

## NEWSLETTER

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### 'New builds' discussion document

Since the Government's announcement in March, regarding the tax deductibility of interest on residential investment properties and the extension of the bright-line period to 10 years, investors have been waiting for more detail on the new rules.



On 10 June 2021, Inland Revenue released a 143 page discussion document titled "Design of the interest limitation rule and additional bright-line rules", which provides further clarification on the proposed rules and seeks feedback on certain elements.

In March it was signalled that 'new builds' would be exempt from the changes, i.e. interest would remain tax deductible and the brightline period would remain at 5 years. Hence, the detail surrounding what comprises a 'new build' has been eagerly anticipated.

Based on the content of the discussion document, to comprise a new build, a code of compliance certificate (CCC) must have been issued on or after 27 March 2021.

The discussion document reveals three categories that new builds can fall under. The first is a simple new build, where one or more self-contained dwellings are added to bare residential land. This also applies to relocated and modular homes, or where an existing dwelling is replaced. The second is a complex new build. This is where one or more self-contained dwellings are added to residential land that already has an existing dwelling on it, without separate title being issued for the new build portion of the land. This includes adding standalone dwellings, attaching new dwellings into existing dwellings and splitting existing dwellings into multiple dwellings. Finally, commercial to residential conversions are also considered new builds.

However, before you can take advantage of the new build exemption, you must also be an 'early owner'. This is someone who acquires a new build either before the CCC is issued or no later than 12 months after it is issued.

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The Government is also considering whether subsequent purchasers of a new build can continue to deduct interest and for how long. There are three options:

- In perpetuity for early owners.
- In perpetuity for early owners and a fixed period for subsequent purchasers.
- For a fixed period for both early owners and subsequent purchasers.

There are a number of questions yet to be resolved. For example, if the sale of a residential house is taxable under the brightline test, can past non-deductible interest be deducted against the profit?

Consultation closed on 12 July 2021; therefore, we expect to see a bill introduced to Parliament soon. Given the content of the discussion document, we expect the legislation will be complex. This is a concern, given the wide reach of who the new rules will apply to.

## The 'ute' – Kiwi icon or tax dodge

Recently, there has been a large volume of media attention being directed to the 'ute' and it has become a focal point of protest action against the Government.



The Government announced the "Clean Car Discount" scheme in June, which from 1 July until 31 December 2021 will see purchasers of imported electric vehicles receive a rebate of \$8,625 for new vehicles, and \$3,450 for used vehicles. Purchases of new and used hybrid vehicles will also be eligible for a rebate of \$5,750 and \$2,300, respectively.

There are various additional requirements – for example, the vehicle must have a purchase price of less than \$80,000, a safety rating of at least three stars and must be registered for the first time in New Zealand between 1 July 2021 and 31 December 2021.

From 2022, subject to legislation being passed, it is proposed that the amount of the rebate will be based on the CO2 emissions of the vehicle. The rebate will be funded by the introduction of a fee imposed on high emission vehicles (such as some utes) from 2022. It is proposed that a maximum fee of \$5,175 and \$2,875 will be imposed on new and used imported vehicles, respectively. The exact fee will be based on the CO2 emissions of the vehicle. The policy will only apply to new and used cars arriving in New Zealand from 1 January 2022 – hence the second-hand market of existing high emission vehicles will not be impacted.

The Government has also confirmed that the value for FBT purposes for employers purchasing vehicles

that are available for private use by employees, will be either net of the rebate (if an electric or hybrid vehicle), or gross of the fee (if a high-emission vehicle).

Speaking of FBT, the ute has received another blow...

If a 'company vehicle' is provided for home to work travel, FBT is likely to apply unless it is a "work-related vehicle". In order to qualify as a "work-related vehicle":

- the employer's name or logo must be permanently and predominantly displayed; and
- the vehicle must not be principally designed to exclusively or mainly carry passengers.

If a vehicle does qualify as a work-related vehicle, FBT will not apply to a particular day if it cannot be used privately, except for home to work travel that is necessary in and a condition of employment; or other travel that is incidental to business use.

Because sedans and hatchbacks & SUV's are designed to carry people they don't qualify as work-related vehicles unless they are specifically modified to qualify. Anecdotally, this might explain the high number of sign-written utes on NZ's roads...

It now appears Inland Revenue may be directed to crack down on the application of FBT to utes and enforce the view that they may not qualify as a work-related vehicle.

It does appear the Government is saying 'it's not me, it's you' to the ute.

## Paid parental leave for who?

Earlier this month, the Government released Budget 2021. Included in the budget was a boost to all main benefits, including an increase to paid-parental leave.

From 1 July 2021, eligible parents will be entitled to a maximum of \$621.76 a week (before tax), an increase of 2.5% on the prior rate of \$606.46.

While the monetary increase is no doubt welcomed, a recently released UNICEF report suggests that New Zealand's child-care policies remain inferior among OECD countries. The report ranks New Zealand in the bottom third of "rich countries" after accounting for the duration of paid leave available, access, quality and affordability of childcare.

Despite the report being based on 2018 data, hence not accounting for subsequent increases in paid parental leave available in New Zealand (18 weeks to the now 26), New Zealand is still significantly off the pace, with the average length of paid leave across OECD countries nearing 55 weeks.



The report also hints that internationally there are inequalities in maternity and paternity leave, suggesting that whilst leave typically provided to fathers is significantly shorter, it is also often paid at a higher rate. At a time where work environments are ever-changing, alongside the diversifying role of parents, a global push for parental policies that adequately reflect the changing environment are increasing.

The introduction of France's revived paternity leave policy came into effect on 1 July. It provides 28 days paid leave to fathers, or second parents, of both biological and adopted children. The initiative comprises 3 days of birth leave funded by the employer and an additional 25 days paid by the state, 7 of which are mandatory. Employers that fail to acknowledge the 7 mandatory days are liable for fines of up to €7,500. Global firm Cyient also recently announced their gender-neutral parental leave policy. The policy provides parents of any gender, up to 12 weeks paid time off at their full pay. The policy applies equally to birth and adoptive parents.

Closer to home, 2degrees recently committed to topping up government contributions up to 100% of an employee's base salary for the 26-week paid period.

Despite many additional examples of more extensive parental leave policies being put in place, it is unclear how effective the new initiatives will be, particularly amongst new fathers.

Japan currently offers one of the lengthiest paternity leave policies, with fathers entitled to up to one year of leave following the birth of a child. Yet, in 2019 only 7.48% of men working in the private sector took paternity leave compared to 83% of women; and in some ways it's not hard to see why. Historically, parental leave initiatives have been solely based on women being the primary caregiver, with parental leave for men an afterthought.

Maternity leave for the private sector wasn't legislated in New Zealand until 1980 and it wasn't until 7 years later that the Act was extended to include men, giving them exclusive use of two weeks of unpaid leave. In contrast to the global shift towards gender neutrality, men in New Zealand technically still have no entitlement to paid parental leave in their own right, although they may be entitled should the mother transfer hers.

It is evident that countries and corporations alike are seeking to advance parental leave policies, however, the uptake rates are likely to remain influenced by societal and corporate expectations surrounding caregiving. Nevertheless, the introduction and revision of policies by numerous global players has undoubtedly started a broader conversation which seeks to challenge entrenched traditional gender roles.

## Cryptocurrencies – Are they on your radar?

Cryptocurrencies have been garnering worldwide attention recently, particularly with Bitcoin's dramatic rise to over NZD\$90,000 for a Bitcoin in April 2021, and its subsequent 50% crash through May and June.

Other cryptocurrencies, deemed 'altcoins', have also seen similar price volatility. These coins adopt the same principles as bitcoin, with slight changes and tweaks to differentiate them. 'Dogecoin', featuring a dog as its logo, saw a 12,000% increase this year, propelled by tweets from Tesla founder Elon Musk.

Clearly, some people are making large amounts of money in this space, and the Inland Revenue does not want to miss out on its share. Inland Revenue has released various forms of guidance on the topic of 'crypto-assets', which encompasses cryptocurrencies. Crypto-assets is defined as "cryptographically secured digital representations of

value that can be transferred, stored or traded electronically."



Effectively, cryptocurrencies provide a decentralised platform for transactions to take place. Each holder of the cryptocurrency has a ledger on their computer which updates as transactions take place. This network of ledgers is referred to as a 'blockchain'.

There is no one central entity, as the system relies on each ledger agreeing in order to verify transactions. This bodes well for security, as hacking the ledger on one computer will not affect the blockchain as a whole.

This process allows for cryptocurrencies to be used as an alternative form of currency, without the need for government monitoring or intervention. Bitcoin transactions are confirmed through a computationally intensive process called 'mining'. Those who are willing to invest in the hardware to 'mine', are

rewarded with bitcoins over time, adding to the overall supply of bitcoins. The supply of bitcoins is limited to 21 million, with 18.7 million currently in circulation. The last bitcoin is expected to be mined in 2140.

The tax guidance on crypto-assets is varied and somewhat contradictory. In general, crypto-assets are treated as a form of property for tax purposes. Individuals are liable for tax in the following circumstances:

- acquiring crypto-assets for the purpose of disposal,
- trading in crypto-assets, and
- using crypto-assets for a profit-making scheme.

However, when salary, wages or bonuses are paid to an employee in the form of crypto-assets, PAYE applies. Furthermore, FBT may apply if employees

are offered conditional crypto-asset payments by a company that issues crypto-assets. This leaves a situation where the IRD is treating crypto-assets as either property or currency depending on the situation. This is not surprising given the complexity and varied nature of crypto-assets; making an all encompassing treatment near impossible. For this reason, Inland Revenue is also proposing that the GST and financial arrangement rules do not apply to crypto-assets.

This year El Salvador made bitcoin legal tender, and we are seeing more stores accept cryptocurrency as payment. However, the extreme volatility associated with crypto-assets makes their use as a currency unreliable for the time being. Clearly, the market is not to be underestimated and we can expect further guidance from Inland Revenue as things evolve.

## Snippets



### Olympic pandemic

The 2021 Olympics were like no other. It is the first ever Olympics to have been postponed. Previously, two Olympics were cancelled during the two world wars, but never postponed. It is the first-time karate, surfing, climbing and skateboard have featured, and baseball and softball return after a 13-year absence.

It was also the first time the Olympics took place during a pandemic, meaning athletes had to adjust to daily COVID tests, no spectators, only being in the Olympic Village for 5 days before and 2 days after their event, and if the athlete caught COVID, their Games were over.

If the Olympics were not already expensive enough, hosting the Olympics during a global pandemic made it more so. The postponement added additional costs including renegotiating new venue leases, maintaining arenas, managing the fact that some of the 5,632 apartments making up the Athletes Village had already been sold, and additional costs in terms of COVID protocols.

Before it was announced that no spectators would be allowed at the games, ticket demand exceeded supply by 10 times, which was expected to raise \$1 billion for local organisers. This will also hit the hospitality sector and is estimated to result in an additional loss of \$1.4 billion. The latest Olympic budget sits at \$15 billion, which is up 22% from the budget before the postponement and more than twice the estimated budget presented when Tokyo won the bid for the Olympics in 2013.

Let's just hope it doesn't also get looked back on as being a multi-national super spreader event.

### Self-employed meals

If an individual operates as a sole-trader, as opposed to trading through a company, it allows for a simplified structure with fewer formal set up tasks (and costs) and greater flexibility and control. However, differences can arise in how the income and expenditure of a sole trader is calculated, compared to a company.



Tax deductible meal allowances is one such difference, where these can be paid by an employer to an employee, whilst self-employed taxpayers may not be able to deduct meal expenses.

In July Inland Revenue released a 37-page Interpretation Statement, IS 21/06, that discusses the income tax and GST treatment of meal expenses and draws out this distinction. It provides that the reason for this difference is because meal expenditure for a self-employed individual is of a private nature, and therefore non-deductible. This difference in tax treatment reflects the different legal arrangements between a company and a self-employed person.

Before presuming there is an advantage to be sought, consideration should also be given to whether the benefit to the employee could be captured as a taxable benefit and subject to PAYE or FBT.

*If you have any questions about the newsletter items, please contact us, we are here to help.*