



New Tax Bill, new Act

Snapshot

Out with the old, in with the new. The Government has followed up enactment of the **Taxation (Neutralising Base Erosion and Profit Shifting) Act** (which received Royal Assent on 27 June 2018), with the introduction of the **Taxation (Annual Rates for 2018-19, Modernising Tax Administration and Remedial Matters) Bill**.

The new BEPS Tax Act contains various rules that will impact NZ businesses with cross-border dealings. These changes generally apply from income years beginning on or after 1 July 2018. Those with a June balance date should take particular note.

The new Tax Administration Tax Bill further progresses Inland Revenue's *Business Transformation* objectives. The main focus is on how individuals will interact with the tax system. The new Tax Bill also contains:

- A new binding rulings option for smaller taxpayers and extends the scope of the binding rulings regime more generally.
- New information collection, use and disclosure rules for Inland Revenue.
- New thresholds for correcting errors in subsequent returns and extension of the Commissioner's administrative power to address minor legislative anomalies.
- KiwiSaver changes, including new contribution rate options.

The passage of the BEPS Tax Bill (and the Multilateral Instrument) marks a significant milestone for New Zealand

The BEPS changes will have immediate effect for some

The new Tax Administration Bill continues the tax administration system transformation journey

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Base Erosion and Profit Shifting (“BEPS”) Tax Act

BEPS Tax Bill passes

The BEPS Tax Bill is now law (the BEPS Tax Act). In a nutshell, this means:

- New interest rate setting rules for inbound related-party debt requiring rates to generally be based on the group credit rating, rather than the standalone NZ borrower.
- NZ taxpayers, rather than Inland Revenue, will have to justify their transfer pricing positions. Inland Revenue will also have 7 rather than 4 years, after the year of filing, to finalise a challenge to those positions.
- Sales by non-resident multinationals to NZ customers will be taxable if there is NZ facilitation of those sales and New Zealand and/or foreign tax avoidance. The rule only applies if NZ’s DTAs do not have up to date “permanent establishment” provisions (see below).
- Income will be taxed and deductions denied depending on the foreign tax treatment of these amounts. This will be relevant for transactions or entity structures with different tax classifications in NZ and overseas.

Multilateral Instrument to change NZ’s DTAs in force

The Multilateral Instrument (MLI) is now officially in force in New Zealand. The MLI updates NZ’s DTAs, where both NZ and the other country have chosen the relevant DTA to be a covered agreement. Particular provisions, including the “permanent establishment” article, will be modified depending on how NZ and the other country have agreed that their DTAs will be changed. The first DTAs to be updated are those with Poland, Sweden and the United Kingdom. Others will be updated progressively as countries complete their domestic processes for implementing the MLI.

Inland Revenue guidance on operation of the new rules

These changes are complex and potentially confusing. Further Inland Revenue guidance on the operation of these BEPS changes is expected in August.

Why you should care

These rules have effect from 1 July for those with June balance dates and from the start of the next income year for others. This does not give much time for affected businesses to plan ahead, including making any changes to funding and operational structures to comply.

New Tax Administration Act Bill

Individuals interacting with the tax system

The new Tax Bill is aimed mainly at supporting, legislatively, the next stage of Inland Revenue’s *Business Transformation* – how individuals interact with the tax system. The proposed changes include:

- A new income tax assessment model for individuals:
 - o End of year refunds or tax to pay will be calculated and assessed, with the refund or tax bill issued automatically if Inland Revenue considers the income information it holds about you is correct.
 - o You will have to provide additional information or confirm the information held is complete, if Inland Revenue considers you may have other taxable income (e.g. overseas income) or it has little or no taxable income information for you.

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- Rules supporting updating and confirming taxable income information electronically, with information held by Inland Revenue pre-populated in tax accounts. The donations tax rebate will also be incorporated into the new system. Receipts can be submitted during the year electronically.
- Enabling Inland Revenue to contact individuals about their tax rates and tax codes, including correcting unsuitable tax rates if there is no response.

Information collection, use and disclosure by Inland Revenue

These changes:

- Amend the current “tax secrecy” rule to more clearly focus on information that identifies or could identify a taxpayer, reveals private or commercially sensitive/confidential information, or which could result in loss, hardship or prejudice to the person to whom it belongs.
- Contain a Government regulation making power to govern the repeat collection of third-party data sets by Inland Revenue.
- Clarify that information collected by Inland Revenue for one purpose can be used for any other purpose (consistent with the Commissioner’s functions and obligations to administer and maintain the integrity of the tax system).

Accessibility of binding rulings

- A new “short process” ruling option, with lower fees, will be available for taxpayers with gross income of less than \$5m or where the tax at stake is less than \$1m. This simplified option would, for example, omit the need to set out the tax law and propositions which apply and require only the general tax outcome sought to be stated.
- For binding rulings generally – removing the prohibition on ruling on a taxpayer’s purpose for entering into a transaction (e.g. purpose of resale at time of acquisition) and allowing factual questions (such as tax residence status) and financial arrangements issues (for which determination must currently be issued) to be ruled on.

Amending errors

The new Tax Bill allows errors to be corrected in a subsequent tax return, if the total amount of errors for the relevant return are equal to or less than \$10,000 and 2 percent of the tax or GST liability and due to a clear mistake, oversight or misunderstanding. There is a \$1,000 threshold for automatic correction in other circumstances.

Extension of “care and management” power

The new Tax Bill also extends Inland Revenue’s “care and management” role to address gaps or inconsistencies in the legislation that do not reflect the clear policy intent of a provision. The additional tools proposed are:

- an Order in Council recommended by the Minister of Revenue;
- a Commissioner determination of the tax treatment; or
- a Commissioner administrative action to notify a tax treatment, exempt a class of taxpayers, remove a compliance obligation, or validate an administrative practice.

KiwiSaver changes

The new Tax Bill introduces a number of changes to KiwiSaver:

- introducing additional contribution rates of 6% and 10%;
- reducing the maximum contributions holiday period from five years to one year;
- changing the name of the “contributions holiday” to “savings suspension”;

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- allowing over 65 year olds to opt-in to KiwiSaver; and
- removing the “lock-in period” (which currently affects members who join KiwiSaver between the ages of 60 and 65).

Some initial thoughts on the new Tax Administration Act Bill

The new Tax Bill contains a mix of proposals to further support Inland Revenue’s *Business Transformation*, enhance its ability to collect, disclose and use information, make the process for binding rulings and correcting errors more “user-friendly”, and to allow administrative flexibility to deal with minor legislative anomalies and gaps.

These measures were consulted on in various previously released documents. In the main, they represent some useful enhancements to the tax administration system.

The proposed changes to individuals’ year-end tax assessment processes reflects both the shift in user preferences and better access to income information, as a result of technology. A case of the tax system keeping up with the times.

However, at a technical level, the proposals represent a “middle ground” between minimising touch points and full self-assessment. It also raises the question whether there are civic benefits that outweigh the private benefits. If all New Zealanders have to confirm their income annually, does that mean they will have a greater appreciation of the tax they pay and what those taxes fund? There are trade-offs.

The amended information collection, disclosure and use provisions will inevitably raise questions (and some concerns) about potential overreach and misuse. The new Tax Bill does contain some important safeguards. We can see the benefits, for example, from the tax secrecy provisions being applied in a more sensible manner. The current restrictions appear to be self-imposed as well as inconsistently applied. A law change is required to change Inland Revenue’s approach.

There are arguments for and against the proposed extension of the Commissioner’s “care and management” role. There is a strong argument that administrative flexibility is critical to ensuring the system operates efficiently and does not unduly penalise taxpayers. Particularly in a reality where some complex tax changes will have ongoing remedial amendments. On the other hand, the concern will be if the Commissioner is seen as usurping the role of Parliament in making tax law and the power derogates from the discipline of getting the law right the first time.

The changes to make the binding rulings regime more accessible are welcome. Some of the current restrictions make it difficult for taxpayers to gain certainty.

The KiwiSaver changes are in response to recommendations from the Retirement Commissioner in 2016.

KPMG R&D tax credit seminars in July

In late July, KPMG will be holding seminars around New Zealand to go into further detail on the Government’s R&D tax credit reforms, the implications for your business and how to be ready from day one. The locations and dates are:

- Hamilton, *Tuesday 24 July 2018*
- Christchurch, *Wednesday 25 July 2018*
- Auckland, *Thursday 26 July 2018*
- Tauranga, *Friday 27 July 2018*

If you would like further information on these seminars, or the R&D tax credit regime, please contact your regular KPMG advisor or our National R&D team, Gwen Riley (gwenanriley@kpmg.co.nz) or Byron Theunisen (btheunisen@kpmg.co.nz).

Further information

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