Tax Update May 2023

The Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill (No 2) (“**the Bill**”) was originally introduced in September last year. After a number of submissions and re-writes this bill has finally received royal assent.

Key changes

- New “GST Marketplace rules” requiring accommodation and ride-sharing platforms to charge GST on behalf of the underlying supplier regardless of their GST registration status.
- Simplification of the GST apportionment rules.
- New “rollover relief” under the bright line and interest limitation rules.
- New exclusion from the interest limitation rules for build-to-rent properties.
- New FBT exemption for providing public transport to employees.
- More trusts can now elect to be ‘non-active’ and therefore excluded from the trust disclosure rules.

GST Marketplace rules

Applies to **listed services** (Airbnb, Uber, food delivery, etc).

Current rules

The marketplace charges GST on its fees to list a particular item, ie a Bach listed on Air BNB. Whether GST applies to the underlying supply then depends on the GST registration status of the supplier.

New rules (from 1 April 2024)

The marketplace will now be required return GST on the entire supply (regardless of whether the supplier is GST registered or not).

GST registered supplier - Makes a deemed supply to the marketplace which will be zero-rated and will be entitled to a GST input claim for associated expenses.

Non-GST registered supplier - Entitled to claim a credit under a new “flat credit scheme”. For example, Air BNB returns GST on the letting of a property on its website and includes 8.5% of the rental income as an input tax credit in its GST return which is then passed onto the unregistered supplier.

GST apportionment rules

The following changes have been made to simplify the current GST apportionment rules:

- Introduction of a new "principal purpose test" for goods and services with a GST exclusive cost of $10,000 or less. This allows for a full input tax claim on certain assets purchased for the principal purpose of making taxable supplies.

- Can now elect to treat the supply of certain goods as exempt from GST. This is aimed at goods, for example land, that have not been acquired for the principal purpose of making taxable supplies and are mainly used privately. This change applies retrospectively from 1 April 2011.

- New transitional rule for certain goods acquired before 1 April 2023 allowing taxpayers to elect to remove their property from the GST net by paying back any GST that has previously been claimed on the "exempt" portion of the supply. For example, where land was acquired as zero rated but should have been apportioned between taxable/exempt use. In this case a nominal GST amount is calculated on the portion of the land used privately and this should be paid back to Inland Revenue.

- Now a 10 year cap on the annual private use adjustments currently required to be made for land.

- Where there is a permanent change of use adjustment made for an asset (ie 100% taxable to non-taxable or vice versa) this can now be made in the year the change took place (instead of over 2 years). This change no longer needs to be 100%.

Bright-line and interest limitation rollover relief

The current bright-line rules operate to tax the sale of land brought and sold within a certain period (currently 10 years for land acquired on or after 27th March 2021 and 5 years for land acquired on or after 29th March 2018 but before 27th March 2021). Unless an applicable exclusion applies for transfers relating to death, relationship property settlements or the family home.

Important changes have been made to these rules and the interest limitation rules to allow certain transfers to qualify for "rollover relief" meaning the original bright line acquisition date will be preserved.

The changes allow for the following types of transfers to be subject to "rollover relief":

- Transfer from a Settlor to the Trust (and vice versa) provided the Settlor is also a beneficiary of the "Rollover Trust".

- Resettlement of a property from one family trust to another provided both trusts are "Rollover Trusts". Must maintain the same group of family members in both trusts.

- Transfer from a family trust back to the settlors of the trust in a different capacity, e.g., to a look through company or partnership where they are the owner or partner.

- Transfers from/to a look-through owner (or partner) to/from an LTC (or partnership).

When the legislation was originally drafted the changes relating to trusts would only work where land was originally "settled" onto the trust which did not include the sale of the land with a debt back that is gifted over time (which is commonly how land was transferred to a trust. These changes also did not originally allow for the resettlement of land from one family trust to another.

These clarifications now make it clear that trust re-settlements are included and the original transfer to the trust could be by way of a sale or gift. They also allow for the common scenario where the property being transferred is not the original property that was settled on the trust.

The legislation has introduced a new concept of a "rollover trust" which means all principal settlors are also beneficiaries of the trust and all settlors and beneficiaries are "close family associates" as defined.

Where rollover relief applies the start of the bright-line period will not re-set. The original bright-line test rather than the test applying at the time of transfer also applies to the recipient (e.g., the five or ten year test). Where there is a loan in place its status (ie as a grandparented loan with the ability to claim interest deductions during the phase out period) will also be preserved under the interest limitation rules.

These changes apply to transfers of land **on or after 1 April 2022**. It is fair to say these rules are complex and have been re-drafted several times. Where you are considering moving property out of or into your trust, please contact your Chapmans advisor to discuss.

New Build to rent exclusion

Large developers developing significant properties that they tend to hold onto and rent out can now claim an exemption under the new interest limitation rules meaning they would be able to claim interest deductions.

To meet the requirements of "build-to-rent" land there must be a development of 20 or more dwellings on the land owned by the same person with the option of a 10-year tenancy.

The development must continuously meet these requirements to qualify for the exemption.

Existing developments have until 1 July 2023 to meet the definition requirements which would apply retrospectively allowing any interest deductions denied from 1 October 2021 to be claimed.

Changes for non-active trusts (including Estates)

The income and expenditure thresholds (used to determine whether a trust qualifies as non-active) have been increased as follows:

- The amount of reasonable administration fees (eg bank fees) has increased from $200 to $1,500.
- The level of income that can be earned by the trust has been extended from being only bank interest of $200 up to $1,000 of "reportable income".
- For an Estate the threshold of "Reportable income" that can be earned is $5,000.

"Reportable income" means income where tax has been deducted at source, ie interest, dividends and PIE income. "Non-reportable income" therefore includes income where tax has not been deducted at source (eg rent).

In addition, a trust can earn up to $200 of "net non-reportable income" before a tax return is required. This only applies up to a maximum of $1,000 of gross "non-reportable income", ie before any expenses have been deducted.

It has also been clarified that it is not necessary for non-active trusts (including Estates) to apply for an IRD number simply to file non-active status.

New FBT exemption for public transport

Where an employer subsidises public transport fares (eg train, bus, ferry) mainly for the purpose of their employees travelling between home and their place of work, this will be exempt from FBT.

However, this exemption will not apply where the employees are reimbursed directly through payroll. Therefore, careful consideration needs to be given to how this reimbursement will be processed.

If you have any questions regarding any of the above changes and how these will apply to your business, please contact your local Chapmans advisor.