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## flash Alert

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### New Zealand – New Tax Bill, Immigration Proposals

by KPMG, New Zealand (a KPMG International member firm)

New Zealand's Taxation (Transformation: First Phase Simplification and Other Measures) Bill<sup>1</sup> was recently introduced into Parliament. The Bill contains measures that:

- contribute to Inland Revenue's so-called "business transformation" by enabling electronic communications with taxpayers and information sharing in a greater range of circumstances.
- enhance the collection of tax on employee share scheme benefits.

In addition, the government also announced that the new double taxation agreement between Canada and New Zealand (the "Canada DTA"), signed in 2012, has finally come into force with provisions that will impact globally mobile individuals and their multinational employers.<sup>2</sup>

In a separate development, the government announced in July it intends to introduce a package of immigration measures that would include a proposal to enhance the appeal to new immigrants of settling outside of Auckland, with effect from 1 November.

### Why This Matters

The proposals in the tax Bill increase the flexibility for Inland Revenue to communicate electronically and foster better information sharing between different parts of government. The Bill removes barriers to electronic communication with taxpayers and this should facilitate clearer understanding and decision-making, as well as compliance.

The ability for employers to deduct PAYE on employee share benefits, rather than employees having to pay the tax in their returns, is a positive step. It provides choices for employers and employees on how to manage tax liabilities effectively. There will be a requirement to provide information on the value of employee share benefits in the Employer Monthly Schedule. This will have an impact on employers' payroll processes and systems.

The new Canada DTA will help facilitate cross-border business and the movement of labor between the two countries.

The package of immigration measures being proposed would be particularly beneficial for entrepreneurs setting up business in New Zealand. For skilled migrants, the change shifts the focus from the migrant's age, qualification, and work experience to the location of their employment. It also broadens the range of eligibility for people who may not have qualifications or work experience.

## **Taxation (Transformation: First Phase Simplification and Other Measures) Bill: What's Proposed?**

### ***Enabling Electronic Communications by Inland Revenue and Information Sharing and Other Changes***

The Bill removes barriers to electronic communication with taxpayers by:

- removing references in the tax legislation that restrict interactions to paper-based transactions;
- providing a framework for electronic communication, including rules applicable to different electronic communication methods and new communication channels;
- accepting electronic signatures for electronically submitted documents, such as returns.

The Bill also contains other changes in respect of information sharing, rulings, and administrative matters.

#### **KPMG Note**

The changes in the Bill to support electronic communications by Inland Revenue represent the first substantive step in the tax authority's business transformation undertaking, while the information sharing changes are designed to make cross-government service delivery more efficient.

### ***New (Optional) Mechanism to Collect Tax on Employee Share Scheme Benefits***

From 1 April 2017, employers will be able to deduct tax on benefits employees receive from employee share schemes under the PAYE regime. Currently employees are responsible for meeting their tax obligations on employee share benefits. The Bill proposes that, from 1 April 2017, employers may elect to withhold tax on employee share scheme benefits using the PAYE system. They will need to disclose the value of benefits each employee receives from an employee share scheme organized by the employer – this will be the case regardless of the tax being deducted via PAYE or paid by the employee.

#### **KPMG Note**

The changes to the tax collection mechanism for employee share scheme benefits should be noted by employers. Those operating employee share schemes, or looking to establish such schemes, should also take note of the additional information that will need to be provided to Inland Revenue.

There will be practical issues to be resolved, such as how employers can fund the tax obligations on share benefits (particularly when the share benefits are a significant part of a remuneration package or exceed the cash component of pay).

Further, regardless of whether employers opt into the new rules or not, there will be a requirement to provide information on the value of employee share benefits in the Employer Monthly Schedule. This will have an impact on employers' payroll processes and systems. Further, it is acknowledged that this may create reconciliation errors (i.e., if PAYE is not paid; although the suggestion is that these errors will be eliminated as part of the redesign of Inland Revenue's IT systems). Employers should take note and plan accordingly.

## New Canada DTA

Below we highlight some of the provisions of the new DTA with Canada that will be of interest to assignees and their multinational employers.

**Pensions** – Pensions can be taxed both in the country of source and residence. (New Zealand's preferred approach is to negotiate that the residence country only can tax pension income.) The tax rate in the source country will be capped at 15 percent.

**Permanent Establishment (PE)** – The PE article has been updated to include the OECD PE clause that provision of personal services can create a PE in the following circumstances:

- the services are performed through an individual who is present in the other jurisdiction for at least 183 days in any 12-month period and more than 50 percent of the gross revenues attributable to the active business activities of the enterprise during this time are derived from the services performed in that jurisdiction through the individual; or
- the services are performed in that other jurisdiction in relation to the same or connected projects, through one or more individuals, for at least 183 days in any 12-month period.

It is now standard treaty practice for New Zealand to seek the inclusion of this provision in DTA negotiations. (This brings the Canada DTA into line with other recently renegotiated New Zealand treaties.)

**Employment Income** – There is no real change to this provision, other than having the "personal services" heading replaced by "income from employment" in this DTA. The 183-day rule for employment income applies if the cost of employment is borne by an employer in the other state (i.e., the state of residence of the employee) and there is no deduction to an employer's PE in the source state – this is essentially the same 183-day rule as in the old treaty.

The above, and other changes, will take effect from 1 April 2016 (for New Zealand) and 1 January 2016 (for Canada).

**Withholding on Dividends, Interest, Etc.** – Under the new DTA, from 1 August 2015, the withholding tax rate on:

- Dividends falls from 15 percent to 5 percent, where the shareholder is a company that holds a more than 10-percent shareholding in the dividend payer.
- Interest falls from 15 percent to 10 percent.
- Royalties on copyright and other specified items falls from 15 percent to 5 percent (and 10 percent for royalties generally).

### KPMG Note

The new Canada DTA, and its lower withholding rates, should be welcomed by New Zealand businesses that trade with, and invest in, Canada as well as Canadian trade/investment into New Zealand. The current Canada DTA entered into force in 1981. The refresh is timely given Canada is one of New Zealand's key trading partners.

#### ***KPMG Note (cont'd)***

Because of other changes, including the definition of PE (e.g., to include a six month permanent establishment rule for services performed by an individual, discussed above), businesses should familiarize themselves with, and take care in applying, the new DTA.

### **Changes to the Points-Based System to Enhance Appeal of Settling Outside Auckland and Other Immigration Measures**

In July, the government announced its plans to introduce new immigration measures that would encourage immigration to parts of New Zealand other than Auckland and streamline the labor market test rules.<sup>3</sup> It will do this by:

- increasing the number of points new migrants will receive for seeking employment or setting up a business outside Auckland;
- streamlining the 'labor market' test for employers so as to provide greater certainty; and
- providing a pathway to residence for a limited number of work visa holders in the South Island, from mid-2016.

#### ***Entrepreneurs – from 20 to 40 points***

Entrepreneurs are currently required to have 120 points before becoming eligible to make a visa application. Those points are allocated based on a number of factors including the entrepreneur's age, business experience, type of business they wish to set up, capital invested, employment opportunities they create, and location of the business. The changes in policy will mean that if an entrepreneur sets up a business outside of Auckland, he or she will automatically get 40 points, instead of 20.

Putting that in context, an additional 20 points for business location for an entrepreneur will be the point equivalent of creating two new full-time employment opportunities, a NZ\$300,000 capital investment, NZ\$300,000+ turnover for an approved export business, three years of relevant business experience, or 10+ years of other business experience.

#### **KPMG Note**

When Immigration New Zealand changed the entrepreneur visa policy in 2014 to introduce the point system, the number of entrepreneur investor applications dropped significantly from an average of over 600 per year to just over 100 for 2014/15. This latest change is a reflection that the tightening of the entrepreneur resident visa category may have gone too far.

For most entrepreneurs, location of their new business will be relatively flexible and, therefore, the additional points on offer are likely to be a strong incentive for setting up outside of Auckland.

#### ***Skilled Migrants – from 10 to 30 points***

The minimum points to qualify for residency, under the skilled migrant category, is 100. This is based on a range factors relating to the person's age, skills, employment, and close family connections in New Zealand.

For most skilled migrants, meeting the 100-point requirement is relatively straightforward as they get

50 points for a skilled job regardless of location and 50 points for a relevant qualification, before adding more points for their age and other factors.

Once the government's planned changes come into effect, from November 2015, a skilled job outside of Auckland will gain the migrant 80 points, as opposed to the aforementioned 50 points (that had nothing to do with location). That leaves 20 points more needed to qualify for residency, and those remaining 20 points can be more easily obtained from other areas. This presents an opportunity for employers in the regions to target foreign skills.

**KPMG Note**

For skilled migrants, the change shifts the focus from the migrant's age, qualification, and work experience to the location of their employment. It broadens the range of eligibility for people who may not have qualifications or work experience.

The plan does not distinguish between the major centers outside Auckland and provincial New Zealand. For example, finding employment in Christchurch will still count for 30 points, even though arguably there may not need to be the same incentives to attract new migrants given the ongoing rebuild in that location.

***Labor Market Test for Employers to Be Streamlined***

Current immigration rules require employers to consider existing New Zealand citizens and permanent residents first for a job vacancy. The government has indicated it plans to streamline the labor market test. However, it is unclear what form this streamlining will take.

**KPMG Note**

Under the labor market test rules, employers need to advertise the job, and often check with Work and Income New Zealand, before they can offer it to a migrant. These rules are in place to ensure New Zealanders are given priority. However, this process can create unnecessary delays and uncertainty for employers and negatively impact their business operations and profitability. Therefore, the idea of streamlining the labor market test is attractive.

***Permanent Residence for Certain Migrant Workers in the South Island***

The government's proposal is to allow a fixed number of longer-term migrant workers in the South Island, who commit to the region, to settle in New Zealand permanently. This provides an opportunity for those whose pathway to New Zealand residence may otherwise be limited to settle here, in recognition of their roots and their economic contribution.

*Footnotes:*

1 See the Bill and associated documents at: <http://taxpolicy.ird.govt.nz/publications/2015-commentary-tfpsom/overview>.

2 For the text of the DTA and related information, see the Inland Revenue Web page for the DTA: <http://taxpolicy.ird.govt.nz/tax-treaties/canada>.

3 For the announcement, see: <http://beehive.govt.nz/release/improving-spread-skills-investment-across-nz>.

This article is excerpted, with permission, from "[New Tax Bill Introduced/ Canada DTA in Force](#)," in *TaxMail* (Issue 2, 3 July 2015), and "[Growth Beyond Auckland](#)," in *TaxMail* (Issue 3, 27 July 2015), a publication of the KPMG International member firm in New Zealand.

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***[GMS Video Now Available for Viewing: Same-Sex Marriage and State Tax Filing Following Obergefell v. Hodges](#)***

The U.S. Supreme Court's recent landmark decision *Obergefell v Hodges* means that those remaining states that still had a ban on same-sex marriage are now required under the Fourteenth Amendment of the U.S. Constitution to issue marriage licenses to same-sex couples. Marianne Evans and Bob Rothery with the KPMG LLP (U.S.) Washington National Tax practice discuss the impact of this decision on how same-sex married couples file their state tax returns in 2015 and 2016, as well as amended tax returns for prior years. From a global mobility perspective, this has implications for international assignees who are in same-sex marriages with state tax filing obligations. Please see:

*[Same-Sex Marriage and State Tax Filing Following Obergefell v. Hodges](#)* – (app. 8-1/2 minutes)

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