets held by an iwi organisation.

Comment

Officials consider that the legislation needs to clarify that a non-profit body that has never treated an asset as part of a taxable activity, or does not in the future treat an asset as part of a taxable activity, should be able to continue to do so with no GST input or output tax implications.

Recommendation

That the submission be accepted.

Issue: Informing a recipient that an election has been made

Clause 228B, Supplementary Order Paper No. 74

Submission
(Matter raised by officials)

In discussion with the Interchurch Bureau the question as to how section 88(6), the anti-avoidance rule where assets for which an election has been can give rise to a second-hand goods input tax deduction for a recipient, can be applied. The concern is that the recipient may not know that an election had been made.

Comment

Officials recommend that the original owner of the asset, or a person who has the necessary information about the election, should provide that information to the recipient if requested to do so.

Recommendation

That the submission be accepted.

CANTERBURY EARTHQUAKE TAX RELIEF PROVISIONS

Clauses 151B and 151C, Supplementary Order Paper No. 74

Issue: Support for the amendments

Submission
(Deloitte, Tomlinson Law)

The submitters support extending Canterbury earthquake depreciation rollover relief provisions for a further five years in the Income Tax Act 2007.

Comment

The submissions are noted.

Issue: Additional sections need to be extended

Submission
(Deloitte, Tomlinson Law)

The Canterbury earthquake provisions in sections CZ 25, CZ 29, DZ 20, EZ 70, EZ 71, EZ 72, EZ 73 and EZ 74 should also be amended in addition to the proposed changes. Both submitters considered it is important that all of these sections are also extended so that their end-dates correspond to the end of the 2023–24 income year, in alignment with the proposed changes for sections EZ 23B and EZ 23BB. This is because some of these sections are essential to the proper functioning of the rollover relief provisions, and some formed a complimentary part of the original set of Canterbury earthquakes tax concessions.

If the application of these other provisions is not extended, many taxpayers (not just business owners) will be adversely affected and end up with a significant tax liability. *(Tomlinson Law)*

Comment

Officials agree that all Canterbury earthquake provisions should be extended but for section CZ 29.

Section CZ 29 exempts employer-provided accommodation from being taxable, within certain time constraints. The provision no longer provides any time advantage over the standard maximum three year exemption for employer-provided accommodation and, therefore, its extension is unnecessary. It was always intended that the standard provisions would apply when section CZ 29 expires.

Moreover, it should be noted that some existing employees who are working on projects of limited duration in greater Christchurch may get the treatment provided by existing section CZ 29 into the 2022 calendar year. Specifically, employees who start work in the period between 1 April 2018 and 31 March 2019 are able to make use of existing section CZ 29 for three years, which in some cases will take them up until 31 March 2022.

Recommendation

That the submission be accepted, subject to officials' comments.

Clauses 2, 98B, 119B, 133B-133F, 151BA, 213 and 214B, Supplementary Order Paper No. 135

Issue: Registration requirements re "stud-founding bloodstock"

Submission

(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

The references in section EC 39B(1)(c) should be changed to "The New Zealand Stud Book" and the "New Zealand Harness Racing Stud Book".

Secondly, the requirement in section EC 39B(1)(d) should be eliminated. There is no registration to breed that arises at the time of the purchase of a filly or colt – such registration to breed would generally only occur several years later.

Comment

The legislation needs to refer to the appropriate register and take into account industry practice as to the timing of the registration to breed, which generally occurs several years after a filly or colt is acquired.

Recommendation

That the submission be accepted.

Issue: Notification and information requirements

Submission

(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

The industry would like to be consulted on the draft guidance on the information that the Commissioner may request under draft section EC 39B(3)(b)(i) that will be released shortly following enactment. The desire is to reduce as far as possible compliance cost, while respecting genuine information needs of the Commissioner.

Comment

Inland Revenue is currently developing the guidance for the information requirements that will support the assessment of a taxpayer's claim that a standout yearling has been acquired with an intention to breed for profit in the future. Once developed, Inland Revenue plans to consult with the key industry bodies on the information requirements before publishing the guidance.

Recommendation

That the submission be accepted.

Issue: National minimum price thresholds

Submission
(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

The breeding industry has some questions whether the method by which the national minimum price thresholds are set will deliver the intended benefits to the industry. The New Zealand bloodstock industry would appreciate the opportunity to discuss the setting of the national minimum price thresholds with officials in the period before the Bill is reported back.

Comment

Officials previously consulted with the industry on the methodology for setting the thresholds for thoroughbred and the standardbred yearlings. Officials also sent those representing the thoroughbred industry the raw data and the equations used to set the proposed 2019 thresholds for thoroughbred yearlings.

With the Committee's approval, officials are involved in further discussions with the industry. Officials will provide further advice to the Committee if these discussions result in officials changing the current recommendation to decline this submission.

Recommendation

That the submission be declined.

Submission
(New Zealand Thoroughbred Breeders' Association Inc.)

Lowering the threshold would encourage new investment into the industry.

Comment

The threshold is designed to target high-quality horses that may be the better future breeding prospects. The threshold also reduces the risk of the policy exceeding the amount of funding allocated in Budget 2018.

Lowering the threshold reduces the quality of bloodstock that could access the rules. Officials would also have concerns with the potential fiscal risk from lowering the threshold.

With the Committee's approval, officials are involved in further discussions with the industry. Officials will provide further advice to the Committee if these discussions result in officials changing the current recommendation to decline this submission.

Recommendation

That the submission be declined.

Issue: Purchases by New Zealand residents at top Australian sales

Submission
(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

The New Zealand bloodstock industry considers that access to the new tax regime for buyers in major Australian sales is important for the industry from the perspective of bringing quality bloodstock back to New Zealand. The industry understands that the non-inclusion of purchases from Australian sales will be reviewed in 2020.

Comment

The industry is aware that the Government has concerns with the potential fiscal risk from including yearlings acquired at Australian sales in this policy. The Government has agreed to review whether this policy should include yearlings acquired at Australian sales in 2020.

Recommendation

That the submission be noted.

Issue: Schedule 18B clarification of premier yearling sales

Submission
(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

Schedule 18B should identify the sales that are standardbred sales and the sale that is a thoroughbred sale, so that the references are easily understood.

Recommendation

That the submission be accepted.

Issue: Purpose of draft section EC 47C and adjustments to drafting

Submission
(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

The intention of the New Zealand bloodstock industry is that so-called prospective breeders be treated similarly to investors in an existing breeding business both in terms of amortising cost of purchase and the ongoing non-race related (holding) costs.

It should be sufficient for a breeding business to be deemed to commence under section EC 47C if the requirements in section EC 39B(3) are met. The additional requirement in draft section EC 47C that a prospective bloodstock breeder meet a test of "preparing their stud-founding bloodstock for breeding bloodstock in New Zealand for profit" should be eliminated.

Comment

The industry is concerned that as drafted, section EC 47C imposes another "test" in addition to the requirements set out in section EC 39B. This is not intended.

Recommendation

That the submission be accepted.

Submission
(New Zealand Thoroughbred Breeders' Association Inc.)

The breeding business should commence at the date the yearling is purchased.

Comment

The concern is that there is ambiguity as to when a breeding business commences. To provide certainty on this matter, officials will redraft section EC 47C.

Recommendation

That the submission be accepted.

Issue: Removal of bloodstock from New Zealand or sale to non-New Zealand residents

Submission
(Chapman Tripp – on behalf of The New Zealand Racing Board, New Zealand Thoroughbred Breeders' Association Inc., and New Zealand Standardbred Breeders' Association)

Officials have not raised sections CG 8B and CG 8C with the New Zealand bloodstock industry and their intended effect needs to be discussed further before legislation is enacted.

The breeding industry's view it is not appropriate for deductions to be clawed back where genuine purchases of bloodstock have been made with a view to breeding for profit and unexpected changes in circumstances mean that the breeding intention is not successful, for example in the event of injury preventing breeding, discovery of infertility subsequent to purchase, temperament change post- purchase requiring gelding.

As for other businesses, where losses are suffered, tax deductions in relation to the loss are not reduced/constrained and neither should they be in the New Zealand bloodstock industry.

Comment

These integrity measures were previously raised with the industry and moderated because of industry concerns.

Officials consider that the current bloodstock breeding tax rules adequately deal with the situations where a horse acquired for breeding is subsequently unable to be used for future breeding. The current rules deem the horse to be disposed of for market value on the day it is determined that the horse is unable to be used for future breeding.

These proposed measures are more concerned with the risk that New Zealand racing industry (including breeding) does not benefit from this policy. If New Zealand investors acquire a standout yearling and then subsequently export or sell the horse without training and racing the horse in New Zealand, there is a greater risk that the horse will not return to New Zealand for breeding. These rules ensure that the New Zealand racing industry receives an upfront benefit from such investment.

With the Committee's approval, officials are involved in further discussions with the industry. Officials will provide further advice to the Committee if these discussions result in officials changing the current recommendation to decline this submission.

Recommendation

That the submission be declined.

Submission
(New Zealand Thoroughbred Breeders' Association Inc.)

These measures are onerous should it be desirable that stud-founding bloodstock be transferred to Australia for genuine commercial reasons. Any new business created by the approval of stud-founding bloodstock should not be subject to onerous conditions re the potential loss of deductions.

Comment

Once a horse has left New Zealand there is a concern that it will not return. These rules seek to ensure that the New Zealand racing industry receives some benefit prior to a horse leaving New Zealand. If the horse returns to New Zealand (perhaps at the end of its Australian racing career), investors will be eligible for tax deductions once a breeding business commences.

With the Committee's approval, officials are involved in further discussions with the industry. Officials will provide further advice to the Committee if these discussions result in officials changing the current recommendation to decline this submission.

Recommendation

That the submission be declined.

Issue: Support for the Bill

Submission
(Klox Limited)

The submitter is happy with the Bill going forward.

Recommendation

That the submitter's support be noted.

Issue: Multi-rate PIEs – IRD number requirements

Submission
(Fonterra)

The submitter seeks an amendment to the recently enacted multi-rate PIE rules amendments to exclude the Fonterra Shareholders Fund from the application of those rules. The multi-rate PIE rules were amended with effect from 1 April 2018 to provide that if an investor does not provide their IRD number within 6 weeks of investing in a multi-rate PIE, the investment is closed and the funds are returned to the investor.

Comment

The Fonterra Shareholders Fund is a multi-rate PIE that is specifically a foreign investment variable-rate PIE listed on the New Zealand stock exchange. These recent amendments to the multi-rate PIE rules do not apply to a PIE listed on a stock exchange (a listed PIE). This is because the PIE's manager cannot control the entry and exit of investors via trades made on the stock exchange and is unable to comply with the requirement to obtain an investor's IRD number within six weeks of the investment and, if no IRD number is provided, cancel and return the funds to the investor.

Officials agree that if a multi-rate PIE is listed on a recognised stock exchange in New Zealand it should be excluded from the recent IRD number rules.

Recommendation

That the submission be accepted.

Issue: Incorrect cross-reference

Submission
(Matter raised by officials)

Section 46(8) of the Tax Administration Act 1994 as amended by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 contains an incorrect section reference. The section should refer to section 275 and not section 200.

This proposed amendment should apply with effect from 29 March 2018, the commencement date of the amendment to section 46(8).

Recommendation

That the submission be accepted.

Issue: Retaining the payroll subsidy

Submission
(Accountants and Tax Agents Institute of New Zealand, Baucher Consulting Limited)

The submitters suggest that the current payroll subsidy contained in section RP 4 of the Income Tax Act 2007 be retained beyond the proposed repeal date of 1 April 2020 in the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018.

The submitters consider retention of the payroll subsidy would support small businesses which will be expected to comply with payday filing from 1 April next year. It should also improve compliance amongst such businesses.

In addition, the payroll subsidy should be expanded by raising the eligibility threshold to $250,000 of PAYE and Employer's Superannuation Contribution Tax withheld by the employer in an income year and by increasing the present limit of five employees per pay period to ten employees.

The submitters believe these changes are necessary to acknowledge that businesses act as unpaid tax collectors and the issue of increased compliance costs for small businesses stemming from payday reporting.

Comment

The decision not to continue with payroll subsidy beyond 1 April 2020 was made by Government as the payroll subsidy targets only one model of payroll service and potentially distorts the payroll service and product market. The change was enacted in the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018. The proposed repeal was part of a set of changes that overall are intended to improve the administration of PAYE by taking advantage of modern digital systems to reduce compliance and administrative costs.

The settings that informed Government's decision to repeal the subsidy remain largely unchanged. Reintroducing the payroll subsidy in this Bill would require the Government to change its views and funds allocation. The cost of re-introducing the subsidy as suggested by the submitters (with a $250,000 eligibility threshold and a 10 employee limit) is in the vicinity of $8.9 million per annum. Such a decision would need to be considered as part of the Budget process to enable the Government to consider this as part of Government's spending priorities.

Recommendation

That the submission be declined.

Issue: Variable RWT on dividends

Submission
(Entrust)

The Bill should be amended to allow variable dividend resident withholding tax rates along the same lines as the law already allows variable RWT rates on interest income. This would be elective so companies, if they wish, could continue under existing dividend RWT rules.

Comment

Officials note that this submission is outside of the scope of the current changes and raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Imputation credit refundability

Submission
(Entrust)

Excess imputation credits should be refunded to Entrust beneficiaries, or the PIE rules should be applied to Entrust to achieve the same effect. This would ensure that Entrust beneficiaries are in the same position as KiwiSaver investors.

Comment

Officials note that this submission is outside of the scope of the current changes and raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Inequality between rich and poor

Submission
(Kerry Lianne)

In order to reduce the growing inequality between the rich and poor in New Zealand:

- there should be a tax threshold beyond which income is taxed at 50%;
- all passive income should be taxed; and
- tax decisions and assistance to the poor should be based on median income, rather than average income.

Comment

Officials note that this submission is outside of the scope of the current changes which focus largely on the administration of the tax system and goes beyond the confirmation of the existing tax rate settings. The submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Remedial amendments

Clause 46

Issue: Support for the proposed amendment

Submission
(ANZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

A number of submitters supported the proposed amendment changing the application date for giving the Commissioner of Inland Revenue a discretion to issue an IRD number to an offshore person without a New Zealand bank account if she is satisfied with their identity and background.

Recommendation

That the submission be noted.

Issue: Guidance on when the Commissioner's discretion will be applied

Submission
(ANZ)

ANZ recommends that Inland Revenue works with the banking industry to develop guidance on when this discretion will be applied in order to provide certainty to both offshore persons and the banking industry.

Comment

Guidance on the issue of IRD numbers to offshore persons is already available on Inland Revenue's website.

Recommendation

That the submission be noted.

Issue: Application date

Clause 2

Submission

(ANZ, Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

One submitter *(Chartered Accountants Australia and New Zealand)* noted that the proposed application date of the amendment referred to in the *Commentary* to the Bill (15 October 2015) is inconsistent with the application date in the draft legislation (1 October 2015). The submitter considers 1 October 2015 is the correct date. It appears, based on their submissions, that ANZ and Corporate Taxpayers Group believed that 15 October 2015 is the correct date.

Comment

Officials can confirm that 1 October 2015 is the correct application date, as stated in the Bill. This will be noted in the *Tax Information Bulletin* if the Bill is enacted.

Recommendation

That the submission be noted.

Clauses 167, 213(18), 214 and 217

Issue: Support for PIE remedials

Submission
(Bay of Plenty Regional Council, Corporate Taxpayers Group, Financial Services Council, KPMG, Quayside Holdings)

The Council submits in support of Northland Regional Council being added to schedule 29. *(Bay of Plenty Regional Council)*

The Group supports the proposed amendment to section YC 12 as this should give each relevant taxpayer who is directly or indirectly owned by a public unit trust the choice as to whether to apply the notional single person concessionary rule. *(Corporate Taxpayers Group)*

The Financial Services Council supports the following remedial changes:

- Allowing listed PIES being wound up to extend the time period they can remain PIEs as part of the wind up process.
- A change regarding how the notional single person rule is applied to public unit trusts.
- Extension of the PIE maximum investor interest exemption to the Northland Regional Council. *(Financial Services Council)*

KPMG supports the PIE remedial amendments included in the Bill and made submissions for further simplifying and improving the operation of the PIE rules. *(KPMG)*

Quayside supports the addition of Northland Regional Council to the list, and notes that all entities defined as a "local authority" per section 5 of the Local Government Act 2002 are widely held and could therefore be included under the same rationale. *(Quayside Holdings)*

Recommendation

That the support be noted.

Issue: Additions to schedule 29, Part A

Clause 217

Submission
(Bay of Plenty Regional Council, Corporate Taxpayers Group, Financial Services Council, KPMG, Quayside Holdings)

A number of submitters made submissions requesting that either individual regional councils be added to schedule 29 or that all councils, and council controlled organisations, should be added. It was also suggested that Inland Revenue should create a list of general requirements to cover entities subject to the PIE maximum investor interest exemption.

Comment

Officials agree that it would be more efficient if all councils were added to schedule 29 rather than adding individual councils as they request it. A "local authority" is already a defined term in section YA 1 and this would be suitable. There is also a definition of council-controlled organisation; however, this only requires that a council holds a 50% or greater voting interest rather than it being wholly owned by the council. Instead officials recommend that a local authority or an entity that is wholly owned by a local authority should be added to schedule 29, Part A.

As this definition would cover Auckland Council, Quayside Holdings Limited and Northland Regional Council it will no longer be necessary for these to be separately identified in schedule 29.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Ownership interest by Public Unit Trusts

Clause 214

Submission
(Corporate Taxpayers Group)

Section YC 12(1B) should refer to an "ownership interest" before section YC 4 is applied to that interest. This is necessary because section YC 4 would otherwise treat the public unit trust as not holding an ownership interest in the subsidiary company (and would instead treat the next shareholder up the ownership chain as holding the ownership interest). To put this another way, on a literal reading of proposed wording in the Bill, it might not be possible for section YC 12(1B) to be triggered in respect of a public unit trust because the unit trust would be treated by section YC 4 as not having an ownership interest in the subsidiary company. Similar drafting is used in section YC 11(1) (which refers to a voting interest or market value interest "before section YC 4 is applied to that interest") to address this same problem. Section YC 11 also applies where a person holds either a direct or an indirect interest in a company, as is the case with section YC 12, so using the same drafting would be appropriate.

Comment

Section YC 4 is a look-through rule for corporate shareholders so that the shareholders of a company own what that company owns. A company includes a unit trust, and therefore section YC 4 also applies to public unit trusts.

Officials agree that section YC 12(1B) should be available when a public unit trust directly, or indirectly, has an ownership interest in a New Zealand taxpayer. The intention of the notional single person concession for unit trusts is that it should be available wherever the public unit trust appeared in the chain. For example, if a non-resident public unit trust wholly-owned another non-resident company and that company wholly-owned a New Zealand resident company it would be appropriate for the concession to be available even though the New Zealand resident company is not directly owned by a public unit trust. Although a public unit

trust is required to be widely held, section YC 4 could also apply to treat the assets of the public unit trust as being held by its shareholders – this should not prevent section YC 12(1B) from being available.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Equivalent interest

Clause 214

Submission
(Corporate Taxpayers Group)

It should be clarified what the term "equivalent interest" in proposed section YC 12(1B) is intended to refer to. This is not a defined term in section YA 1 and does not appear elsewhere in the Income Tax Act 2007. The existing defined term "ownership interest" also already includes a "voting interest" or a "market value interest, so it should be clarified what sort of additional type of interest the term "equivalent interest" could refer to.

Comment

As noted by the submitter, "ownership interest" is a defined term that refers to voting interests or market value interests. However, this term specifically only applies to companies. The term "equivalent interest" was included to cover off entities in an ownership chain that were not companies and interests that are equivalent to an ownership interest such as a share in a partnership. However, on further consideration officials consider that this extension to include "equivalent interests" is not necessary and recommend it be removed.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Damages, insurance and other compensation received in relation to land

Submission
(KPMG)

Under section HM 12(1)(b), ninety percent or more of the gross income for a PIE must be from one of the listed types in order for the entity to maintain its PIE status. This includes income under a lease of land (other than from an associate), under section HM 12(1)(b)(iv). However, this does not include amounts, which are taxable relating to damages, insurance proceeds and other compensation payments.

Section HM 12(1)(b) should be extended to include amounts relating to taxable damages, insurance proceeds and compensation payments, where these amounts are derived by a PIE that derives income from a lease of land (under section HM 12(1)(b)(iv)).

Currently, the income types requirement in section HM 12 does not address ordinary commercial events where a PIE may receive either damages (for example, where the PIE has commissioned the construction of a building for rental purposes, but the construction company or contractor defaults or there are delays, resulting in lost rental income and triggering damages, court-ordered compensation or settlements) or some other form of taxable compensation (for example, insurance proceeds for loss of rent, insurance proceeds that are taxable under section CG 4 to the extent a deduction for repairs and maintenance is claimed, or insurance proceeds that require an adjustment under section EE 52).

As these payments are outside the control of the PIE, the 10% income tolerance provided under section HM 12 may be breached in a quarter, or consecutive quarters, resulting in a breach of PIE status. This is despite these payments being received in relation to the PIE's business of deriving income from the lease of land.

These payments should be explicitly included within the scope of section HM 12(1) as these amounts are replacement payments for lost rental income (that is, income under a lease of land) and/or amounts the receipt of which is outside the control of the PIE.

Comment

The types of income included in section HM 12(1) are intended to restrict a PIE to largely earning passive income, including, as noted by the submitter, leasing of land from non-associated parties. Officials agree that damages, insurance proceeds or other compensation payments derived as a replacement for lost lease income should be included in section HM 12(1)(b) so that a PIE that derives such income will continue to satisfy section HM 12.

Recommendation

That the submission be accepted.

Issue: Exemption from meeting the minimum investors/maximum investor interest requirement for certain public unit trusts

Submission
(KPMG)

Section HM 22 removes the need to meet the minimum 20 investor and maximum twenty percent investor interest requirements for a PIE that, if it were treated as a unit trust (or for an investment class of a PIE, if the investment class was treated as a unit trust), would meet the requirements of one or more of paragraph (a) and (c) to (e) of the public unit trust definition in section YA 1. Paragraph (e) of the definition is intended to allow entities that are for direct investment by widely-held entities to qualify as a public unit trust. However, the eligible investor types do not include other PIEs.

The eligible investors under paragraph (e) of the definition of public unit trust should be extended to also include portfolio investment entities (PIEs).

Section HM 22 allows a PIE (or an investor class of that PIE) that, if it were a unit trust, would meet one or more of paragraphs (a) and (c) to (e) of the definition of "public unit trust", to not have to comply with the minimum 20 investor rule (section HM 14) or the twenty percent maximum investor interest requirement (section HM 15). This is designed to simplify some of the PIE eligibility requirements as a public unit trust will typically either be widely-held or have investors that are widely-held (other than in temporary or unusual circumstances).

> Paragraph (e) of that definition applies to:
>
> a unit trust that has less than 100 unit holders if it could reasonably be regarded as a vehicle mainly for investment by widely-held vehicles for direct investment that are 1 or more of the following:
> (i) unit trusts; or
> (ii) group investment funds; or
> (iii) life insurance companies; or
> (iv) superannuation funds

This paragraph of the public unit trust definition is intended to qualify "wholesale" unit trusts or funds (that is, where the investors are themselves widely-held investment vehicles for "retail" investment – that is, investment by members of the public). However, currently, the list of eligible investors excludes PIEs. This is problematic where the PIE is not a unit trust, group investment fund, life insurer or a superannuation fund. For example, we note that a number of listed PIEs are legally companies and not unit trusts or superannuation funds, so this is a practical issue.

Where a wholesale fund has a listed PIE investor that is a company, for example, the listed PIE investor will not be able to own greater than fifty percent of the wholesale fund, due to the "mainly for investment" criterion in the paragraph (e) definition. This seems an absurd outcome as a PIE, by definition, must be widely-held, either directly or indirectly. (For completeness we note that this suggested change should also not dilute the effectiveness of the "public unit trust" definition for the notional single person shareholder continuity concession.)

Comment

Officials agree that a PIE should always be able to be considered widely held so there should be no concerns with a PIE owning a majority of a public unit trust that is a wholesale fund. Officials note that including a PIE within paragraph (e) of the public unit trust definition will reduce the possibility of a unit trust not meeting the public unit trust definition in a specific scenario which is consistent with the existing policy but will not increase the types of unit trusts that could meet the public unit trust definition. Therefore there will be no flow-on consequences for the various provisions that rely on the public unit trust definition.

Recommendation

That the submission be accepted.

Issue: Definition of “ownership interest”

Submission
(Matter raised by officials)

The definition of “ownership interest” in section YC 18(6) of the Income Tax Act 2007 is redundant as it has been replaced by a general definition in section YA 1.

Comment

The definition of “ownership interest” in section YA 1 originally cross-referenced to the definition in section YC 18(6) and applied only for the purpose of sections YC 18, YC 18B, YC 18C and YC 19B. The Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Act 2014 inserted the definition of “ownership interest” directly into section YA 1 and applied it without restricting it to particular sections.

However, the original definition in YC 18(6) has not been removed. While the two definitions are the same, the definition in section YC 18(6) is redundant and should be removed. Consequential changes are also necessary in sections YC 18B(5)(a), YC 18C(5) and YC 19B(3) which refer to the former definition.

Recommendation

That the submission be accepted.

WORKING FOR FAMILIES ABATEMENT RATES AND THRESHOLDS

Clauses 179, 183, 184, 260 and 261

Submission
(Chartered Accountants Australia and New Zealand)

The submitter opposes the repeal of the average abatement rate, threshold and family tax credit rate as they believe the START system will not have sufficient information for all taxpayers to reconcile actual income earned before and after 1 July.

Comment

The amendment more closely aligns instalments of Working for Families with the actual rates and thresholds that apply before and after 1 July 2018. It is aimed at ensuring that the payments are more accurate. The Families Package (Income Tax and Benefits) Act 2017 increased the family tax credit and raised the abatement threshold.

The START system will have the ability to correctly determine the income earned before and after 1 July and apply the correct Working for Families rates and thresholds for each period. If a person requires details of the calculation, Inland Revenue will be able to provide this.

Recommendation

That the submission be declined.

INTERACTION BETWEEN BEST START AND PAID PARENTAL LEAVE

Clauses 178

Submission
(Chartered Accountants Australia and New Zealand)

The submitter supports the amendment which ensures that a person can receive the Best Start tax credit for a child once paid parental leave for that child ceases.

Recommendation

That the submission be noted.

PARENTAL TAX CREDIT CLARIFICATION

Clauses 180–182, 263, 264 and 269

Issue: Support for amendment

Submission
(Chartered Accountants Australia and New Zealand)

The submitter supports the amendment which retrospectively enables the parental tax credit to be paid on a pro-rata basis to qualifying persons.

Recommendation

That the submission be noted.

Issue: Benefit abatement rates

Submission
(Drucilla Kingi-Patterson)

The policy to tax those on a benefit or pension is set too high. For example, a person may be taxed at 70 cents in the dollar on amounts over $80. If the rate was set at 30 cents in the dollar after the first $80, the person would have more money for petrol and food and therefore would be able to keep being employed.

Comment

The submission concerns the abatement rate that is used when a person on a benefit starts earning income.

Officials note that this submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Backdating Working for Families

Submission
(Matter raised by officials)

An amendment should be made to enable Inland Revenue and the Ministry of Social Development (MSD) to backdate payments of Working for Families entitlements.

Comment

One of the issues that arose in the course of implementing the new Best Start tax credit was the backdating of tax credits.

There could be delay between the child's birth (or coming into care) and Inland Revenue receiving the Best Start application. This can happen in two situations – when a baby is born before its due date of 1 July 2018 (or later) or when the application for the tax credit is late. A similar issue arises for other Working for Families components when there is a delay in applying for the tax credits.

To address this, officials recommend an amendment to enable Inland Revenue and MSD to backdate payments of Working for Families entitlements. The amendment would ensure that the payments are made in a timely manner.

Recommendation

That the submission be accepted.

Issue: Working for Families payments to beneficiaries who share the care of a child

Submission

(Matter raised by officials)

An amendment should be made to clarify that Inland Revenue can pay Working for Families payments to recipients of income-tested benefits who share the care of a child.

Comment

During the implementation of the Families Package (Income Tax and Benefits) Act 2017 it was identified that it is currently not clear that Inland Revenue can pay Working for Families to recipients of an income-tested benefit who share the care of their child with another person when the entitlement is unabated.

Officials recommend an amendment be made to clarify that Inland Revenue can pay Working for Families to recipients of income-tested benefits who share the care of their child, regardless of whether or not their entitlement is abated.

In addition, officials recommend that MSD should retain their authority to pay Working for Families to recipients of income-tested benefits who share the care of their child with another person.

Recommendation

That the submission be accepted.

Issue: Working for Families payments to foster carers

Submission
(Matter raised by officials)

An amendment should be made to enable Inland Revenue to pay the Best Start tax credit to eligible foster carers who receive both an income-tested benefit and the Foster Care Allowance.

Comment

MSD does not have a system in place to identify children who are in foster care. MSD is not able to pay the Best Start tax credit to foster carers who receive both an income-tested benefit and the Foster Care Allowance.

Inland Revenue does collect information on whether a child is a foster child as part of the Working for Families application and so it can calculate the Best Start tax credit.

Officials therefore recommend an amendment be made to enable Inland Revenue to pay the Best Start tax credit to foster carers who receive an income-tested benefit.

MSD should retain the authority to pay Working for Families payments to foster carers who are receiving an income-tested benefit. This ensures that if, in the future, MSD can identify children in foster care they could pay the tax credit to those customers.

Recommendation

That the submission be accepted.

Issue: Adjustment to Working for Families payments to prevent over or underpayments

Submission
(Matter raised by officials)

An amendment should be made to clarify that Inland Revenue can adjust interim Working for Families payments (except Best Start) during the year to ensure that the recipient receives as close as possible to their correct entitlement during the year.

Comment

In order to ensure policy intentions are met, the law should be amended to enable the Inland Revenue to adjust Working for Families payments during the year to prevent over- or under-payments and ensure that the recipient receives as close as possible to the correct amount for the year.

When a potential overpayment is identified, a person's future payments would be reduced so as to avoid any overpayment of their Working for Families over the year. If the adjustment were not made, the person would receive an overpayment of tax credits, and these would need to be repaid.

When a potential underpayment is identified a person's future payments would be increased. If the adjustment were not made, a person would not receive the remainder of their entitlement until after the end of the tax year.

Officials consider that Inland Revenue should be able to reduce or increase a person's Working for Families payments.

Officials consider that Inland Revenue should not adjust Best Start payments during the year. This amendment would ensure that the policy intent to give all families a universal payment in the first year of a baby's life is maintained.

Recommendation

That the submission be accepted.

Issue: Support for the proposals

Clauses 223 and 225–228

Submission
(Corporate Taxpayers Group, Chartered Accountants Australia and New Zealand)

The Corporate Taxpayers Group is supportive of cross-referencing errors and oversights being amended to provide guidance to taxpayers. The Group also supports the amendments to remove the outdated references to the principal purpose test, and the amendment to remove the requirement for a registered person to notify the Commissioner of a change in constitution.

Chartered Accountants Australia and New Zealand is supportive of clauses 226, 227 and 228.

Recommendation

That the submitters' support be noted.

Issue: Outdated references to former principal purpose test

Clause 228

Submission
(New Zealand Law Society)

Proposed new section 55(7)(db) does not address the situation where the goods and services were acquired, produced or applied for a non-taxable use by an entity before becoming a member of the group and are subsequently applied for a taxable use. The *Commentary* states that the amendment is intended to cover this situation, not just the situation where the new member previously acquired the goods or services for a taxable use.

If the proposed collapsing of section 55(7)(dc) and (db) into a new section 55(7)(db) proceeds, the reference in section 55(7)(c) to 55(7)(dc) would need to be omitted.

There are other apparently outdated references to "principal purpose" in the GST Act in sections 5(13A), 10(3A) and 20A(4) which could be updated.

Comment

Officials agree with the points raised by the submitter.

Recommendation

That the submission be accepted.

Issue: GST refund for regional fuel tax rebates paid to unregistered persons

Clause 225B

Submission
(Matter raised by officials)

Comment

The current GST rules allow the New Zealand Transport Agency to claim a GST refund from Inland Revenue in respect of regional fuel tax that it has rebated to a GST registered person.

A remedial amendment is required to allow the New Zealand Transport Agency to also claim a GST refund in cases where the rebate is paid to a person who is not registered for GST (such as an individual or small business). This will ensure the correct GST outcome, of no net GST, in all cases where the regional fuel tax was rebated.

Recommendation

That the submission be accepted.

FINANCIAL ARRANGEMENT RULES – TREATMENT OF FOREIGN CURRENCY AGREEMENTS FOR THE SUPPLY OF GOODS AND SERVICES

Clause 149

Issue: Support for amendments

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The submitters generally support the amendment. They each makes two submissions on the topic, which are covered separately below.

Recommendations

That the support be noted.

Issue: Contingencies in business combinations

Clause 149

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group)

The proposed amendment is reasonable for a simple contingent payment. However, an amount that is specifically stated as being interest in relation to the contingent amount should arguably be treated as interest by both parties. This could be done by defining "contingent consideration" as the underlying price adjustment, and excluding any amount that is explicitly referenced as being interest on the amount. *(Chartered Accountants Australia and New Zealand)*

A contingent sum which is an adjustment to the purchase price should not, in itself, be regarded as interest. The contingent sum should be attributed to that asset where it is due to a variation in the underlying price of the asset acquired. However, where the contingency is brought about by, say, a delay in settlement, then it is more akin to interest and should be treated as such. This distinction could be legislated through distinguishing a change in consideration, driven by a view as to the value of the asset acquired, as opposed to a delay in settlement. *(Corporate Taxpayers Group)*

Comment

The tax treatment of foreign agreements for sale and purchase of property or services (foreign ASAPs) follows the accounting treatment for International Financial Reporting Standards (IFRS) taxpayers. Accounting distinguishes between contingent amounts and deferred amounts. The latter are explicitly dealt with as interest for accounting, and the tax treatment continues to follow the accounting for any deferred consideration. The accounting for deferred amounts will therefore reflect interest agreed between the parties. It is only contingent amounts (when relevant) that are the subject of this amendment, and they will not be treated as interest for tax purposes if they are included in a taxpayer's income statement. Officials consider the

accounting and the proposed amendments will properly deal with contingent and deferred amounts in all situations.

Recommendations

That the submission be declined.

Issue: Change in policy

Clause 149

Submission
(Chartered Accountants Australia and New Zealand)

It is difficult to view the proposed amendment as a remedial change. It should more correctly be described as a policy change. The current effect was known and deliberately sought when the legislation was amended to change the treatment of foreign ASAPs.

Comment

The treatment of contingent amounts automatically as interest in business combinations was not an outcome intended by officials. The relevant contingent amounts are clearly not interest paid/received for the advancement or deferral of amounts payable under ASAPs. The outcome was realised after the new legislation was passed and needed to be corrected as Chartered Accountants Australia and New Zealand agrees.

Recommendations

That the submission be declined.

Issue: Contingent sum treated as goodwill

Clause 149

Submission
(Corporate Taxpayers Group)

Where a contingent sum is attributed to the acquired asset, the Group does not agree that any contingent sum should, in the case of a purchase of assets and liabilities, be treated as goodwill. Rather, any such contingent sums should be attributed to the assets and liabilities purchased in the same manner as any other amounts paid for the purchase of assets and liabilities.

Comment

Officials consider that the submission does not take into account that the amendments apply only to foreign ASAPs that relate to a business combination and are specifically accounted for as such. It does not apply to foreign ASAPs that are for acquisitions/disposals of items that are

not part of a business combination. The proposed treatment of the relevant contingent amounts as adjustments to goodwill is considered appropriate for business combinations.

Recommendations

That the submission be declined.

Issue: Foreign ASAPs for non-IFRS taxpayers business combinations

Clause 149

Submission
(Matter raised by officials)

The rules for foreign ASAPs for IFRS and non-IFRS taxpayers should give equivalent treatment and that is the policy intent. For contingent consideration in business combinations the Bill did not include amendments for non-IFRS taxpayers.

Comment

Amendments to the rules for foreign ASAPs of non-IFRS taxpayers are required to ensure the treatment is equivalent to the amended rules for IFRS taxpayers.

Recommendation

That the submission be accepted.

RESIDENTIAL AND MAIN HOME EXCLUSIONS

Clauses 110–113

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

The submitters support the proposed remedial amendments to the residential and main home exclusions under the rules that tax sales of land, which will ensure those exclusions work as intended.

Recommendation

That the submissions be noted.

Issue: Land owned by trustees

Clauses 112 and 113

Submission
(KPMG)

Sections CB 17(1), CB 17(2) and CB 18(1) should be further amended to make it explicit that the main home exclusion also applies if the main home is held in a family trust. This will provide consistency with the exclusions outlined in sections CB 16A and CB 16, as well as providing much needed clarity for taxpayers.

Comment

The purpose of these amendments is to reinstate the pre-rewrite position, restoring the original policy intent. This submission suggests changes that go further than clarifying the original intention for the provisions. Officials consider that this submission raises further issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Submission
(Matter raised by officials)

The application date for the five-year bright-line test should be amended for land that was purchased off the plans, and for freehold estates converted from leases with a perpetual right of renewal, to reflect the policy intention.

An amendment should also be made to clarify that the bright-line test applies to off-the-plans purchases of both freehold and leasehold estates in land.

Comment

The bright-line test for sales of residential land has been extended to apply to disposals of land within five years from two years originally. The five-year bright-line test will apply if someone first acquired an estate or interest in the land they are disposing of on or after 29 March 2018. The two-year bright-line test will continue to apply to disposals of land if someone first acquired an estate or interest in the land on or after 1 October 2015 but before 29 March 2018.

The application date for the five-year test gives the wrong policy result in two situations:

- for freehold estates converted from leases with a perpetual right of renewal; and
- for land that was purchased off the plans.

For leases with a perpetual right of renewal (Glasgow leases) that are converted to freehold estates, whether the two-year or five-year bright-line applies should depend on when the leasehold estate was granted, rather than when the first interest in the freehold was acquired. While the legal estate has changed, it is appropriate that leases with a perpetual right of renewal are treated similarly to freehold estates – which other tax provisions do, including the provision that sets the bright-line start date for freehold estates converted from perpetual leases.

For purchases off the plans, whether the two-year or five-year bright-line applies should depend on when the contract to buy off the plans was entered into, rather than when the first interest in the land was acquired. The person will not have an interest in the land until it exists, which will not be until the development is completed and the title is issued. However, the appropriate date in terms of whether the two-year or five-year bright-line test applies is the date that the contract to purchase was entered into. This would be consistent with how standard land purchases are treated, and also with the start-date for the bright-line period for off-the-plan sales.

Currently, the rule for purchases off the plans applies only to freehold estates. There is no policy reason why the off-the-plans rule should not also apply to leasehold estates, which are commonly used for central city apartments.

Recommendation

That the submission be accepted.

Clause 151

Issue: Support for the proposal

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, KPMG)

The submitters support the proposal to amend the cost method calculation in the foreign investment fund rules to ensure the law works as intended.

Recommendation

That the submissions be noted.

Issue: Application date

Clause 2

Submission
(Chartered Accountants Australia and New Zealand)

The proposed application date for the amendment referred to in the *Commentary* to the Bill (1 April 2007) is inconsistent with clause 2(6) of the Bill (1 April 2008). The latter is correct.

Comment

Officials agree with this submission. The correct application date is 1 April 2008.

Recommendation

That the submission be accepted.

Issue: Further amendment needed

Clause 151

Submission
(KPMG)

In addition to the proposed amendments, section EX 56 should be amended to allow actual cost to be used where a FIF interest is acquired for which a market value is not able to be obtained on a yearly basis.

The rules for determining the "opening value" for applying the cost method sets out a hierarchy. Actual cost is only an option if the FIF interest was acquired in the 2005–06 and 2006–07 income year (and was previously a so-called "grey list" investment). In other circumstances, the value of the FIF interest in the person's audited financial statements (which must be publicly available) or, if not, an independent valuation of the interest is required. This imposes significant compliance costs on taxpayers who hold or acquire minority interests in private companies offshore. The inability to use actual cost in these circumstances should be reconsidered.

If the concern is that actual cost will not be a reasonable proxy at the time of the first FIF calculation (for the year following acquisition, as "opening value" is nil in the year of acquisition) this could be addressed by requiring the original cost to be uplifted by 5%.

Comment

The intention of the current amendment is to ensure that section EX 56(3)(b) will operate as originally intended. This submission suggests changes to section EX 56 that go further than clarifying the original intention for the provision. Officials consider that this submission raises further issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Clause 108(1)

Issue: Exclusions from section CB 15

Submission

(Chartered Accountants Australia and New Zealand, Deloitte, New Zealand Law Society)

An exclusion from section CB 15 should apply to a person (transferee) who disposes of land acquired from an associated person (transferor) if a transferee acquired the land for a capital purpose (for example, to occupy, or erect, a dwellinghouse on the land; and the dwellinghouse was occupied mainly as a residence by the transferee and his or her family; or to derive rental income from the land). *(Chartered Accountants Australia and New Zealand)*

This situation can be rectified by including a rule in the legislation that would allow land held on revenue account to be transferred to capital account at the time there is a permanent change in use and there is no intention to undermine the rules. The submitter also considers that the reforms to the associated person definition in 2009 have exacerbated the issue. *(Chartered Accountants Australia and New Zealand)*

Another submitter states that section CB 15(1), both as currently drafted and with the clarifying changes in clause 108 of the Bill, should operate to tax disposals of residential property in a way which is contrary to the scheme and purpose of the land tax provisions. *(Deloitte)*

The opportunity should be taken to confirm that section CB 15(1) should not operate to tax genuine disposals of the family home and the land under it in line with the current political consensus. *(Deloitte)*

An associated person vendor that is an individual or trust taxable under section CB 15(1) should be able to apply the residential exclusion in the same way as would have been the case had they carried out the taxable land transaction themselves. *(Deloitte)*

There should be sufficient safeguards within the existing tax provisions to capture avoidance transactions while allowing genuine disposals of the family home to remain outside of the taxing provisions. *(Deloitte)*

The proposed amendment in section CB 15(1) should not proceed. *(New Zealand Law Society)*

Comment

The proposed amendment corrects an unintended legislative change arising in the anti-avoidance land sales rule and restores the law to the same effect it had under the Income Tax Act 1994 (taking into account the reforms to the associated person rules in 2009).

This rule applies to tax a vendor on a disposal of land if that land was previously acquired from an associated person (the original owner) provided that the original owner:

- held that land on revenue account at the time of that earlier acquisition; and

- would have been taxed on the disposal of land by the vendor, if the transfer between the associated persons had never occurred.

The original policy and law for this rule did not consider the circumstances of the vendor (other than the associated person test). Consequently, it has never been intended that the vendor of land who is taxable under the associated person rule could utilise any exclusion from the land sales rules.

The 2009 reforms to the associated person's rules was to ensure that land dealers, land developers, and builders were not able to avoid tax on land sales by using entities or trusts which were under the effective control of such taxpayers even though not directly owned.

Officials consider that these submissions raise issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submissions be declined.

Issue: Repeal anti-avoidance land sales rule

Clause 108

Submission
(Crowe Horwarth)

The submitter agrees that the proposed amendment clarifies the interpretation of the provision and restores the pre-rewrite position, but considers that, rather than being amended, section CB 15(1) should be repealed.

The submitter considers that:

- the associated person definition was much narrower prior to the rewrite of the land sales rules;
- the original purpose of this rule was to ensure that land could not escape tax by being transferred at cost (under-value) to an associated person; and
- a valuation rule applying to transfers of land at under-value may make this provision unnecessary.

Comment

The proposed amendment corrects an unintended legislative change arising in the anti-avoidance land sales rule, and restores the law to the same effect it had under the Income Tax Act 1994 (taking into account the reforms to the associated person definition in 2009).

This rule applies to tax a vendor on a disposal of land to a third person if that land was previously acquired from an associated person (the original owner) who:

- held that land on revenue account at the time of that earlier acquisition; and

- would have been taxed on the disposal of land to that third person, if the transfer between the associated persons had not occurred.

The original policy and law for this rule did not consider the circumstances of the vendor (other than the associated person test). This rule is intended as an exception to the general scheme and purpose of the land sales provisions. Consequently, it has never been intended that a vendor of land who is taxable under this associated person rule could utilise any exclusion from the land sales rules.

The valuation rule referred to in the submission applies from 5 September 1973 (the same commencement date as the land sales rules). This rule has always ensured that, since the land sale rules became effective in 1973, land held on revenue account must be transferred at market value. Consequently, officials do not agree with the submitter that the anti-avoidance land sales rules were intended to apply only if the transfer between associated persons was made at cost.

Officials agree that the submitter raises a number of issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Savings provision

Clause 108

Submission
(New Zealand Law Society)

If the proposed amendment proceeds, either the amendment should apply from the date of enactment or an appropriate savings provision should be implemented to protect tax positions taken on the basis of the wording of the existing law.

Comment

The proposed amendment corrects an unintended legislative change arising in the anti-avoidance land sales rule and restores the law to the same effect it had under the Income Tax Act 1994 (taking into account the reforms to the associated person rules in 2009).

A savings provision as described by the submitter was signalled in the *Commentary* to the Bill and was intended to be included in the Bill. It's omission from the Bill was inadvertent.

Recommendation

That the submission be accepted.

LAND SALES – RELIEF RULE FOR ASSOCIATED PERSONS

Clause 108(3)

Issue: Correction of unintended legislative change

Submission
(Chartered Accountants Australia and New Zealand)

CAANZ supports the proposed amendment to section CB 15(2).

Recommendation

That the submission be noted.

Issue: Associated person relief rule within a circle of association

Clause 108

Submission
(Corporate Taxpayers Group, Deloitte)

The submitters do not support the proposed amendment to the associated person relief rule to restrict the tracing back of ownership one step and not count the entire circle of association.

In situations where there are multiple transactions with a wholly owned group, the acquisition date should be the original date of acquisition by the wholly-owned group.

Comment

The proposed amendment restores the effect of the law prior to the repeal of the Income Tax Act 1994. The purpose of the amendment is to correct an unintended change in legislation arising during the rewrite of the land sales provisions. This provision applies to a vendor of land who would be taxed because the vendor:

- was associated with a land developer, land dealer or a builder when the vendor acquired the land; and
- sold the land within 10 years of that acquisition.

The purpose of the associated person relief provision is to allow the vendor of the land to count the period of ownership of a person from whom they acquired the land provided that other person was an associated person at the time of that acquisition.

Officials consider the submission relates to the economic ownership of land through a group of companies. Officials also consider that under the rules defining when a group of companies exists, it is possible for the economic ownership of a group of companies to change over time. Under the submitters suggestion, it is possible that two different economic owners of a group

of companies could benefit from the associated person relief rule for disposals of land. Such an outcome is inconsistent with the policy intent.

Recommendation

That the submission be declined.

Issue: No savings provision is included in the Bill

Submission
(Corporate Taxpayers Group, Deloitte)

The proposed amendment should include a savings provision to protect tax positions taken for disposals of land.

Comment

As noted in the *Commentary* to the Bill, it was intended for a savings provision to apply to this proposed amendment. Officials note this omission was an oversight and recommend that an appropriate savings provision be included to protect taxpayers who have taken a tax position based on the words of the provision prior to the date of introduction of the Bill.

Recommendation

That the submission be accepted, subject to officials' comments.

CALCULATION OF AVERAGE TAX RATE FOR AN EXTRA PAY

Clause 199

Issue: Retrospective application of a correction for an unintended legislative change

Submission
(ANZ, Corporate Taxpayers Group)

A savings provision should be introduced if the amendment is to have retrospective application.

Comment

The amendment is intended to reflect policy and practice relating to the calculation of tax on an extra pay by employers by correcting an unintended change in the rewrite of the rule.

Officials consider the submissions have merit as they raise the possibility that cases may exist where an employer may have withheld an incorrect amount of PAYE on an extra pay (consistent with the rewritten law). A particular concern raised was that if the amendment has no savings provision, such an employer could be exposed to penalties. At the time of introduction, officials were not aware that any such cases existed, as it was understood that employers and the Commissioner were applying the law consistent with the policy intent.

However, officials agree with the points and concerns raised in the submissions and recommend that a savings provision be included as suggested. The combined effect of the savings provision and the retrospective application will ensure that since the enactment of the Income Tax Act 2007:

- taxpayers who have withheld PAYE from an extra pay consistent with the policy intent will be treated as always complying with the retrospective law; and
- taxpayers who have withheld PAYE from an extra pay consistent with the wording of the current wording in the law will not be exposed to penalties.

Recommendation

That the submissions be accepted.

Issue: Amendment to the calculation of the PAYE for an extra pay is supported

Clause 199

Submission
(ANZ, Chartered Accountants Australia New Zealand, Corporate Taxpayers Group)

The submitters support the proposal which restores the intended effect of section RD 17 and so confirm current practice for calculating PAYE on an extra pay.

Comment

Officials note the support for the proposed amendment.

Recommendation

That the submissions be noted.

Clause 186

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG, PwC)

The proposed savings provision is supported. *(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte, KPMG)*

The proposed savings provision should be extended to allow taxpayers to continue to rely on section OP 22 as it was prior to the amendment until such time as a full policy review can be undertaken. *(Chartered Accountants Australia and New Zealand)*

The savings provision should be extended indefinitely and until such time as a full policy review can be undertaken. *(Corporate Taxpayers Group, Deloitte)*

The protection offered should be extended until such time as a full review of the policy relating to pre-consolidation imputation credits can be undertaken. *(KPMG)*

The change to section OP 22 should be delayed to enable sufficient time for officials to ensure any resulting legislative amendment is not overly broad or runs counter to the general policy rationale of the imputation credit regime. At a minimum, a period of 4 years is suggested to ensure there is sufficient time to undertake a policy review and complete the Parliamentary process. *(PwC)*

Comment

The policy for the use of pre-consolidation imputation credits is that during a tax year, an imputation group may only use those pre-consolidation credits if they have no unused group credits available to offset an imputation debit entry made to the group imputation credit account. For example, this could occur as a result of attaching group imputation credits to a dividend paid by a group company.

Following 2004 reforms to the imputation group rules, this policy and its practical effect was explained in *Tax Information Bulletin,* Volume 16, No. 1 for each type of imputation group that could use pre-consolidation imputation credits.

Section OP 22 was amended by the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 to ensure that it worked as intended. That earlier amendment:

- corrected a minor rewrite wording matter relating to a phrase omitted during the rewrite of the provision (the omitted phrase being “to the extent that”); and
- ensured the rule allowing an imputation group to use pre-consolidation credits would be unaffected by other amendments to the imputation rules (in the same amendment Act) relating to the treatment of opening balances of an imputation credit account.

Submissions were subsequently received on the amendment to section OP 22 that indicated taxpayers considered a tension existed between:

- a 1992 discussion document on relating to the proposals to enact tax rules for a consolidated group of companies; and
- Inland Revenue guidance published in 2004 after reforms to the imputation group rules.

Taxpayers submitted they had generally applied the law in line with observations made in that 1992 discussion document. In considering these submissions, officials agreed these tensions exist and acknowledged that taxpayers may not have been aware of the impact of the guidance given in 2004.

Officials subsequently obtained approval to introduce a savings provision pending a review of the policy for the use of pre-consolidation imputation credits.

The proposed savings provision in this Bill is intended to allow taxpayers to continue to apply the law in a manner consistent with the policy observations set out in a 1992 background paper, pending such a policy review.

Officials agree with the submissions and consider the savings provision should be extended to 31 March 2021. This will allow the suggested policy review to be considered for prioritising and resourcing as part of the Government’s tax policy work programme.

Recommendation

That the submissions be accepted, subject to officials’ comments.

Clauses 159, 160(1), 161(3) and (6)

Issue: Resettlement of trust property

Submission
(Chartered Accountants Australia and New Zealand, Cone Marshall Limited)

CAANZ supports the proposed amendments to ensure that a resettlement of property on a sub trust:

- does not affect an income tax exemption for foreign sourced income for the trustee of the sub trust; and
- ensures that the resettled property is not trustee income for the sub trust.

Cone Marshall Limited supports the proposed amendment because it is consistent with New Zealand trust law, accepted fiduciary principles and tax principles pertaining to beneficial ownership.

Recommendation

That the submissions be noted.

Issue: Determining the residence status of a trust having multiple settlors

Clause 161

Submission
(Russel McVeagh)

The proposed amendment should be clarified to consider multiple settlors and to recognise that the definition of settlor must apply at different points in time.

Comment

Section 33 of the Interpretation Act 1999 provides "words in the singular include the plural". In general, policy makers and drafters rely on the Interpretation Act to ensure that legislation is not complicated unnecessarily by stating that sections apply to both a single and a plural situation.

In this proposed amendment, as there is no explicit exclusion of multiple settlors, the phrase "the settlor" would normally be read as including multiple settlors. However, officials consider the submitter's point has merit and the wording can be improved to reflect the policy intent for determining residence of a settlor of a trust having multiple settlors. The intent is that residence status of each settlor of a trust (which has multiple settlors) is determined at the time the settlement or distribution is made.

Recommendation

That the submission be accepted.

Issue: When a settlor of the head trust has died while non-resident

Clause 161

Submission
(Patterson Hopkins)

The proposed amendment be clarified so that it applies to a situation where the settlor has died or otherwise ceased to exist.

Comment

Officials agree that the proposed wording assumes that, at the time of a resettlement of property by trust, the settlor of the head trust is:

- a natural person, who is still living; or
- a legal entity other than a natural person (for example, a company) that continues to exist.

Officials agree with the submitter that the proposed amendment should also apply to a resettlement of property by a trustee if the settlor of the trust, prior to that resettlement:

- being a natural person (and sole settlor), has died while non-resident;
- being a corporate settlor has ceased to exist; and
- in the case of multiple settlors that have died or ceased to exist prior to the resettlement, all of those settlors either died or ceased to exist while non-resident.

Recommendation

That the submission be accepted, subject to officials' comments.

DEFINITIONS OF SETTLOR AND SETTLEMENT

Clause 161(3)

Submission
(Cone Marshall Limited)

The drafting of the proposed amendment is too broad, not clearly defined and thus at risk of being misinterpreted and incorrectly applied.

Comment

Since the trust rules were reformed in 1988, the term "settlor" has always included any person who provides services to or for the benefit of a trust for less than market value. The policy for this rule encompassed such activities as investment advisory services, legal and accounting services and services relating to any business carried on by the trustees of the trust.

As noted in the *Commentary* to the Bill, this proposed amendment has two elements:

- to correct an unintended legislative change occurring during the rewrite of the trust rules. This ensures that services provided to, or for, the benefit of a trust at less than market value are treated as a settlement; and
- to ensure that from the date of enactment, services provided that are incidental to the operation of the trust are not treated as a settlement.

Officials consider that the proposed amendment relating to incidental services provided at less than market value addresses the concerns raised about such services, on a prospective basis. It also provides alignment between the treatment of incidental services under the minor beneficiary rules and the treatment under the general trust taxation rules applying to incidental services.

Officials think that the question of whether such services are incidental to the operation of the trust will always depend on the specific facts of each case. Therefore, if the Bill is passed, in the *Tax Information Bulletin* item for this proposed amendment, officials propose to provide guidance on the policy intent for when such services would be a settlement on a trust, or incidental to the operation of a trust.

Recommendation

That the submission be declined.

TRUST REMEDIALS ARISING FROM AN ADMINISTRATIVE REVIEW OF THE TAXATION OF TRUSTS

Clauses 153, 158 and 160–164

Issue: Proposed amendments are supported

Submission
(Chartered Accountants Australia and New Zealand)

CAANZ supports the proposed amendments in clauses 153, 158 and 160–164 to clarify the trust tax rules.

Recommendation

That the submission be noted.

Issue: Dual status trusts

Submission
(John W Hart)

The election mechanism in section HC 33 should be expanded to allow a dual status trust to elect to be treated as either a complying trust or a foreign trust.

This would permit trusts that elect to be treated as complying trusts to consequently also not be subject to the registration and reporting requirements under the foreign disclosure regime.

Comment

While the submission does not relate to a matter in the Bill, officials agree with the submitter's point that, at any point in time, a dual status trust is a trust that meets the requirements of being both a foreign trust and a complying trust. This dual status may arise at a time if the trust has never had a settlor resident in New Zealand and either:

- the trustee has derived only New Zealand sourced trustee income taxed at the trustee rate of 33%; or
- an election has been made to pay New Zealand tax on the world-wide trustee income at the trustee rate (33%) from the effective date of the election.

The dual status is important for determining the income tax liability of the trust on world-wide trustee income and the trustee's obligations to pay tax on distributions to beneficiaries.

However, as the trust has a non-resident settlor, New Zealand has general international obligations to provide information relating to such trusts. These obligations arise irrespective of whether the trust is also a complying trust.

Officials consider this submission raises issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Support for the proposed amendments

Clause 174

Submission
(PwC, Chartered Accountants Australia and New Zealand)

The submitters support the proposed changes as they ensure the rules deliver the intended policy outcome. In particular, the submitters are pleased to see that there is a conscious effort by officials to monitor and review the rules to ensure they are not overly broad or onerous in application.

Many organisations that fall within the scope of the deregistration rules are likely to have limited resources. Therefore the de minimis threshold is a welcome change.

The submitters welcome officials' efforts in monitoring the application of these rules and to continue to engage with the sector to ensure they operate as intended.

Recommendation

That the submission be noted.

Issue: Market valuation of assets and liabilities

Clause 174(4)

Submission
(Deloitte)

Valuing assets at market value may incentivise the assets to stay in the charitable sector but it will also increase the tax burden on the deregistered charity in some cases.

Comment

Officials accept that requiring a market valuation of assets and liabilities could increase the tax burden on the deregistered charity in some cases. This is consistent with the policy intent of the tax rules for deregistered charities, which are designed to ensure that charitable assets are always destined for a charitable purpose. Officials do not think an alternative valuation such as historic cost would achieve this policy intent.

Recommendation

That the submission be noted.

Issue: De minimis threshold should be increased

Clause 174(3)

Submission
(EY, Chartered Accountants Australia and New Zealand)

The proposed de minimis threshold that must be satisfied before a small charity falls outside the charity deregistration rules should be increased from $5,000, as currently proposed, to $10,000 to ensure the de minimis is meaningful. This would be a better reflection of the policy position that the scope of the deregistration rules be targeted at “larger” charities.

The *Commentary* to the Bill justifies the $5,000 de minimis threshold by stating that this amount is consistent with the de minimis threshold used in relation to the trust minor beneficiary rules. The submitters do not consider this to be an appropriate comparison. There is no connection between the areas of deregistered charities and the trust minor beneficiary rules.

Comment

According to publicly available data from DIA Charities Services, officials estimate that approximately half of all deregistered charities would fall below a $5,000 de minimis threshold, and approximately 60 percent of all deregistered charities would fall below a $10,000 threshold.

Officials consider that the higher threshold of $10,000 suggested by submitters would still be effective in carving out smaller charities while ensuring that the rules continue to apply to charities that do have the resources to comply with these rules.

Recommendation

That the submission be accepted.

Issue: Support rationale for amendments

Submission
(Chartered Accountants Australia and New Zealand)

Improving the integrity and coherence of the tax system and public transparency of charitable organisations is fundamental and promotes the public interest.

Recommendation

That the submission be noted.

Issue: Charitable business income exemption

Clause 125

Submission
(PwC, Simpson Grierson)

The proposal to limit the charitable business income exemption under section CW 42 to charities registered under the Charities Act 2005 is not a remedial change, but rather represents a significant change in policy. *(PwC)*

The proposed change should be deferred, subject to a more holistic review of the tax rules as they apply to the not-for-profit sector. Excluding the changes from this Bill would also allow changes that are linked to Charities Act registration, such as the proposed changes to the charity business income tax exemption and to certain donee status provisions, to be considered in parallel with the recently-announced review of the Charities Act. *(Simpson Grierson)*

Comment

Officials consider that it was always intended that entities must be transparent and accountable to the public in return for being conferred a charitable income tax exemption. The proposed amendment would ensure that the small number of entities that are currently accessing this income tax exemption without being registered are subject to the same transparency and public accountability requirements as the majority of charitable businesses that are already on the charities register.

Officials understand that this proposal would only impact a small number of entities, as it is codifying the existing practice among charitable businesses. Therefore, the proposal is consistent with existing policy settings and officials do not consider that a full consultation process is necessary.

Recommendation

That the submission be declined.

Issue: Requirement for charitable businesses to be registered charities

Clause 125

Submission
(Russell McVeagh)

Sections CW 41 and CW 42 use the concept of "tax charity" (as defined in section CW 41(5)) to define which entities may obtain the benefit of those provisions. The definition of "tax charity" reflects a policy decision that certain entities that are not registered charitable entities under the Charities Act 2005 should receive the benefit of sections CW 41 and CW 42. Proposed section CW 42(1)(aa) as drafted may deny some tax charities the benefit of section CW 42. Proposed section CW 42(1)(aa) should be amended to align with the existing concept of 'tax charity" so as not to unduly limit the application of section CW 42.

Comment

The definition of "tax charity" in section CW 41(5) includes certain entities that are not registered under the Charities Act, but are approved by the Commissioner of Inland Revenue for the purposes of the exemption. These are typically non-resident charities that are unable to be registered under the Charities Act because they do not have a sufficiently strong connection to New Zealand.

Officials understand that entities approved by the Commissioner under this provision generally only derive passive investment income, and do not rely on the section CW 42 business income exemption. If any such entities did derive business income, then they would be expected to pay tax on that income to the extent that they have overseas charitable purposes.

For this reason, officials think it is appropriate that entities relying on the business income exemption should be registered charities, and should not include non-resident charities approved by the Commissioner as a "tax charity".

Recommendation

That the submission be declined.

Issue: Requirement for charitable businesses to be registered under the Charities Act to qualify for the exemption

Clause 125

Submission
(Simpson Grierson, New Zealand Law Society, Eastern Bay Energy Trust)

The Commissioner has oversight of entities that use the exemption, including entities that would be affected by the proposed change. (*Simpson Grierson*) In addition, all entities that are beneficiaries of the relevant business must be Charities Act registered and are therefore subject to DIA Charities Services oversight. Requiring subsidiaries to register under the Charities Act will duplicate the information already being provided to Charities Services and will therefore see an increase in administration costs but with no additional disclosure overall. Accordingly,

there is already full adequate oversight and regulation of the entities targeted by the proposed change. *(Simpson Grierson, Eastern Bay Energy Trust)*

We understand the concerns raised in relation to businesses taking advantage of the business income exemption without being subject to the public reporting requirements of registered charities. However, we believe that a more targeted approach should be taken to directly deal with entities causing mischief instead of a broad approach that penalises compliant entities who are acting within the rules. *(Eastern Bay Energy Trust)*

Charities Act non-registration of businesses carried on for, or for the benefit of, registered charities is unlikely to undermine public trust and confidence in the charitable sector. *(New Zealand Law Society)*

It is appropriate that Inland Revenue, not DIA Charities Services, has oversight of the entities targeted by the change because:

- as is the case of various other tax exemptions under the ITA, it is Inland Revenue, not DIA, that is, and should be, responsible for the administration of the charitable business income exemption (with DIA having oversight of the charitable beneficiaries of tax-exempt businesses); (*Simpson Grierson*) and
- such entities' commercial information would be appropriately protected from public disclosure under the Tax Administration Act, whereas the Charities Act, as currently interpreted and administered by DIA, does not provide such protection. *(New Zealand Law Society, Simpson Grierson)*

Comment

Charities are conferred an exemption from income tax to reflect the fact that they exist for the public benefit. Therefore, there is an expectation of public transparency and accountability in order to maintain public trust and confidence in the sector, and to promote the effective use of charitable resources.

Registration under the Charities Act will enhance public accountability and transparency, and also ensures that DIA Charities Services has regulatory oversight over these entities. DIA Charities Services only has regulatory oversight of charities registered under the Charities Act. It does not have regulatory oversight of charity subsidiaries that are not registered under the Charities Act. Officials consider that this proposal will enhance the public's trust and confidence in the sector.

Officials note that under section 25 of the Charities Act, Charities Services can restrict public access to some information on the Charities Register if it is in the "public interest" to do so. The guidelines published by Charities Services state that it will restrict access to information if the charity can demonstrate a clear link between making the information publicly available and an unreasonable prejudice to the charity's commercial position.

Officials also note that the Charities Act permits affiliated or closely related charities to register as a group, which can minimise annual reporting compliance costs.

Recommendation

That the submissions be declined.

Issue: Charitable business may be ineligible to register

Clause 125

Submission
(New Zealand Law Society)

A business affected by the proposed amendment may not itself be registered as a charitable entity under the Charities Act because it is ineligible to register. For example, where not all business activities carried on by that entity are for, or for the benefit of, a registered charity, although in such cases provision for registration of a trustee deriving income in trust for charitable purposes may apply.

Comment

Under the current law, a business that is ineligible to be registered as a charitable entity because not all of the business activities carried on by that entity are for, or for the benefit of, a registered charity, would not meet the test for exemption from income tax. The current tax exemption requires business income to be applied exclusively for charitable purposes and there is no provision allowing for apportionment between some charitable and non-charitable application of business income.

The proposed amendment would not have the effect of denying any entities that are currently eligible for this exemption from accessing this exemption in the future – provided that they are registered under the Charities Act and therefore subject to greater public accountability requirements.

Recommendation

That the submission be declined.

Issue: Defer commencement date of proposed requirement for charitable businesses to be registered charities

Clause 2

Submission
(Chartered Accountants Australia and New Zealand, PwC, New Zealand Law Society, Simpson Grierson, Eastern Bay Energy Trust)

Despite fundamentally opposing the way the following changes have been put forward, if they do proceed, the commencement date should be changed to provide sufficient time for taxpayers that are affected to comply with the new requirement to limit the charitable business income exemption under section CW 42 to charities registered under the Charities Act 2005. *(PwC)*

If the proposed changes were to proceed, the protection of affected entities' commercial information needs to be addressed before such entities are required to register under the Charities Act, and this could potentially be addressed as part of the Charities Act review. *(Simpson Grierson)*

Entities carrying on business for, or for the benefit of, a registered charity are unlikely to have sufficient time following the enactment of the Bill to register as charitable entities under the Charities Act before the start of their 2019–20 income year. The Charities Act registration process can often take between 3 and 6 months, and although registration can be backdated in certain circumstances (if ultimately approved), entities need certainty regarding their registration position before the amendment applies. Changes to an entity's constitution and/or restructuring may also be required. *(Simpson Grierson, New Zealand Law Society, Eastern Bay Energy Trust)*

It would also be inappropriate for business entities that qualify for registration but fail to register as charitable entities prior to the start of their 2020 income year, to be required to prepare part-year accounts (which will require calculation of opening tax book values of tax base property) for the period from 1 April 2019 until they become registered charities. *(New Zealand Law Society)*

The *Commentary* to the Bill states on page 144 that the proposed amendment to section CW 42 will come into force on the date of enactment. This is not reflected in clauses 2(22) and 125(2) of the draft Bill which states that the amendment will come into force on 1 April 2019 and will apply for the 2019–20 and later income years. *(Chartered Accountants Australia and New Zealand)*

The *Commentary* to the Bill also states on page 145 that the proposed amendment to the definition of "resident foreign trustee" in the Tax Administration Act will come into force on the date of enactment. This is not reflected in clause 2(22) of the draft Bill which states that the amendment will come into force on 1 April 2019. The application date as provided for in the Bill would be appropriate. *(Chartered Accountants Australia and New Zealand)*

The application date as provided for in the Bill would be appropriate. *(Chartered Accountants Australia and New Zealand)*

Comment

The difference in application dates in the *Commentary* to the Bill and the draft Bill was an error. The intended application date of 1 April 2019 is reflected in the draft Bill.

However, given the concerns expressed by submitters that entities not currently registered under the Charities Act will not be ready to comply with the new requirements by the start of the 2019–20 income year, officials support the commencement date being deferred to 1 April 2020.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Some donee status changes are not remedial but a change in policy

Clauses 42 and 176

Submission

(Simpson Grierson, New Zealand Law Society, PwC)

The Charities Bill initially included a provision requiring both charitable entities and donee status entities to be registered, but the donee status registration provisions were removed from the legislation. Revisiting and effectively reversing that decision is not a remedial change. *(Simpson Grierson)*

The proposals in this Bill are not remedial changes but rather represent a significant change in policy. *(Simpson Grierson, Russell McVeagh)*

A review of sections LD 1 to LD 3 would be appropriate, but this should be done with the right level of consultation. The proposed changes, put through in the manner suggested, undermine the push to encourage charitable and philanthropic behaviour. *(PwC)*

As an alternative to the proposed amendments, the extension of the more formal registration regime under the Charities Act to donee organisations could be considered as part of the Government's review of the Charities Act, rather than legislating for a separate but largely overlapping approval/listing regime administered by Inland Revenue. Excluding the changes from this Bill would also allow other changes that are linked to the Charities Act registration, such as the proposed changes to the charity business income tax exemption, to be considered in parallel with the review of the Charities Act. The proposed changes could therefore be deferred, subject to a more holistic review of the tax rules as they apply to the not-for-profit sector. *(New Zealand Law Society)*

Comment

Requiring all donee organisations with charitable purposes to register under the Charities Act will improve integrity and consistency and largely codifies existing practice. It will mean all donee organisations with charitable purposes will be subject to the same reporting and regulatory requirements.

Officials agree that the Commissioner of Inland Revenue is solely responsible for donee status matters. This will not change as a result of the Government's current review of the Charities Act, as tax concessions for charities are not within the scope of that review.

Recommendation

That the submissions be declined.

Issue: Concerns about the process relating to the approved donee list

Clauses 42 and 176

Submission
(Deloitte, Simpson Grierson, New Zealand Law Society)

Clarification is required as to how Inland Revenue intend to administer this new approval system to ensure that charitable organisations can receive donee status promptly and without delay. *(Deloitte)*

The current draft Bill contains no clarity around the process for entities to deal with the Commissioner deciding to decline the approval or listing of an entity, or deciding to withdraw approval/listing previously given, when the entity considers that it meets the objective criteria for donee status. *(Simpson Grierson, New Zealand Law Society)*

In respect of charitable entities that are already registered under the Charities Act, such entities should not be required to satisfy the Commissioner that their purposes are charitable, or to provide information relating to this issue. The Commissioner should only assess whether additional donee status requirements have been met, such as the application of funds wholly or mainly to purposes within New Zealand. *(Simpson Grierson, New Zealand Law Society)*

Timing issues need to be addressed, because there will be circumstances that arise where gifts are made to entities that meet the requirements for donee status and should qualify for donation incentives, where it is not possible to attain prior listing. There should be express provision for listing to be backdated, for example to the beginning of the year in which a request for listing is made or possibly to any earlier date. Time delays in relation to the Commissioner's approval of donee status listing may exacerbate this issue. *(New Zealand Law Society)*

Comment

The purpose of introducing an approved donee list is to ensure all donee organisations, including a small number of organisations which currently self-assess their donee status without informing the Commissioner, are subject to the Commissioner's approval and are recorded on the public list of donee organisations. This will provide more certainty for donors and will provide more integrity for the donee status rules.

Under current practice, Charities Services, within the Department of Internal Affairs, informs Inland Revenue of organisations that it registers as charitable. If the charity has indicated it will receive donation income and wishes to obtain donee status, Inland Revenue automatically accepts that their purposes are charitable. Inland Revenue uses information the organisation has provided to Charities Services to establish whether the *wholly or mainly* test is met and if it does, Inland Revenue issues a letter confirming the organisation's donee status from the date of registration under the Charities Act. If donee organisations subsequently cease to meet the *wholly or mainly* test, they inform Inland Revenue and are removed from the donee list.

This current process will not change under the proposed legislation. There will be no change to the time taken by the Commissioner to approve donee status nor will there be any change to the date donee status is effective from. Donee organisations that cease to meet the *wholly or mainly* test must continue to inform Inland Revenue so they can be removed from the donee list.

If Inland Revenue declines to list a new organisation, or decides to withdraw the donee status of an existing organisation – for example, because it believes the *wholly or mainly* test has not been met, it is a disputable decision of the Commissioner to which the organisation can then issue a Notice of the Proposed Adjustment. This is the case under the current legislation and will not change.

Recommendation

That the submission be noted.

Issue: Breadth of language relating to the Commissioner's approval of donee entities

Clause 42

Submission
(Simpson Grierson, New Zealand Law Society)

The language used in the draft Bill is inappropriately broad, as it refers to the Commissioner approving/listing entities based on what she "considers appropriate", rather than approval/listing being based on objective criteria.

The current draft Bill contains inappropriately broad language in relation to the Commissioner prescribing information that must be provided by an entity in order to attain approval/listing, with no reference to such information having to be relevant to the applicable objective criteria.

Comment

Appropriateness of the language should be considered in its statutory context. The Commissioner's discretion, provided for in the proposed section 41A(16) of the Tax Administration Act, is restrained by the words of the new proposed section 41A(17) and the criteria in section LD 3 of the Income Tax Act 2007. For the same reason, the information that must be provided by an entity to obtain the donee status is relevant to the application, as the Commissioner must ascertain that the entity meets the criteria listed in section LD 3.

Recommendation

That the submission be declined.

Issue: Eligibility for donee status should not depend on the Commissioner's approval

Clause 42

Submission
(New Zealand Law Society, Simpson Grierson)

Submitters said that in practice an approval/listing regime for donee status entities already exists. Entities obtain Inland Revenue's approval in the ordinary course if they expect to receive donations. However, neither an entity's eligibility for donee status nor a donor's eligibility for a donation tax incentive turns on Inland Revenue approval listing. Eligibility turns, as it should, on meeting the objective criteria for donee status in the Income Tax Act.

Comment

As the Commissioner needs to ensure the integrity of the tax system, a check on whether or not an entity actually meets the criteria to be a listed entity is entirely appropriate.

Recommendation

That the submission be declined.

Issue: Requirements for organisations with charitable purposes to register under the Charities Act to obtain donee status

Clauses 42 and 176

Submission
(Deloitte, Simpson Grierson, Chartered Accountants Australia and New Zealand, New Zealand Law Society)

It is not clear why entities with exclusively charitable purposes should be required to be Charities Act registered when other donee status entities (for example, entities with purposes that are not exclusively charitable or with non-charitable benevolent, philanthropic or cultural purposes) are not. This means there is a somewhat unsatisfactory two-tier regime for donee organisations. *(Simpson Grierson, New Zealand Law Society)*

While the policy intent of the amendments to require donee organisations to be registered under the Charities Act 2005 is laudable, some practitioners are concerned that the interpretation of "charity" currently being applied by Charities Services may result in some charities losing their donee status. This may force them out of existence. *(Chartered Accountants Australia and New Zealand)*

The current drafting referring to the Commissioner's opinion on eligibility for Charities Act registration is not appropriate. We are aware of various cases where Charities Services has disagreed with the Commissioner. *(Simpson Grierson)*.

If the Commissioner's opinion is that an entity is eligible to register under the Charities Act (and the entity meets other applicable requirements for donee status), but Charities Services and the Charities Registration Board consider that the entity is not eligible to register under the Charities Act, the entity should still qualify for donee status. *(New Zealand Law Society)*

It is stated on pages 145 and 146 of the *Commentary* to the Bill that "organisations with benevolent, cultural or philanthropic (but not charitable) purposes" will continue to be eligible for donee status. We agree with this policy position. However, as currently drafted, the policy intent is not clearly reflected in the proposed amendments to section LD 3 of the Income Tax Act 2007. In particular, we refer to the complicated approach adopted in the drafting of proposed section LD 3(3). *(Chartered Accountants Australia and New Zealand)*

Comment

The government's preference is to define charitable purposes primarily by reference to section 5 of the Charities Act 2005 for the purposes of tax concessions. That is reflected in the introduction of the *tax charity* category for the purposes of sections CW 41, 42 and 43. This increases certainty and reduces duplication.

The effect of the proposed amendment is that all donee organisations with charitable purposes, which meet the essential requirements of registration as a charitable entity in section 13 of the Charities Act 2005, will be required to register under that Act in order to qualify for donee status. This will ensure that all charitable organisations with donee status are subject to the same reporting and regulatory requirements. The proposal largely codifies existing practice.

Under the current proposals, if Inland Revenue requests that an applicant for donee status seeks registration under the Charities Act on the basis that it believes the applicant appears to meet all the essential requirements of registration, and Charities Services declines to register the entity, the applicant can then request Inland Revenue to approve donee status under the grounds of its benevolent, philanthropic and/or cultural purposes.

The volume of donee organisations with charitable, benevolent, philanthropic and/or cultural purposes that are not registered under the Charities Act is low (fewer than 500 out of 25,000 donee organisations). The current drafting will ensure that most of these donee organisations will be required to register under the Charities Act. Only a very small number, which do not meet the essential requirements of registration as a charitable entity but which have benevolent, philanthropic and/or cultural purposes, will continue to be donee organisations without the same reporting and regulatory requirements.

Recommendation

That the submissions be noted.

Issue: Location of the definition of "tax charity"

Clause 42

Submission
(Chartered Accountants Australia and New Zealand)

As currently drafted, the Bill inserts in the list of defined terms in section LD 3 the term "tax charity" (clause 176(3)); and replaces the definition of "tax charity" in section YA 1 to refer readers to the definition in section CW 41(5) (clause 213(32)).

The opening words of section CW 41(5) currently read: "In this section and sections CW 42 and CW 43, **tax charity** means, – …"

Without reference to section LD 3 in the opening words above, the definition of "tax charity" will be undefined in the context of section LD 3.

Comment

Officials agree. The substantial definition of "tax charity" will be shifted from section CW 41(5) to section YA 1, and apply for the purposes of the whole Act.

Recommendation

That the submission be accepted.

Issue: Defer commencement date of proposed donee status changes

Clauses 42 and 176

Submission
(New Zealand Law Society, PwC, Simpson Grierson)

Submitters stated that if the changes proceed, the commencement date should be changed to provide sufficient time for taxpayers that are affected to comply with the new requirement to obtain approval from the Commissioner for donee status. Organisations with charitable purposes must be registered charities in order to obtain donee status.

Given organisations will either have to obtain the Commissioner's approval or register under the Charities Act 2005, at a minimum the proposed changes should be delayed to income years starting from 2020–21. *(New Zealand Law Society, PwC)*

Comment

While the proposed changes will only affect a small number of charities, officials accept that these charities will need time to liaise with Charities Services if they wish to retain their donee status or business income exemption.

Therefore, officials agree that the application date should be deferred to 1 April 2020.

Recommendation

That the submission be accepted.

Issue: Operational Statement OS 06/02 should be updated or replaced

Clauses 42 and 176

Submission
(New Zealand Law Society)

If the proposed changes to the approval/listing process for donee organisations were to proceed, Inland Revenue's Operational Statement OS 06/02 should be replaced or updated to provide clear guidance regarding the Commissioner's approach to approval/listing.

If the amendment requiring organisations with charitable purposes to be registered under the Charities Act to be approved for donee status proceeds as currently drafted, the updated Operational Statement should confirm that the Commissioner's opinion on whether an entity is eligible to be registered as a charitable entity under the Charities Act, for the purpose of section LD 3 of the Income Tax Act, will be consistent with guidance provided by Charities Services and decisions made by the Charities Registration Board.

Comment

Officials agree that a new Operational Statement should be provided.

The government's preference is to define charitable purposes primarily by reference to section 5 of the Charities Act 2005 for the purposes of tax concessions. Under the current proposals, if Inland Revenue requests that an applicant for donee status seek registration under the Charities Act on the basis that it believes the applicant appears to meet all the essential requirements of registration, and Charities Services declines to register the entity, then the Charities Services view on its charitable status will prevail. The applicant can then apply to Inland Revenue for donee status on the grounds of benevolent, philanthropic and/or cultural purposes.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Donation tax credit anti-avoidance provision should not proceed

Clause 157

Submission
(Simpson Grierson, New Zealand Law Society)

The application of the donation tax credit provision is already regulated by the requirement that the payment at issue must be a monetary gift. If a payment is a gift, there would seem to be little, if any, scope for the application of any anti-avoidance provision. *(Simpson Grierson)*

The term “gift” used in this context regulates the types of payments that qualify for a donation tax credit. That is, there needs to be a voluntary transfer of property to the donee organisations, without consideration. *(New Zealand Law Society)*

If an appropriate case were to arise, the Courts would be open to applying the existing general anti-avoidance provision so a specific donation tax credit anti-avoidance provision is not required. *(Simpson Grierson)*

Although the *Commentary* on the Bill appears to suggest that existing avoidance provisions would not apply in relation to donation tax credit claims, the New Zealand Law Society doubts that this is the case. The general anti-avoidance provision in section BG 1 of the Income Tax Act, and associated definitions, would appear to be wide enough to cover donation tax credit claims, so that this also regulates the type of payments that can qualify for a donation tax credit. The submitter believes that the circumstances in which a payment is a “gift” to a donee organisation but section BG 1 applies to deny a donation tax credit, would be expected to be rare. *(New Zealand Law Society)*

This clause should therefore not proceed. *(Simpson Grierson, New Zealand Law Society)*

Comment

A legislative provision is necessary to counter artificial circular arrangements. Accordingly, the Bill proposes a specific anti-avoidance provision for donation tax credits.

The proposed anti-avoidance provision would allow the Commissioner to reduce any associated tax credit to the amount that the Commissioner considers would have arisen had an arrangement not been entered into.

The general anti-avoidance provision (section BG 1 of the Income Tax Act) and associated definitions are not wide enough to apply to donation tax credits, as its application is explicitly limited to income tax, and donation tax credits are not tax “imposed on taxable income”.

Recommendation

That the submission be declined.

Issue: Breadth of proposed anti-avoidance rule for charitable or other public benefit gifts

Clause 157

Submission
(Russell McVeagh, Simpson Grierson, New Zealand Law Society)

The proposed anti-avoidance provision is too broad and should be drafted using more conventional wording used in anti-avoidance provisions. *(Russell McVeagh)*

It could be interpreted by officials in such a way as to deny tax credits in situations which are not in the nature of tax avoidance *(New Zealand Law Society)*, or could apply to all manner of donation fundraising undertaken by a donee status entity, whenever any other form of fundraising is also an option *(Simpson Grierson)*. This could include situations when a larger rather than a smaller donation was made, thereby resulting in a larger tax credit *(Russell McVeagh)*. More generally, it could include any situation where a charity or other donee organisation receives donations instead of charging or increasing fees or other sources of funding may be caught. If an anti-avoidance provision is considered necessary, it should apply only where the arrangement would defeat the intent and application of section LD 1, not merely where it would have a more favourable effect.

The proposed rule lacks basic requirements that need to be met before it can apply. Other anti-avoidance provisions include an express requirement that the relevant tax avoidance purposes or effect must be more than merely incidental, and various other anti-avoidance provisions refer to the relevant arrangement having to be one that defeats the intent and application of specified provisions. *(Simpson Grierson)*

One submitter acknowledged that the proposed anti-avoidance provision is modelled on the existing section GB 44 of the Income Tax Act, but that section is not a good model because:

- the tax credit claims targeted by section GB 44 are not already regulated by any requirement under the relevant tax credit provisions equivalent to the requirement under section LD 1 that a payment must be a gift to a donee entity to qualify for a donation tax credit; and
- section GB 44 is also too broad and open to inappropriate use. This is also in the context where GB 44, like the new proposed anti-avoidance provision, is one that may typically be applied against less sophisticated and less well-resourced taxpayers. *(Simpson Grierson)*

In light of Inland Revenue's recent approach to various donation tax credit claims, the drafting raises a real concern that such a provision may be inappropriately used by Inland Revenue against donors *(Simpson Grierson)*. This concern is reinforced by the fact that Inland Revenue officials can take such an approach with donors without any fiscal consequences, because the Commissioner is not required to pay interest on any delayed payment of donation tax credit refunds to which donors are entitled (which is to be affirmed by a proposed amendment to the interest provisions under the Tax Administration Act, under clause 77 of the Bill). *(New Zealand Law Society)*

Comment

Officials note that the current proposed anti-avoidance provision, which is based on the existing GB 44, should be considered in its anti-avoidance context.

However, officials acknowledge that most specific anti-avoidance provisions refer to arrangements that aim to defeat the intent and application of tax legislation. Officials consider the proposed anti-avoidance provision should be amended so that it applies when an arrangement has a purpose or effect of defeating the intent and application of section LD 1.

Recommendation

That the submission be accepted, subject to officials' comment.

Issue: Proposed anti-avoidance provision needs a different number

Clause 157

Submission
(New Zealand Law Society, Simpson Grierson)

The Bills' section numbering will need revision: the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018 has already brought in a new section GB 54 as an anti-avoidance measure relating to permanent establishments, so the proposed introduction of a new section GB 54 is potentially confusing. *(New Zealand Law Society)*

The existing section GB 54 deals with arrangements involving establishments and non-resident businesses. *(Simpson Grierson)*

Comment

Officials agree that the numbering of the proposed anti-avoidance provision dealing with arrangements involving tax credits for charitable or other public benefit gifts should be amended.

Recommendation

That the submission be accepted.

Issue: Application of interest and penalty provisions to donation tax credit claims

Clause 5

Submission
(Simpson Grierson)

This proposal should not proceed until it has been subject to further consultation. Consideration should be given towards the potential wider implications of deleting the exclusion of donation tax credits from the definition of "tax" in the Tax Administration Act.

Comment

Officials consider this amendment is remedial in nature. The issue has arisen as a result of the definition of "tax" being previously amended in 1998 for another purpose.

Following the Taxation (Simplification and Other Remedial Matters) Act 1998, donation rebates (now donation tax credits) were removed from the return filing system, and a new form for claiming rebates was created. This was done to provide a simpler mechanism to claim donation tax credits, and as part of the simplification of the return system as a whole. This action was not intended to remove the ability to impose interest and penalties in some cases.

Recommendation

That the submission be declined.

Issue: Consistency of the proposed interest and penalty provisions with current legislation

Clause 5

Submission
(Simpson Grierson)

The relationship between the proposed changes in the Bill and the application of other provisions in the Tax Administration Act (sections 41A(14) and 41A(15)) which specify that interest and penalties do not apply to applications for donation tax credit claims should be addressed.

Comment

Officials agree that to be consistent with the proposed amendments in the Bill, changes need to be made to section 41A of the Tax Administration Act. Section 41A(14) should be repealed to be consistent with amendments to the definition of "tax" in section 3 of the Tax Administration Act, which ensure that interest can apply to overpaid donation tax credits.

Section 41A(15) should also be repealed. It is unnecessary because the proposed amendment to the definition of "tax" would already ensure that the penalties regime applies to donation tax credits.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Commissioner not being required to pay interest on tax credit claims

Clause 77

Submission
(Simpson Grierson)

It is proposed that excess donation claims attract interest but the Commissioner does not have to pay interest on tax credit claims, especially in light of the recent experiences where donors' tax credit claims have been held back by the Commissioner for extensive periods of time. If no interest is payable by the Commissioner in any circumstance, there is no financial disincentive to discourage Inland Revenue from holding back donation tax credit claims without regard to the merits of such claims.

Comment

A donation is different from a tax liability because the first is a voluntary payment and the second is an obligation. Charitable giving is tax advantaged through the availability of a donation tax credit. Occasionally, taxpayers may not claim donation tax credits for several years, and then apply for them at once. The Commissioner should not compensate such taxpayers for their earlier inaction. For these reasons, credit use-of-money interest should not apply.

Interest on overpaid donation tax credits is, however, justified because if a taxpayer has received donation tax credits in excess of their entitlement, the Government should be compensated through use-of-money interest for the time value of money component.

Recommendation

That the submission be declined.

Issue: Protection of donors who rely on the Charities register and/or Inland Revenue's approved list of donee organisations

Clauses 5, 42 and 176

Submission
(Simpson Grierson, New Zealand Law Society)

Protection of donors from any exposure to interest or penalties in relation to donation tax incentive claims on account of a recipient entity not qualifying for donee status needs to be considered, in particular in circumstances where the entity is Charities Act registered and/or Inland Revenue approved/listed when the donors make their gift to the entity. *(Simpson Grierson)*

Consideration should be given to providing for donors to be able to rely on the Commissioner's published approval/listing of an entity as a donee organisation in relation to making any donation tax credit claims, unless a donor knows or has reason to believe that the entity does not qualify for donee status. *(New Zealand Law Society)*

Comment

Proposals in this Bill will provide greater certainty to donors. If an entity is listed on the Inland Revenue approved donee list, donations to such an entity qualify for donation tax credits. The rule will not have retrospective effect when an entity is removed from the approved donee list. Therefore, taxpayers will be protected from penalties and interest if they made a donation tax credit claim when the entity was on the list.

Recommendation

That the submission be noted.

Issue: Application of the deemed disposal provision for depreciation recovery income

Clause 134

Submission
(Deloitte)

It appears Inland Revenue considers that section EE 47(2) applies where a business registers as a charity. The proposed amendment to section EE 47(2) simply changes the year in which the income arises. Prior to the Bill being introduced, there was no reason to consider that section EE 47 applied in this situation as there is no "change in use" of an asset just because the business that an asset is used in becomes a registered charity – that is, the assets are still being used in the exact same way in the business before and after that registration.

The wording of the provision needs to change to make such an outcome clear – that is, it currently only refers to change of use and change of location of use, neither of which on the clear meaning of the words would cover the registration of the business as a charity.

Comment

Officials disagree with the submitter's interpretation of current section EE 47(2). Tax law generally treats an entity entering and leaving the tax base as a deemed disposal of its assets.

There will be a change in the use of an asset if an entity was using an asset for the purpose of deriving assessable income, then registers as a charity and begins using that asset for the purpose of deriving exempt income. Without an amendment, the registration of an entity as a charity will trigger a deemed disposal – but it would not be possible to in fact recover any depreciation recovery income as the entity would be exempt by the time that amount would otherwise be included as income. The proposed amendment, therefore, changes the timing of when that income must be returned, so that it occurs before the entity leaves the tax base.

Recommendation

That the submission be declined.

Issue: Deemed consideration for depreciation recovery income

Clause 134

Submission
(Deloitte)

Subsection EE 45(5) should be amended to deem the consideration from the deemed disposal to be the GST exclusive market value (where the taxpayer is GST registered). Currently subsection EE 45(5) is only a GST exclusive amount if there is a taxable supply made. Given that there is only a "deemed disposal" and not an actual disposal there is no taxable supply made (therefore deeming the disposal to be made at the GST inclusive values).

Comment

Taxpayers registered for GST can generally claim a credit for the GST part of a depreciable asset's cost price. Depreciation is then calculated on the GST-exclusive price of the asset. Taxpayers that are not registered for GST base their depreciation calculations on the actual price paid for the asset, including GST. When a depreciable asset is disposed of or otherwise leaves the tax base (leading to a deemed disposal of that asset), the amount of depreciation recovery income should reflect whether the amounts the depreciation calculations were based on included or excluded GST. Subsection EE 45(5) could be amended to ensure that the legislation achieves this policy intent.

Recommendation

That the submission be accepted, subject to officials' comments.

Issue: Proposed extension of foreign trust disclosure rules to registered charities

Clause 5(52)

Submission
(Russell McVeagh, John W Hart)

Both submitters said that registered charities are already subject to oversight and transparency requirements. Extending the foreign trust disclosure rules to registered charities is therefore unnecessary and should not proceed.

The proposed amendment would have the effect of subjecting registered charities that are also foreign trusts to the foreign trust disclosure requirements in the Tax Administration Act 1994. The proposed change is an unnecessary additional compliance cost on the not-for-profit sector. The existing public disclosure requirements that apply to registered charities, which include the public disclosure of information relating to constitutional documents, financial performance and position, the charity's activities and the charity's officers (all of which is published on Charities Services website) and the application of charities law generally, are sufficient to prevent the abusive use of trusts that are registered charitable entities and also foreign trusts. *(Russell McVeagh)*

Note that under both FATCA and CRS, charities are generally exempted from reporting and therefore there is a strong argument that the foreign trust registration and disclosure regime should be consistent with the approach taken under those multilateral regimes. *(John W Hart)*

Comment

The policy rationale for the exclusion of registered charities from the foreign trust disclosure requirements was that the disclosure requirements under the Charities Act were historically more extensive than the Tax Administration Act foreign trust disclosure requirements. Following the changes to the foreign trust disclosure rules in 2016, this is no longer the case – the Charities Register does not collect, for example, information relating to:

- the name, email address, physical address, jurisdiction of tax residence, taxpayer identification number and connection with the trust of each settlor, each appointor, anyone with control over the power to appoint or dismiss a trustee, each person with the power to control a trustee, and each trustee; or
- details relating to settlements made in relation to the trust – that is, date, amount, settlor and nature of each settlement on the trust (excluding provision of minor services at less than market value that are incidental).

The policy preference is for all foreign trusts, including those that are registered charities, to provide the same level of information so that it can be shared with overseas tax authorities where appropriate.

There is no general exemption for charities under the Common Reporting Standard (CRS), although charities are able to apply for an exemption if they satisfy the "low-risk of being used to evade tax" criteria set out in the CRS.

Recommendation

That the submission be declined.

Issue: Debt forgiveness and gifts

Submission
(Matter raised by officials)

A recent court decision in *Roberts v Commissioner of Inland Revenue* (the *Roberts* case) held that debt forgiveness qualifies as a gift under section LD 3 of the Income Tax Act 2007, which in turn makes debt forgiveness eligible for donation tax credits and gift deductions. Currently, the section refers to a "monetary gift of $5 or more".

This decision is contrary to the policy intent, which is that only monetary gifts of cash, including payments made by way of electronic bank transfers, credit cards, and cheques, qualify as gifts. They do not include gifts in kind or debt forgiveness.

From 1 April 2008, following the re-write of the Income Tax Act 2007, the language of the provision has undergone some changes for language simplification reasons, but at no time has there been an intention to change the policy intent. Officials consider that the judicial interpretation in the Roberts case is an unintended consequence arising from the rewrite of the donation tax credit rules.

Officials therefore recommend that a remedial amendment be made to section LD 3 of the Income Tax Act 2007 to replace the existing words "monetary gift of $5 or more" with the original wording "gift of money of $5 or more". This will remove a significant risk to the tax base.

Officials propose that the application date of the amendment be 1 April 2008, the commencement of the Income Tax Act 2007. This would be in conjunction with a savings provision for taxpayers who have already taken a position in reliance on the current wording, if they have filed a return or a donation tax credit claim. This retrospective application date in conjunction with a savings provision is consistent with the general approach to remedial rewrite amendments.

Recommendation

That the submission be accepted.

Clause 54

Submission
(Chartered Accountants Australia and New Zealand)

The proposed amendment is supported.

Recommendation

That the submission be noted.

Issue: Support for amendment

Clause 150

Submission
(Jim Gordon Tax Limited)

That the amendment is sensible, logical and is supported.

Recommendation

That the submission be noted.

Issue: Branch debt

Clause 150

Submission
(Deloitte)

The submitter notes a situation where, as part of a set of proposed restructure steps, a NZ branch of a US company currently owes debt to another group company (in the US); and the NZ branch could end up having a debt owed to its head office.

This potentially triggers debt remission income as the head office will have a debt owing to itself.

Section EW 46C of the Income Tax Act 2007 does not apply to a forgiveness in this situation. This does not appear to be the correct outcome given the background/policy intent of section EW 46C. An amendment is required to section EW 46C(1) so that it applies correctly to a remission arising in the above and similar situations.

Comment

When the debt remission rules were developed, they did not consider branches. Section EW 46C(1)(a) and (b) are limited to the debtor being a New Zealand resident company or owned by New Zealand resident companies respectively. Officials consider that this submission raises further issues that would require prioritising and resourcing as part of the Government's tax policy work programme.

Recommendation

That the submission be declined.

Issue: Fairness of fair dividend rate for US citizens who are NZ tax residents

Submission
(Kathleen Torpie)

The submission raises a general tax issue unrelated to any specific bill proposal. It seeks a remedial amendment to New Zealand's Foreign Investment Fund (FIF) rules to address a perceived inequity.

The issue arises for United States (US) citizens who are New Zealand tax residents, and who hold shares in US companies. Prior to reforms in 2006, US investments were protected from New Zealand taxation by the "grey list" exemption – a list of countries (including the US) for which the FIF rules did not apply. From 2007, however, the grey list was abolished and US investments have been subject to annual New Zealand taxation – under the Fair Dividend Rate (FDR) method for taxing FIF investments.

The submitter considers taxation under the FDR method to be inherently unfair, as it imposes tax on the basis of deemed dividends even when no dividends have actually been paid, and the calculation methods are not equivalent to a fair dividend rate (particularly when losses from the global financial crisis are taken into account).

However, the main thrust of the submission is that the 2006 reforms created an anomaly for US citizens who are NZ tax residents even though the stated aim was to remove anomalies. Such investors are now subject to taxation in New Zealand on an accrual basis under the FIF rules and will then be subject to capital gains tax in the US on effectively the same income when the shares are sold. Because of timing differences and different classifications of "income", foreign tax credits are unlikely to apply, resulting in unrelieved double taxation, in contravention of the New Zealand/US double tax agreement (DTA).

The submitter requests the retrospective introduction of a grand-parenting rule for US investments of US citizens who are New Zealand tax residents and who held shares in US companies prior to 2006.

Comment

The changes to the FIF rules in 2006 to remove the "grey list" and introduce FDR rules were intended to remove inequities from the FIF rules and ensure neutrality in investment decisions. Post-2006, a New Zealand investor should in most cases face approximately the same overall tax regardless of whether they invest in a foreign company or New Zealand company and regardless of whether the foreign investment gave rise to dividend income. By ensuring that investors with economically equivalent investments face broadly similar taxation, investment decisions can be expected to be driven by pre-tax returns rather than tax advantages.

The issue of double taxation arises in respect of the US because the US has a policy of taxing the worldwide income of citizens as well as residents. By contrast, New Zealand, like almost all other countries, only taxes the worldwide income of *residents* (and not citizens). The general principle in the New Zealand/US DTA is that the country of residence (in this case New Zealand) is accorded a full taxing right in respect of income from shares. To the extent that the US also taxes income from shares on the basis of citizenship, the DTA provides that the US

must allow a credit for "the income tax paid to New Zealand". The issue is therefore whether this obligation applies to require the US to allow a credit against their tax on capital gains (should the shares be sold) for New Zealand taxes imposed on an accrual basis. It is possible that the US would allow a tax credit.

Tax settings do change from time to time and taxpayers have to make investment decisions in light of those changes. Other investors in the submitter's situation may have sold their shares in 2006.

Officials note that it would be very unusual to enact an exemption twelve years after the change to which it relates. It would also be undesirable from a policy perspective to create a situation where some New Zealand residents with investments in the US are subject to the FIF rules and others in an identical situation (except for their US citizenship) are not.

Recommendation

That the submission be declined.

Issue: Provide guidance for taxpayers on foreign investment fund rules

Submission
(Kathleen Torpie)

To assist taxpayers the submitter proposes the following.

Simplify compliance with the FIF Rules, by making it easier for taxpayers (particularly those required to pay tax on worldwide income to both New Zealand and the United States) to understand their tax obligations to each country and what means are available via the DTA to prevent double taxation. In particular, Inland Revenue should provide greater clarity about which treaty partner has the first or sole right to tax specific types of income, and the basis for determining which categories of income are eligible for tax credits.

Comment

Officials acknowledge the difficulty that can at rise at times for taxpayers facing the complexity of overlapping tax systems and the overlay of DTA rules.

Inland Revenue attempts to issue guidance, to the extent possible. This includes, for example, a detailed interpretation statement published in 2016 on claiming foreign tax credits where the foreign tax paid is covered by a DTA.

However, such guidance is necessarily generic, whereas complex cases are often fact-specific. In addition, Inland Revenue is constrained from providing guidance on how foreign legislation applies.

Taxpayers facing difficulties such as those described by Ms Torpie should therefore always seek the assistance of a tax professional.

Recommendation

That the submission be declined.

Issue: Simplify the calculation of foreign investment fund income

Submission
(Kathleen Torpie)

The submitter suggests two ways to simplify the calculation of FIF income:

1. For the Comparative Value (CV) method for calculating FIF income, base FIF income on total gains of all foreign stocks and funds at the end of the year rather than on each holding and each dividend when it occurs.

2. Make compliance less time consuming and expensive for taxpayers by allowing foreign sourced income to be calculated according to the end of year official tax summary of the partner nation.

Comment

The proposed changes represent significant policy changes rather than remedial amendments.

In applying tax to foreign shares, the FIF rules have a role in ensuring people cannot avoid New Zealand tax by shifting income into low tax countries and aim to provide broadly similar tax outcomes for investors who invest directly compared to those that invest through managed funds. Therefore, further policy analysis and consultation would be required to ensure that any proposed changes do not create unintended consequences such as avoidance risks or a significant tax bias for investing directly rather than through managed funds. We also note that the Tax Working Group is considering the current FIF/FDR rules as part of their remit.

Officials consider that these suggestions are out of scope for the current bill (as they represent policy rather than remedial changes), and (depending on the outcome of the Tax Working Group) should be further considered and consulted on when the FIF rules next come up for review.

Recommendation

That the submission be declined.

Submission
(Chartered Accountants Australia and New Zealand, Corporate Taxpayers Group, Deloitte)

The submitters said that the cash basis person thresholds in the financial arrangement rules should be reformed and increased as there are a significant number of people who (potentially unknown to them) may need to recognise income on an accrual basis, rather than a cash basis (that is, that person needs to apply the financial arrangement rules to recognise income over the term of an arrangement, not just when cash is received).

For example, a taxpayer has entered into a 5 year term deposit from 1 April 2014 to 31 March 2019. The deposit is $64,500, with an interest rate of 5.5% pa. Interest is paid at maturity in the 2019 tax year of $17,747.

A cash basis person can return all $17,747 of income in the 2019 income year. A non-cash basis person would recognise the income each year (potentially $3,549 each year depending how the financial arrangement rules are applied).

If Inland Revenue is going to automatically generate refunds/tax bills, the concern is that Inland Revenue won't be able to determine who is a cash basis person or not, as Inland Revenue does not hold details of all financial arrangements entered into by taxpayers. This is particularly relevant for individuals with term deposits.

Currently, a person is only a cash basis person under section EW 57 of the Income Tax Act if the absolute value of all financial arrangement income and expenditure in a year is $100,000 or less, or the absolute value of all financial arrangements added together is $1 million or less (that is, anyone with a mortgage in excess of $1m may not be a cash basis person). These thresholds should be increased.

Comment

Officials agree that the cash basis person thresholds should be reviewed. However, there are also other related issues that should also be considered at the same time, for example, the treatment under the financial arrangements rules of foreign currency mortgages on overseas residential housing.

Officials consider the cash basis person thresholds could be adjusted following public consultation under the Generic Tax Policy Process. A review of issues with the financial arrangements rules, including the cash basis thresholds, is on the tax policy work programme. Officials do not recommend changes to the thresholds in advance of consultation on this issue.

Recommendation

That the submission be declined.

Issue: Optional credit rating and secured debt

Submission
(Matter raised by officials)

The optional credit rating in the restricted transfer pricing rule should be able to be calculated based on secured debt as well as unsecured debt.

Comment

The optional credit rating allows a borrower, including one that is a high BEPS risk or an insuring or lending person, to determine their credit rating based on the rate implied from third party senior unsecured debt. A lower credit rating allows the interest rate on related party debt to be higher than if the credit rating was higher.

The optional credit rating was introduced at the Finance and Expenditure Committee stage of the BEPS Bill. The optional credit rating was based on unsecured debt only, as this debt represents the credit risk of the borrower as a whole compared with secured debt which represents some reduction in credit risk by virtue of the secured lenders preferential ranking relative to the unsecured lenders in the event of a default. Usually, a well secured loan will have an interest rate that implies a higher credit rating than that of the lower ranking debt of the entity, such as unsecured or subordinated debt. Where a borrower has both secured and unsecured third party borrowing, it would be appropriate for the optional credit rating to be based on the lower credit rating implied from the unsecured debt.

Limiting the optional credit rating to unsecured debt was intended to be favourable to taxpayers, as the credit rating from unsecured debt would never be higher than the credit rating from secured debt. However, it has been brought to officials' attention that some borrowers only have secured debt in which case the optional credit rating is not available to them.

There is no policy reason why a borrower with no unsecured third party debt should not be able to apply the optional credit rating based on secured debt as this credit rating will always be the same or higher than if they had unsecured debt. Officials recommend the optional credit rating is extended so it can be based off either secured or unsecured debt.

Borrowers, with both secured and unsecured debt, should be able to choose to base the optional credit rating off either debt. Officials expect a borrower would use the rating for their unsecured debt first, up to the existing 4 times limit after which a rating implied from the secured debt would continue to be available.

Recommendation

That the submission be accepted.

Issue: Determining a credit rating for the group member with the most debt

Submission
(Matter raised by officials)

A borrower determining their group credit rating under the restricted transfer pricing rule should use the group member with the highest amount of long term senior unsecured debt with third parties.

Comment

The credit rating of a borrower who is an insuring lending person, or a high BEPS risk, is determined by the group member with the highest long-term senior unsecured debt. This was chosen as it is difficult to identify the appropriate entity to treat as the parent without considering a group's specific circumstances, and groups may have incurred high compliance costs if they were required to consider the credit rating of all members of their worldwide group.

Page 66 of the Officials' Report to the Taxation (Neutralising Base Erosion and Profit Shifting) Bill confirms that this was intended to be the member of the group with the highest unsecured third party debt. This test was intended to be based on third party debt, as a group is incentivised to borrow from third parties through the entity that has the lowest credit risk as this will reduce their group net interest expense. No such equivalence exists with related party debt so an entity with the highest amount of related party debt doesn't provide any expectation that this may be the highest rated member of the group.

However, sections GC 16(10)(a) and GC 17(a) refer to the entity with the highest long-term senior unsecured debt without requiring this to be with a third party.

Officials recommend amending the group credit rating and insuring or lending person credit rating provisions so they are based on the member of the group with the highest amount of long-term senior unsecured debt that is not related-party debt.

Recommendation

That the submission be accepted.

Issue: Group credit rating where there is no third party debt

Submission
(Matter raised by officials)

The group credit rating in section GC 16(10)(a) and the credit rating for an insuring or lending person in GC 17(a) refer to the member of the borrower's worldwide group that has the most long-term senior unsecured debt (and as noted above this should refer to third party debt). It will not be possible to apply these provisions when the worldwide group has no third party debt.

Comment

The current drafting of these provisions, plus the inclusion of a reference to third party debt, are designed as a lower cost method to identify the entity that would be most likely to provide implicit parental support. It is still necessary to identify the entity that would be likely to provide implicit parental support where a group has no third party long-term senior unsecured debt. The current drafting, however, does not state how this should be achieved.

Officials recommend section GC 16(10) and GC 17 be amended to identify the appropriate credit rating of the group when the group does not have any third party long-term senior unsecured debt. Officials consider a taxpayer should be required to make a reasonable effort to identify the highest rated member of the worldwide group. This will often be the parent or main trading entity within the group, and a taxpayer should not be expected to consider the credit rating of every member of a large or complex group where an entity that could reasonably be considered the highest rated member of the group has been identified.

Recommendation

That the submission be accepted.

Issue: Section FE 5(6) is redundant

Submission
(Matter raised by officials)

Section FE 5(6) is redundant and should be removed.

Comment

In the thin capitalisation rules, the allowable debt percentage of a group where the worldwide group is the New Zealand group has been reduced from 110% to 100%. Prior to the introduction of the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, several iterations of the drafting were considered in order to implement this policy. One of these iterations introduced subsection FE 5(6). As the drafting developed other changes were made to sections FE 5 and FE 6 to implement the policy and section FE 5(6) became unnecessary. However, FE 5(6) was not removed from the Bill and was subsequently enacted.

As section FE 5(6) is redundant, officials recommend that it be removed.

Recommendation

That the submission be accepted.

Issue: Optionality of deferred tax liability adjustment

Submission

(Matter raised by officials)

In the thin capitalisation rules, the reduction in the non-debt liabilities adjustment for deferred tax liabilities should be optional.

Comment

The debt percentage calculation was amended so that it became debt/(assets – non-debt liabilities) so that for a given level of debt and assets, an increase in non-debt liabilities would result in a higher debt percentage. Deferred tax liabilities are a form of non-debt liabilities; however, certain deferred tax liabilities can be subtracted from non-debt liabilities, which will decrease the group's debt percentage.

As only certain deferred tax liabilities can be removed from the calculation, groups will incur compliance costs in identifying these specific deferred tax liabilities. In many circumstances, the compliance costs of this calculation may exceed any tax saving from adjusting for these deferred tax liabilities. This will mostly occur when a group is below the 40% restricted transfer pricing or 60% thin capitalisation thresholds. It may also occur where the taxpayer is above the threshold but the cost of obtaining the data and completing the calculation exceeds any reduction in interest deductible.

Page 97 of the Officials' report to the Taxation (Neutralising Base Erosion and Profit Shifting) Bill recognised the calculation of deferred tax liabilities is complex and technical, and therefore proposed "an option" to exclude certain deferred tax liabilities amounts from non-debt liabilities. Although the ability to exclude certain deferred tax liabilities was included, this was not made optional. Officials recommend the calculation of the non-debt liability adjustment is amended so that taxpayers are not required to remove deferred tax liabilities unless they choose to do so.

Recommendation

That the submission be accepted.

Issue: Payee tax and ordinary income

Submission
(Matter raised by officials)

The definition of "payee tax" in section FH 3(5)(b) should be amended so that it refers to the amount of the relevant payment that is recognised by the payee jurisdiction as "ordinary income arising from the payment received by the payee."

Comment

The definition is used to calculate the amount of deduction denied under the hybrid financial instrument rule, which is one of the hybrid and branch mismatch rules. Amending the definition would ensure that the original policy intent of the rule is achieved in the circumstance of a payment that is recognised as income in the payee jurisdiction, but is also eligible for a tax credit or some other type of tax relief. Tax payable on such a payment should not qualify as "payee tax".

Recommendation

That the submission be accepted.

Issue: Timing recognition for defensive hybrid financial instrument rule

Submission
(Matter raised by officials)

For timing mismatches, the defensive hybrid financial instrument rule in section FH 4 should require that income is recognised at the time in which a deduction is recognised in the payer jurisdiction for the relevant payment.

Comment

In relation to timing mismatches, the rule currently allocates income to the income year in which the payment is received. This is effective when the timing mismatch relates to a prepayment to a New Zealand lender on an ordinary loan. However, it is also possible that the timing mismatch relates to a deductible foreign equity distribution. Such distributions are subject to New Zealand tax when due or received. If the payer is entitled to a deduction on an accrual basis, taxing the payment on a receipts basis may not correct for the mismatch. In order for the rule to work effectively, income should be recognised when the payer jurisdiction grants a deduction to the payer.

Recommendation

That the submission be accepted.

Issue: Dual resident companies without foreign deductions

Submission
(Matter raised by officials)

The dual resident payer rule should not apply to the extent that the dual resident company has expenditure that is not deductible under the relevant foreign jurisdiction's laws due to that expenditure's connection with income that is not taxable in the foreign jurisdiction.

Comment

This amendment is necessary to ensure that a deduction of a dual resident company is not denied in a case where the deduction is not duplicated in a foreign jurisdiction. There is no hybrid mismatch in such a case.

Recommendation

That the submission be accepted.

Issue: Payer tax status and surplus assessable income

Submission
(Matter raised by officials)

The definition of "unrecognised" in section FH 12(4)(d) should be amended to include income that is not taxed in another country because of the tax status of the person deriving that income in that country.

Comment

The definition is used to calculate a person's surplus assessable income for the purpose of the hybrid and branch mismatch rules. The amendment was previously recommended in the Officials' Report on the Taxation (Neutralising Base Erosion and Profit Shifting) Bill but, due to an oversight, no change was made to the Bill to achieve it.

Recommendation

That the submission be accepted.

Issue: Definition of mismatch amount and mismatch situation

Submission

(Matter raised by officials)

"Mismatch amount" should be defined by reference to adjustments to deductions or income under the entity-based hybrid mismatch rules, rather than to what happens to such amounts if there is surplus assessable income. Further, the related definition of "mismatch situation" should be amended to include situations where there is no mismatch amount but the situation could give rise to mismatch amounts.

Comment

The current definition of "mismatch amount" is focused on the surplus assessable income offset, which is potentially misleading and should be changed to ensure that the provisions are consistent with the policy intent of the rules.

The current definition of "mismatch situation" could be interpreted as requiring a person to have a mismatch amount in order to have a mismatch situation. This would be inconsistent with the policy intent of the rules and the published draft guidance material on the hybrid and branch mismatch rules.

Recommendation

That the submission be accepted.

Issue: Section GB 54 – activity by facilitator

Submission
(Matter raised by officials)

Section GB 54 is a permanent establishment anti-avoidance rule. The rule applies if (amongst other things) a supply is made by a non-resident to a recipient in New Zealand, and a related party (referred to as the "facilitator") carries out an activity for the purpose of bringing about that supply. However, the rule is also intended to apply if:

- the non-resident makes a supply to an intermediary;
- the intermediary then on-supplies the goods to a recipient in New Zealand; and
- the facilitator carries out an activity for the purpose of bringing about the intermediary's supply to the recipient.

Section GB 54(1)(b) refers to an activity carried out by the facilitator for the purpose of bringing about the non-resident's "facilitated supply" to the "recipient". However if an intermediary is involved, the facilitated supply is made by the non-resident to the intermediary, not by the non-resident to the recipient. Accordingly, section GB 54(1)(b) should refer to an activity carried out by the facilitator for the purpose of bringing about *either* the facilitated supply to the recipient, *or* the supply by the intermediary to the recipient.

The amendment should apply retrospectively from the commencement of section GB 54.

Recommendation

That the submission be accepted.

Issue: Section GB 54 – purpose of effect of tax avoidance

Submission
(Matter raised by officials)

Section GB 54(1)(h) refers to an arrangement that has a purpose or effect of tax avoidance. Section GB 54(1)(i) refers to this same arrangement, but only requires that the arrangement have a more than merely incidental *purpose* of tax avoidance. For consistency, section GB 54(1)(i) should be amended to also refer to a purpose *or effect* of tax avoidance.

The amendment should apply retrospectively from the commencement of section GB 54.

Recommendation

That the submission be accepted.

Issue: Section GB 54 – tax avoidance

Submission
(Matter raised by officials)

Section GB 54(1)(h) refers to arrangements for the avoidance of income tax. The intention is for the section to also apply to arrangements that avoid other kinds of tax, such as non-resident withholding tax (NRWT). The *Commentary* to the Taxation (Neutralising Base Erosion and Profit Shifting) Bill also stated that the application of section GB 54 could result in NRWT becoming payable. Accordingly, the current drafting does not achieve the intended effect.

Section YA 2(3) contains an expanded definition of income tax, which includes NRWT. Accordingly, section YA 2(3) should be amended to also apply to section GB 54.

The amendment should apply for income years commencing after enactment of the Bill.

Recommendation

That the submission be accepted.

Issue: Section YD 4(17D)

Submission
(Matter raised by officials)

Income from a source under sections YD 4(15)–(17) should be excluded from the application of section YD 4(17D).

Section YD 4(17D) provides that income has a source in New Zealand if New Zealand has a right to tax it under a double tax agreement. Sections YD 4(15)–(17) contain source rules under which only a portion of the relevant types of income have a source in New Zealand. The Income Tax Act sets out apportionment methods for these types of income in sections YD 6, YD 8 and EY 48. These apportionment methods should still apply if income with a source under sections YD 4(15)–(17) also has a source under section YD 4(17D). However, it would be helpful to clarify this by amending section YD 4(17D).

The amendment should apply retrospectively from the commencement of section YD 4(17D).

Recommendation

That the submission be accepted.

Issue: Section DB 18AA – apportionment of expenses for dual use premises

Submission

(Matter raised by officials)

Section DB 18AA of the Income Tax Act contains a simplified method for taxpayers to claim deductions for dual use (business/personal) premises. There is a technical problem with the formula used to calculate this deduction. The formula provides for the total mortgage interest and rates, or rent, for the property (premise costs) to be multiplied by the percentage of the building (for example, the house) used primarily for business purposes. The intent is for the building's curtilage (the land immediately surrounding the building) to effectively be disregarded when carrying out this calculation.

However, because "premises" are defined to refer only to a building, there is an issue as to whether the premise costs need to first be apportioned between the curtilage and the building, with only the portion attributable to the building then being apportioned under the formula between the building's business and personal use.

Therefore, section DB 18AA should be amended so that expenses do not need to be apportioned between buildings and curtilage. Officials note that where a house is on something like a farm, with land extending beyond the curtilage, the intent is for the expenses to be apportioned between the building + curtilage and the non-curtilage land before applying the formula.

The current formula in section DB 18AA(2) also assumes there is only a single building on the property. Accordingly, it cannot be applied literally where there are multiple buildings on the same property.

The policy intent is for the formula to work in the same way for multiple buildings on a property as for a single building. Therefore section DB 18AA should be amended so that, for multiple buildings, the area of each building on a property is added together to give a total combined building area (ignoring the curtilage). The fraction of business use should then be determined by dividing the total area used primarily for business purposes in all buildings by the total combined area of those buildings.

The amendments should apply retrospectively from the date section DB 18AA first came into effect (the section came into effect on 1 April 2017 with effect for the 2017–18 and later income years).

Recommendation

That the submission be accepted.

Issue: Section HG 11 – limited partnership loss limitation rule

Submission
(Matter raised by officials)

A limited partner (unlike an ordinary partner) is not legally liable for the debts of a limited partnership. To reflect this, a limited partner is prevented from claiming deductions for the losses of a limited partnership to the extent the losses exceed the partner's economic exposure to them.

The loss limitation rules technically limit a partner's share of the limited partnership's gross deductions, rather than its net losses. This is because a limited partnership, as a transparent entity, technically does not have net losses under the Act. The distinction between gross deductions and net losses is usually irrelevant. However. in some unusual circumstances, limiting a partner's gross deductions (instead of losses) can result in the partner being deemed to derive net income from a loss-making limited partnership.

Accordingly, section HG 11 should be amended to ensure that the loss limitation rules only deny a partner's share of the net deductions from a limited partnership (that is, the excess of the partnership's deductions over its assessable income) and cannot result in a limited partner deriving net income from a loss-making partnership.

The amendments should apply retrospectively from the commencement of the limited partnership regime (1 April 2008, for income years starting on or after 1 April 2008). The rules were only intended to limit losses from a limited partnership, and were never intended to result in additional net income arising. The rules were also described by Inland Revenue as limiting net losses in its explanatory material. This is also how the rules are generally understood as operating in the private sector.

Recommendation

That the submission be accepted.

BEPS REMEDIALS – CONSEQUENTIAL AMENDMENTS TO THE BINDING RULINGS PROVISIONS

Submission
(Matter raised by officials)

Officials recommend amendments to a number of binding rulings provisions to update cross references to new provisions added by the Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018.

These amendments would clarify that the Commissioner of Inland Revenue has the ability to issue binding rulings (advance pricing agreements) in relation to transfer pricing arrangements that involve applying the new rules for cross-border related borrowing.

Recommendation

That the submission be accepted.

STATUS OF THE COMMENTARY ON THE BILL

Submission
(KPMG)

KPMG submits that the Committee should make clear its view on the status of Commentary on a Bill to assist submitters with how much regard they should have to the Commentary when interpreting the provisions.

The submitter notes that in the Officials' Report to the Committee on the Taxation (Neutralising Base Erosion and Profit Shifting) Bill, officials made reference to the Commentary on that Bill in a number of circumstances indicating that commentary was "useful background" and authority for the policy intent. The submitter considers that it cannot be both and its status should not change depending on the submission being addressed.

Comment

The government started publishing tax bill commentaries in 1994 to accompany the introduction of a tax bill. The preface to the first such commentary – Commentary on the Taxation Reform (Binding Rulings and Other Matters) Bill stated:

> *The purpose of this commentary is to describe the policy intent of measures contained in the Taxation Reform (Binding Rulings and Other Matters) Bill. It has been prepared to assist those who wish to consider the contents of the bill, whether they are preparing a submission or simply want to know more about the proposed changes.*

The Minister of Revenue, Hon Wyatt Creech, in his first reading speech in respect of this Bill commented that "the commentary is a plain-language description of all the measures that are in the Bill."

It would appear that subsequent commentaries have not included such a statement. As indicated above, the commentary provides contextual background and information on the policy intent of the legislative proposal in the bill. The commentary's purpose is to assist those who are interested in the policy proposals in the bill in understanding that intent (at the time of introduction) and how it fits into the wider tax system, if appropriate.

The policy intent of provisions in a bill may change as a result of amendments made by Parliament during the passage of a bill through the Parliamentary process. Officials draft a *Tax Information Bulletin* item on the provisions in the bill following its enactment which explains the legislative amendments and their policy intent. Again this is to assist users of the legislation in understanding of the policy intent.

Recommendation

That the submission be noted.

DEBT FORGIVENESS

Clause 150

Submission
(Matter raised by officials)

The debt holders who qualify for "self-remission" should, like the ordinary debt remission rules, include people closely associated with the owner.

Comment

Two sets of new "debt remission" rules were enacted last year to ensure debt remissions did not produce taxable income in situations where there is no economic income. Both focused on cancelling debt remission income when there is no equivalent economic income when viewed from the perspective of the owner or the borrower.

In the general debt remission rule, close associates (for example, the spouse) of the owner could also be the person who remitted the debt. Clause 150 contains some minor technical amendments in relation to this rule.

In contrast, under the "self-remission" rule, the cancellation only applies when the owner remits the debt. "Self-remission" arises when a shareholder of a look-through company is also a creditor of that company and forgives that debt because the company is unable to repay it. The previous amendments ensured that the owner would not have taxable income as a result of the debt forgiveness, because the owner in their capacity of a creditor will have suffered an economic loss on the same loan that is non-deductible.

There is no reason why these rules should be different in their treatment of close associates of the owner. Officials recommend an amendment to the "self-remission" rule to widen its coverage to include debts forgiven by close associates of the owner. For this purpose, a close associate would be a relative (for example, a mother, father, child, brother or sister, a spouse or partner, grandchild, niece or nephew) or close friend of the owner; or a trustee of a family trust.

This amendment had been intended to be included as part of the proposed changes in the Bill, but was accidentally omitted. This proposed change is taxpayer friendly.

The debt holders who qualify for "self-remission" should, like the ordinary debt remission rules, include people closely associated with the owner. This amendment should apply retrospectively, to income years commencing 1 April 2011 onwards, the date from which the look-through company rules apply.

Recommendation

That the submission be accepted.

CORRECTION OF UNINTENDED LEGISLATIVE CHANGES ARISING FROM THE REWRITE OF THE INCOME TAX ACT

Clause 199

Submission
(Corporate Taxpayers Group, Deloitte)

The submitters raise a concern at a trend of rewrite remedials being included in tax bills with retrospective effect and no savings provisions.

Comment

Rewrite remedials are intended to restore the effect the law had prior to it being rewritten. This requires retrospective legislation.

In addressing such unintended legislative changes, officials check with operational staff to determine if Inland Revenue is aware if taxpayers are taking positions based on the rewritten provision containing the unintended change. In cases where there is no evidence that taxpayers have taken a tax position on the basis of the unintended change, officials aim to avoid increasing legislative complexity by introducing unnecessary savings provisions.

It is officials' practice:

- to rely on the select committee process to draw attention to cases that officials were unaware of where taxpayers have relied on the rewritten provision that contains an unintended change in law; and
- if necessary, to make appropriate recommendations for a savings provision to the Finance and Expenditure Committee.

Recommendation

That the submission be noted.

Schedule 1

Submission
(Matter raised by officials)

The Commissioner of Inland Revenue is currently permitted to share certain information with a "member of the New Zealand Police" under section 81(4)(z) of the Tax Administration Act 1994. This wording is also used in proposed new clause 29, schedule 7.

Under the Policing Act 2008, the term "member of the New Zealand Police" must be read as a reference to a "constable". Constables are Police employees who have taken the constable's oath (a sworn member).

The policy intent of section 81(4)(z) has always been to allow the Commissioner of Inland Revenue to disclose information to Police officers who have been authorised by the Commissioner of Police to receive the information. Often these officers will be in the Police's Financial Intelligence Unit (FIU) and will not be constables.

Officials recommend that the proposed clause 29 of schedule 7 be amended to ensure that the Commissioner of Inland Revenue may disclose information to authorised Police officers, whether or not they are sworn members.

Recommendation

That the submission be accepted.

HURUNUI/KAIKOURA EARTHQUAKE – ROLL-OVER RELIEF FOR OWNERS OF REVENUE ACCOUNT PROPERTY

Submission
(*Matter raised by officials*)

During discussions, KPMG noted that there is no roll-over relief in the income tax legislation for owners of revenue account property that is land and buildings affected by the Hurunui/Kaikoura earthquake in November 2016. This is not consistent with the tax treatment of owners of revenue account property affected by the Canterbury earthquakes in 2010–11 (section CZ 25 of the Income Tax Act 2007). Such roll-over relief ensures that property owners can defer (or roll-over) income tax liabilities arising from the receipt of insurance payments for irreparably damaged or abandoned buildings.

There was seen to be no need for such a provision when the Hurunui/Kaikoura earthquake provisions were implemented in 2017. However, officials are now satisfied with the evidence provided that such a provision is necessary. The provision would be justified on the same policy grounds as the equivalent Canterbury provisions – namely, tax provisions should not impede the post-earthquake recovery after a significant earthquake.

Officials recommend a new provision that allows the owners of revenue account property that is land and buildings affected by the Hurunui/Kaikoura earthquake in November 2016 the same roll-over treatment as for the owners of property affected by the Canterbury earthquakes in 2010–11.

Recommendation

That the submission be accepted.

HONORARIA PAYMENTS RECEIVED BY FIRE AND EMERGENCY VOLUNTEERS

Submission
(Fire and Emergency New Zealand)

Fire and emergency volunteers are reimbursed for their loss of income when they attend a training course administered by Fire and Emergency New Zealand (FENZ). These payments are treated as taxable "honorarium" under the Income Tax Act, and subject to withholding tax as a schedular payment. This current tax treatment results in additional compliance obligations for volunteers. Specifically:

- the requirement to file an income tax return for what is typically a relatively small amount of income; and
- the additional requirement of returning ACC levy on the amount is overly onerous.

While the proposals contained in this Bill may remove the requirement to file an income tax return for some volunteers, the proposed changes would not resolve the issue around the ACC levies.

The current tax treatment acts as a barrier to volunteering. As FENZ is already withholding tax on the payment, it would be more efficient to treat the payments as subject to PAYE so that ACC levies are also collected on behalf of the volunteers.

Comment

Officials generally support greater use of the PAYE system for the efficient administration of tax. PAYE minimises the non- or late payment of tax, and reduces compliance costs for the taxpayer. Where a large number of payees receive payments from the same payer, it is more efficient to impose the tax obligation on that one payer rather than on the many payees.

Applying one of the secondary tax codes under the PAYE rules normally deducts the correct amount of tax under our progressive tax rate scale. It would also ensure that relevant social policy payments are withheld at source, such as ACC levies, child support payments, and student loan repayments.

There is precedent for including certain payments as "salary and wages" under the Income Tax Act in circumstances where an employment relationship under general law does not exist. For example, certain payments under the Veterans Support Act 2014 are treated as "salary and wages" and therefore subject to the PAYE rules. Similarly, officials recommend that honoraria payments made under the Fire and Emergency Act 2017 should be included as "salary and wages" in the Income Tax Act.

However, officials do not consider that it would be appropriate for KiwiSaver obligations to be triggered by these payments. Consequential amendments should be made to the KiwiSaver Act 2006 to ensure that honoraria payments made to FENZ volunteers do not impose KiwiSaver obligations on FENZ.

Recommendation

That the submission be accepted, subject to officials' comments.

USE OF DEFINED TERMS IN THE TAX ADMINISTRATION ACT 1994

Submission
(KPMG)

Unlike the Income Tax Act, the Tax Administration Act 1994 does not note whether a section includes a defined term. Given the addition of a significant number of definitions, it would aid interpretation if, at least, the amended sections to the Tax Administration Act noted defined terms.

Comment

Officials consider using defined terms in the new provisions, but not throughout the Act, is a consistency issue which could cause confusion. Officials also consider that the benefits of incorporating defined terms in each provision throughout the Tax Administration Act 1994 would need to be weighed up against other work programme priorities.

Recommendation

That the submission be declined.

Issue: RWT exemption certificate – transitional issue

Submission
(Russell McVeagh)

The submitter suggests that a transitional provision should be enacted to preserve the effect of legal documents that refer to an "RWT exemption certificate" in circumstances where, from 1 April 2020, such certificates will be replaced with "RWT-exempt status".

Comment

From 1 April 2020, the concept of an "RWT exemption certificate" will be replaced with "RWT-exempt status". Under the new rules a person will not be issued with a RWT exemption certificate, but if they meet the requirements of RWT- exempt status they will be added to an electronic register of persons with that status.

Given that there is a practice in New Zealand of lenders providing representations and undertakings in respect of RWT exemption certificates in loan documentation, officials agree that it makes sense to preserve the effect of such provisions as a transitional measure. This prevents the need to update such documentation to refer to RWT-exempt status.

Recommendation

That the submission be accepted.

Issue: Non-resident contractors exemption certificate – transitional issue

Submission
(Matter raised by officials)

A transitional provision should be enacted to preserve the effect of legal documents that refer to an "exemption certificate for schedular payments" in circumstances where, from 1 April 2020, such certificates will be replaced with "exemptions".

From 1 April 2020, the concept of an "exemption certificate for non-resident contractors" will be replaced with an "exemption for non-resident contractors".

It makes sense to preserve the effect of provisions in documents that refer to exemption certificates as a transitional measure. This prevents the need to update such documentation to refer to an "exemption".

Recommendation

That the submission be accepted.

Issue: RWT exempt status database – transitional issue

Submission
(Matter raised by officials)

Investment income payers preparing to implement the investment income changes included in the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018 have requested earlier access to the exempt status database. This request has been made so that they can ensure that their systems can access and apply the information from the database before it becomes a legal requirement to do so. Officials agree that this is necessary and propose a transitional provision to allow the Commissioner to make the exempt status database available before 1 April 2020.

Recommendation

That the submission be accepted.

Issue: Country code requirement in relation to NRWT recipients

Submission
(Matter raised by officials)

Section 49(2) of the Tax Administration Act 1994 required every NRWT withholding certificate to include the country code of the recipient. This requirement was not carried over when Schedule 6 was inserted with the enactment of the Taxation (Annual Rates for 2017-18, Employment and Investment Income, and Remedial Matters) Act 2018. This means that the requirement to include the recipient's country code in a NRWT certificate is no longer in the law. As different countries have different withholding rates (set out in the double tax agreements between New Zealand and each country), it is important to know the appropriate rate at which to withhold. A remedial amendment is proposed to reinstate this requirement into schedule 6.

Recommendation

That the submission be accepted.

SUSPENDING THE DISPUTES PROCESS PENDING THE OUTCOME OF A TEST CASE

Clause 57B

Submission
(Matter raised by officials)

Officials recommend an amendment to section 89N(1)(c)(ix) of the Tax Administration Act 1994 to make it clear that the disputes process (outlined in Part 4A of the Act) can be suspended pending the outcome of a test case.

The provision as currently worded allows for the suspension of "proceedings" in a dispute pending the outcome of a test case, which arguably does not allow for the suspension of the disputes process. This is because the definition of "proceedings" does not include the disputes process outlined in Part 4A of the Act and instead refers only to a challenge or objection (pursuant to Parts 8 and 8A of the Act) commenced before a hearing authority.

The provision is intended to allow for the disputes process to be suspended pending the outcome of a test case, provided the taxpayer and the Commissioner agree, and record their agreement in a document.

Recommendation

That the submission be accepted.