



A pre-Easter legislative rush brings some welcome amendments and clarifications to the RLWT and GST proposals

However, the RLWT is still to proceed and the GST remote services changes have not been delayed

Both will require early assessment so that implementation can follow enactment

2015 Tax Bills reported back

Snapshot

Two 2015 Tax Bills have been reported back from the Finance and Expenditure Select Committee of Parliament with a number of changes:

- The **first** applies GST to non-resident supplies of “remote services” (e.g. digital content) to NZ consumers and a Residential Land Withholding Tax (RLWT) on the sale of NZ land within 2 years by “offshore persons”.
- The **second** introduces a framework for information sharing and taxpayer communication under Inland Revenue’s Business Transformation proposals and new rules for deducting tax on Employee Share Scheme benefits.

A couple of changes stand out and are discussed in our detailed analysis:

- Land developers that are offshore persons may be able to apply for an exemption certificate from the RLWT. This is a welcome change.
- An offshore person will not need a New Zealand bank account, to get an IRD number, if they have already been subject to New Zealand Anti-Money Laundering (AML) verification or are non-resident suppliers registering solely for GST. While this addresses some of the concerns, it highlights the unintended consequences of legislating these changes in haste last year.

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What changes have the Select Committee recommended?

The Select Committee's changes are summarised in the tables below. Refer our earlier taxmails (1/2) for the detailed proposals in the Tax Bills as introduced.

Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill

Tax Bill as introduced	Tax Bill as reported back
Residential Land Withholding Tax (RLWT)	
A NZ company, trust or partnership is an "offshore person" if a shareholder/director, beneficiary/trustee/settlor, or partner is an offshore person.	The definition for RLWT purposes has been better aligned with the Overseas Investment Act definition. An offshore RLWT person will include: <ul style="list-style-type: none"> • A company with more than 25% control or ownership by shareholders or directors who are offshore persons. • A trust with more than 25% offshore person trustees or offshore persons with the power to appoint or remove a trustee. The circumstances of a beneficiary may also taint a trust. • A partnership with more than 25% of interests held by general or limited partners who are offshore persons.
Land developers that are offshore persons are caught by the RLWT if sales are within 2 years of acquisition.	An RLWT certificate of exemption will be available if: <ul style="list-style-type: none"> • The seller is a land developer with a good two year New Zealand tax history or they pay a bond; or • An offshore person is selling their "main home".
Interim returns can be filed to receive refunds of RLWT.	RLWT can be repaid by Inland Revenue if it would result in over-taxation, RLWT was not applicable, or the seller has sufficient tax losses. However, excess RLWT can be used by Inland Revenue to first meet any outstanding tax obligations.
The withholding agent needs to confirm the offshore person status of the seller.	A NZ director, trustee or general partner will need to verify that the relevant entity is not an offshore RLWT person.
RLWT deducted by an associated purchaser needs to be held in a separate bank account.	The separate bank account requirement has been removed.
Withholding agents are subject to penalties for non-compliance (e.g. for late payment of RLWT)	Withholding agents will: <ul style="list-style-type: none"> • Not be liable for penalties if they relied on "reasonable grounds" on information provided by the vendor. • Also be subject to late filing penalties.
GST on remote services	
Fixed-term contracts spanning the date of introduction will be subject to the new rules.	A contract will be "grand parented" for the shorter of the term of the contract or 396 days.
"Electronic marketplace" is defined in the GST Act.	Inland Revenue can approve other forms of "marketplace" (e.g. for insurance services).
B2B supplies can be zero rated by mutual agreement.	An offshore supplier can unilaterally zero-rate a B2B supply. (This impacts the supplier's ability to claim input tax.)
GST registration is required if making supplies of more than NZ\$60,000 in a 12-month period.	<ul style="list-style-type: none"> • Any fair and reasonable currency conversion method can be used to determine the value of NZ supplies, for registration threshold purposes.

	<ul style="list-style-type: none"> The total supplies made in a period can be converted at the exchange rate on the last day of that period, or using another Commissioner approved method, for GST return purposes. (This will be subject to a 24 month consistency requirement.)
Bank account requirement for offshore persons	
Offshore persons need a fully functional NZ bank account to apply for an IRD number.	<p>A NZ bank account is not required, for IRD number purposes, if:</p> <ul style="list-style-type: none"> An offshore person has already been subject to AML verification by a New Zealand financial institution (such as a NZ bank); or The application is solely because they are a non-resident supplier for GST purposes.

Taxation (Transformation: First Phase Simplification and Other Measures) Bill

Tax Bill as introduced	Tax Bill as reported back
Employee Share Schemes	
Employee share benefits are subject to PAYE in the pay period the benefit is paid.	The employee is treated as deriving the income in the subsequent pay period. PAYE will follow accordingly.
Employee Share Schemes and share benefits paid are subject to the new rules from 2017/18	<p>The new rules apply retrospectively, from 1 April 2008, if an employer has deducted PAYE on share scheme benefits during this period.</p> <p>The new rules, including disclosure of share benefits, would not apply to share purchase schemes approved by the Commissioner. The disclosure requirements will not apply to:</p> <ul style="list-style-type: none"> Income arising from a disposal of shares to a third party under a share purchase agreement; and Share benefits provided to former employees (unless PAYE is deducted).
Business Transformation – information sharing / communications framework	
The rules facilitate electronic communication with taxpayers, support co-location and information sharing between Inland Revenue and other Government agencies.	<p>The reported back Tax Bill:</p> <ul style="list-style-type: none"> Clarifies the meaning of common verbs used in the legislation to support digital communication (such as “notify”, “request” and “inform”). Allows the transfer of information to a taxpayer’s software intermediary without breaching taxpayer secrecy. Requires the Minister of Revenue to be informed when biometric information is shared. Requires Inland Revenue employees to take reasonable care when communicating information in a co-located environment.
ASX-listed Foreign Investment Fund exemption	
The requirement to be listed on an “approved index” of the ASX is removed from 2016/17.	The application date of this change has been deferred to 2017/18.

Our view

General comments

The Officials Report and the Select Committee Report devote many pages to defending the integrity of the RLWT. Our view remains that this is a costly exercise that will bring in little, if any, tax.

The RLWT will be collected from certain offshore persons who must sell within 2 years. When applied to New Zealand entities, who are already in the tax net, the RLWT would only marginally bring forward the collection of tax. Provisional tax would apply in any case. For companies with a New Zealand or Australian director, as required by the Companies Act, Inland Revenue would appear to have adequate powers to enforce payment.

Nonetheless, the Tax Bill's apparently imminent passage by Parliament means that the RLWT must be complied with, if applicable, once enacted.

There are a number of detailed amendments to the GST on remote services rules. Those that impact particularly gambling, insurance and zero-rating of business-to-business (B2B) supplies will require review for their effect.

Officials and, ultimately, the Select Committee were unconvinced by submissions that 1 October 2016 is too early a start date for the new rules. This is despite the fact that Inland Revenue's own systems will not be ready in time. This is disappointing.

Again, there is little choice but to understand the changes and to take steps to comply.

The Select Committee's amendments to the second Tax Bill, to support Inland Revenue's Business Transformation communication and information sharing framework and to update the rules for deducting tax on Employee Share Scheme benefits are largely welcome.

Specific comments

The Select Committee has recommended two changes which are worth highlighting.

RLWT for land developers

The draft legislation applied the RLWT to all sales by offshore persons within 2 years of acquisition. This captured offshore land developers as well as New Zealand developers that are offshore persons. This would have resulted in significant over-taxation as the RLWT does not take into account costs of improvements to the land.

Our preferred approach was a general exemption for those already taxed as land developers, etc. The Select Committee recommended a certificate of exemption approach instead. While this should achieve the intended outcome, new developers will need to pay a bond. They will not have the requisite good New Zealand tax history to claim an exemption certificate.

Bank account requirement for offshore persons

Last year's [land information tax rules](#) required a fully functional NZ bank account before an offshore person could get an IRD number. This requirement applies whether or not the offshore person is buying or selling land.

This rule has created delays and prevented offshore persons from complying with their tax obligations. KPMG and others made submissions calling for a more sensible approach.

The Select Committee changes go part of the way to addressing those concerns. An existing New Zealand AML verification or registering solely for GST purposes will mean that a NZ bank account is not required. (There is also temporary relief proposed for non-resident seasonal workers.)

We believe that limiting relief to a New Zealand AML verification significantly reduces the benefit of this amendment. This will only be carried out on new account openings. It would have been much more helpful if an offshore person were able to provide evidence of their foreign AML compliance. As AML is a global standard, foreign AML verification should be acceptable. Inland Revenue could use the information provided to the foreign financial institution to assist with satisfying any exchange of information obligations.

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The carve-out from the NZ bank account requirement for non-resident suppliers registering for GST is welcome. Non-residents with essentially “one-off” supplies are being told that they need a local bank account to register to pay the GST, when they have no need for such an account. This will address that issue. However, from the legislative wording, it is not clear whether a non-resident registering to claim GST input tax would qualify (as they may not be non-resident suppliers).

The Select Committee report also notes that “*Officials have undertaken to continue to work on solutions, whether legislative or operational, for some of the other practical difficulties and unintended consequences*”. This needs to be progressed as a matter of priority. It highlights the consequences of legislating these requirements in haste last year.

For further information

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