Our ref: KPMGSubmissionAugustTaxBill2025

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The Chair
Finance and Expenditure Committee
Parliament Buildings
Wellington

23 October 2025

Dear Sir or Madam

KPMG submission — Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Matters) Bill

We welcome the opportunity to make a submission on the Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Matters) Bill (referred to hereafter as "the Bill").

We have split our submission into submissions on the key matters raised in the Bill and more detailed submissions on specific measures.

Given the wide range of matters covered, of both a policy and remedial nature, in the Bill, we have not had an opportunity to consider every amendment. Therefore, where we have not explicitly commented on a particular amendment, this does not necessarily signal our support (or lack of support) for the change.

KPMG's participation in the tax policy and legislative process

KPMG spends many hours engaged in the Generic Tax Policy Process ("GTPP"). We provide submissions on Government discussion documents and Taxation Bills, engage with Officials and Members of Parliament and present to Select Committees. We respond to many requests for feedback from Inland Revenue on proposed policies, operational guidance and interpretations.

Fundamentally, we consider that good tax law is key to the functioning of our economy. Good tax law includes the policy, the legislation and its application by taxpayers, Inland Revenue and the Courts.

We engage in the GTPP because we can offer:

- A potentially different perspective to that of Officials and Government and can challenge some of the thinking around a particular policy or policy issue; and
- Practical experience of how tax law applies and therefore how a change may actually apply and be implemented.

We believe our involvement, and that of other advisors and professional bodies, produces better tax law and policy.

Our perspective and experience is based on involvement with the tax system and with business. We see how both operate. That informs our approach. We recognise that not all of our submissions are or will be accepted. However, even so, that they are considered does help improve the outcome.

We therefore have no interest in poor tax policy or law. It creates uncertainty which is inimical to business interests. It is frustrating for our clients. We bear that frustration when we are unable to provide clear and certain answers. Practically, our clients do not like to pay for non or unclear advice. It also creates risk for us. Accordingly, when we disagree with a policy, we still make submissions to make the outcome as clear and workable as possible. Hopefully that is apparent from some of our submissions.

Key submission points on the measures in the Bill

Tax treatment of New Zealand visitors

We support the new "non-resident visitor" (275-day) exemption from the 183-day residence test, and to link this to recent changes to the visitor visa requirements that allow employment (with a foreign employer) whilst in New Zealand.

We also support legislatively clarifying that a non-resident visitor's presence in New Zealand would not adversely impact their foreign employer, by creating New Zealand employer tax obligations (such as PAYE and FBT obligations) or a taxable presence (i.e. through a New Zealand permanent or fixed establishment or tax residence for foreign companies). To achieve this, we note that the Bill contains exemptions from the "centre of management" and "director control" tests for corporate tax residence and the PE and FE rules, which we welcome.

At a policy level, while the non-resident visitor changes in the Bill will assist with temporary remote working arrangements from New Zealand, we note that the much bigger question of how more permanent arrangements should be treated, from a tax perspective, remains. Specifically, if a person chooses to relocate to live in New Zealand, and the nature of their role is such that they can work remotely, the potential New Zealand tax exposure for their foreign employer will still be a significant barrier. As a result, New Zealand risks missing out on both talent and revenue (from taxing the person on their employment income while working from New Zealand).

While we are not expecting this to be addressed as part of the Bill, we have highlighted it as a critical issue to be addressed if New Zealand is to be competitive in attracting not just temporary "digital nomads", but those with key skills, including expatriate New Zealanders, to migrate/relocate here.

We make the following more detailed submissions on the non-resident visitor changes in the Bill.

- New section CW 22B proposes an exemption from New Zealand tax for a non-resident visitor's personal or professional services income, provided the services are performed for a foreign employer, and the income is subject to income tax in another country. Similarly, new section CW 22C exempts business or self-employment income of a non-resident visitor, if that income would be subject to income tax in another country. It is not clear why the taxability (or otherwise) of the person's income in another country should be a requirement for the New Zealand tax exemption to apply. This is arguably discriminatory. Further, the requirement to determine whether the foreign income tax is *"substantially the same as [NZ] income tax"* has the potential to make what should be a relatively straightforward exemption, unnecessarily complicated to apply.

- The proposed exemption from the centre of management and director control tests for the employer (or associated offshore entities) of the non-resident visitor also requires that the employer (and/or offshore entities) be resident in a jurisdiction which imposes a tax that is substantially the same as [NZ] income tax. Again, we question the need for this restriction. (We note that the proposed exemption from the PE and FE tests, does not require the non-resident employer to be resident in a country that has an income tax that that is substantially the same as NZ income tax.)

- A foreign employer of a non-resident visitor should be able to rely on this status for the afore mentioned exemptions from NZ employment tax obligations and having a NZ taxable

presence. The Bill proposes that a person who breaches their visa conditions (e.g. by overstaying) will be deemed never to have had non-resident visitor status. This should not adversely affect a foreign employer who has reasonably relied on this status for an employee. For the foreign employer, the loss of any tax "concessions" should be prospective only from the breach.

- The Commentary on the Bill states that *"….the proposed amendments would take effect from 1 April 2026 and would apply to persons who arrive in New Zealand on or after that date. **If a person was physically present in New Zealand before 1 April 2026**, they would not be a non-resident visitor."* We understand the policy intention is that non-resident visitor status should not be available to any non-residents who are physically present on 31 March 2026 (that is, their stay in New Zealand commenced prior to 1 April 2026). However, the wording in the Commentary could be read as suggesting that any prior visit to New Zealand could be a disqualifying event. The commencement provision in the Bill is unclear on this. We recommend this be clarified, for avoidance of any doubt.

Issue: Making GST registration optional for non-resident visitors

We welcome the ability for non-resident visitors to opt out of New Zealand GST registration requirements as a compliance cost reduction measure.

However, we note that the value of supplies made to non-resident customers that can be ignored is limited only to supplies of services that are:

- unrelated to land or moveable personal property in New Zealand; and
- supplied to a person who is a non-resident and who is outside of New Zealand at the time the services are performed (meeting these criteria would mean that the services would be zero-rated under section 11A(1)(k) of the GST Act).

We recommend the rule should also be extended to apply where supplies are made to:

- non-residents to the extent zero-rating treatment for the goods and services can be applied; and
- the amount of the non-resident visitor's input tax is likely to be less than a minimal amount, such as $500; and
- the non-resident visitor elects not to file GST returns on an ongoing basis.

Foreign Investment Funds – Revenue Account Method

We support the introduction of the Revenue Account Method (the "RAM") as an alternative to the existing Foreign Investment Fund ("FIF") income methods. Our principal submissions are:

- The availability of the RAM should be expanded beyond new migrants and returning New Zealanders (i.e. the proposed definition of a "RAM taxpayer" in the Bill) who become tax resident on or after 1 April 2024. The RAM option should be available to all taxpayers who hold qualifying FIF interests (see below on what we consider should be included as a qualifying FIF interest). We see no policy reason for limiting the RAM to a narrow subset of persons as there is no advantage to its application, compared to the other FIF methods, such as the Fair Dividend Rate ("FDR") or Comparative Value ("CV") methods.
- Relatedly, the definition of qualifying FIF interest for the RAM should be expanded to both listed and unlisted foreign shares as, again, we see no policy reason for limiting the method to so-called "hard to value" and "illiquid" shares. We note that this restriction would not apply in the "expanded" RAM context, so there is policy justification for a wider application of the RAM to all foreign shares.

Our specific submissions on the RAM proposal in the Bill are as follows:

- The Bill proposes an "all of portfolio" approach for applying the RAM to qualifying FIF interests (i.e. if applied to one interest, it must be applied to all shares that meet the definition of "RAM interest" in new section EX 46B). We note the Bill proposes restricting the RAM to FIF interests: that are shares not listed on a stock exchange; where there is no redemption facility for the shares; and/or where the share is not in a company/entity that derives more than 80% of its value from listed shares or shares with a redemption facility. This tests for a RAM interest will not be straightforward to apply. The consequence of not applying these tests correctly is that it could inadvertently result in the RAM not being available, or alternatively, the other FIF methods (such as the FDR or CV) not being available. Instead, we recommend that the RAM method be optional on a "per security" basis with a minimum lock-in period for changing to a different FIF method for that security.

- Under the RAM, realised gains will receive a 30% discount while distributions (i.e. dividends) will be fully taxable. Therefore, what comprises a "dividend", will be critical as to the tax treatment. Under domestic tax law, potentially any transfer of value due to a shareholding relationship is treated as a dividend in subpart CD of the Income Tax Act, unless specifically excluded. There is a risk, for example, that a share buy-back in a foreign jurisdiction (which is likely to be treated as a share disposal subject to capital gains tax in that jurisdiction) may in fact be treated as a dividend, for NZ tax purposes. This would mean the 30% discount on realisation would not apply. Practically, it may be difficult for RAM taxpayers to apply the NZ domestic law dividend test to different "corporate actions". Therefore, we recommend a simplified rule which aligns the dividend definition for RAM purposes with how the foreign country defines a dividend (rather than requiring New Zealand tax concepts to be applied).

- Qualifying New Zealand investors who pay tax on a "look-through" basis in a foreign country may be double taxed under the RAM, undermining the effectiveness and attractiveness of this FIF method for new migrants (and other investors if eligibility for the RAM is expanded per our submission above). In our experience, it is relatively common for migrants, particularly from the United States, to hold interests in foreign limited partnerships ("LPs"), foreign limited liability partnerships ("LLPs") and US limited liability companies ("LLCs"), which are typically taxed as flow-through partnerships in the US (and in many other jurisdictions) but treated as companies (and often FIFs) for New Zealand tax purposes. Under the RAM, tax will be payable if/when "dividends" are received, while the distribution from the foreign partnerships may be disregarded for foreign tax purposes as tax has been paid on a look-through basis over time in the foreign jurisdiction. We therefore recommend implementing an equivalent rule to existing section CD 18, to reduce the taxable "dividend" under the RAM by the amount of foreign tax paid on a look-through basis. Additionally, under RAM the NZ investor will be taxed in NZ on the disposal of the interest in the LP/LLP/LLC. However, if foreign tax (such as on US capital gains) is payable in relation to the underlying assets of these entities (on a look through basis), this will result in double taxation of the investment in the LP/LLP/LLC unless an appropriate foreign tax credit or equivalent mechanism (similar to section CD 18) is implemented to provide relief.

Issue: FIF de minimis threshold should be increased

While not addressed in the Bill, we strongly recommend increasing the NZD50,000 total cost threshold for FIF interests to be exempted from the FIF rules (the "FIF de minimis") to reflect the quarter century since it was last adjusted. The Bill increases the various "cash basis" person thresholds for exemption from the financial arrangement rules spreading methods (discussed below) and for similar reasons we consider the FIF de minimis threshold should also be increased. Further, we consider that there should be a mechanism for regularly reviewing and updating this threshold.

While inflation is one factor, another consideration is the much easier access to direct investment in foreign shares (via online trading platforms and the like) than when the FIF de

minimis threshold was last adjusted, or the current FIF rules were enacted. It is unlikely to be only sophisticated investors that hold offshore shares directly, who may need to comply with the FIF rules, noting also that the FIF de minimis is not a tax concession. The latter is important, as it is not clear to us that increasing it should automatically have a significant fiscal cost attached, and could result in more tax being collected over time, if there is inadvertent non-compliance with the FIF rules at present because some simply do not understand the rules.

Therefore, we recommend that the threshold level be raised to a more appropriate level – such as between NZD120,000 to 150,000.

Investment Boost remedials

We support the remedial amendments contained in the Bill relating to:

- The low value asset threshold (in clause 42).
- Asset transfers in certain circumstances (in clauses 34 and 35).
- Asset transfers between associates (in clause 43).
- The second-hand exclusion (in clauses 33 and 95(26)).

The following practical issues should also be considered:

- The potential loss of the Investment Boost tax deduction in specific circumstances, such as when the asset is acquired for use by a partnership (or limited partnership) and new partners (or limited partners) are subsequently introduced. This is because the new partners will be deemed to have acquired a "used" asset. The partnership (or limited partnership) will need to reflect this as part of the different partner allocations at year-end. It will also result in different partners having different cost bases for tax (and therefore depreciation deductions) going forward. This illustrates some of the complexity when applying the Investment Boost in practice. Consideration needs to be given to how the application of the rules can be simplified in such situations.
- The "claw back" of the Investment Boost deduction when an asset is transferred between associated parties (e.g. companies within a wholly owned group). This seems overly restrictive as the asset is still owned within the same "economic group". This is of particular concern in the context of buildings, where the tax deduction may be permanently forfeited (given buildings are not otherwise depreciable for tax). We recommend introduction of a broader set of "rollover relief" rules for circumstances where there is no change in the ultimate economic ownership of the asset for which Investment Boost has been claimed.

Issue: Remedials highlight the importance of consultation in policy and legislative development

The requirement for remedial amendments in the Bill, as well as the issues identified above, highlights the importance of ensuring that, for major tax policy measures like Investment Boost, the Generic Tax Policy Process ("GTPP") and the full legislative (including Select Committee) process is followed. The GTPP, in particular, is designed to ensure that key design issues can be addressed prior to legislation being enacted. This is desirable as taxpayers need certainty about whether the policy applies or not when making investment decisions or taking tax positions (either in tax return or for provisional tax purposes). We elaborate on some of the practical consequences below for Investment Boost, which was a 2025 Budget Day announcement and enactment.

The application date of Investment Boost (assets acquired on or after 22 May 2025), means that late-balance date taxpayers will need to determine whether Investment Boost can be claimed in their 2025 tax returns. These returns will need to be filed by 31 March 2026 at the latest, when the remedial amendments in the Bill, which will be retrospective in nature, are unlikely to be

enacted until late March 2026. For example, if a late balance date taxpayer acquired a commercial building on or after 22 May 2025 from a developer, based on the Budget Day legislation, the taxpayer is not entitled to claim a deduction for Investment Boost which is clearly not the policy intention. However, once remedial legislation is passed, the taxpayer will (with retrospective effect) be entitled to claim an Investment Boost deduction in the 2025 income year. Practically speaking, this means that the 2025 tax return cannot be filed before the enactment of the Bill claiming the Investment Boost. The return will need to be subsequently amended post enactment, which is not ideal.

Similarly, uncertainty about the availability of Investment Boost (or not) can impact provisional tax positions as taxpayers will need to determine whether the benefit of the tax deduction can be offset again provisional tax instalments that would otherwise be payable.

Issue: Sustainability of the Investment Boost

A question/concern that has been raised with us is the long-term sustainability of policies like Investment Boost. This has the potential to impact decision making in the case of assets which will need to be constructed and, as a result, will not be available for use until several years in the future. There is some uncertainty about whether the tax deduction will still be available, and/or in its present form, when the asset becomes available for use.

Given this uncertainty, some taxpayers may be reluctant to factor in the value of the Investment Boost tax deduction for longer-term capital investments, such as construction of non-residential buildings or new plant machinery and equipment, meaning the policy may not fully achieve the Government's stated aim of encouraging investment in productive assets. Justifiably, in the case of buildings there is some nervousness given previous Governments' decisions to remove, then reinstate, and then again remove tax depreciation deductions.

We acknowledge that tax policy will be based on the objectives of the Government of the day and future Government can, and do, change the policies of their predecessors. However, with policies like Investment Boost, which are explicitly designed to encourage new investment, consideration should be given to mechanisms to provide more certainty upfront. For example, by establishing the right to the deduction at the time construction of an asset commences or the asset or a project is "definitively committed to" (subject to the asset ultimately being constructed or acquired) but deferring its timing until the asset is available for use. While a future Government could still deny the deduction at the time, this is likely to provide more comfort around sustainability of the policy at the time investment decisions are being made.

Fringe benefit tax remedials

We support, from a policy perspective, the remedial amendments contained in the Bill:

- Allowing employers to treat gift cards as subject to FBT rather than PAYE.
- To leave the value of motor vehicles unchanged for FBT calculation purposes, if the Investment Boost deduction has been claimed in respect of the vehicle.
- To equate the treatment of FBT and PAYE in respect of benefits provided.
- To provide options for calculating FBT on premiums for global insurance policies. We recommend clarifying new section RD 49(3B) to explicitly state that, in addition to the option to pool the value of the benefit under section RD 53, employers may choose to apportion the total global insurance premium attributable to New Zealand employees by dividing it equally among them.
- To ensure that unclassified fringe benefits provided to employees of associated entities are properly included in the calculation of the de minimis thresholds.

We are disappointed that the Bill does not contain the key proposals consulted on in the *Fringe Benefit Tax – options for change* consultation document released in April this year. The current FBT rules impose significant compliance (and monetary) costs on employers to get it right and, even then, there can be inadvertent non-compliance, particularly in two of the key areas that were proposed for reform in the consultation document: motor vehicles and unspecified benefits. Therefore, we would welcome further clarity and simplification of these rules.

Increase cash basis person thresholds

We strongly support increasing the thresholds for the "cash basis" person exemption from applying the financial arrangement rules spreading methods. (The application of the financial arrangement rules can result in unrealised gains being taxable). This change is well overdue, given the impact of inflation eroding the benefit of the current thresholds and exemption.

We have following concerns:

- While the increase in the different cash basis person thresholds is helpful, the application of this exemption still requires a person to calculate annually income from all their financial arrangements under the spreading rules (that is, on an "accruals" basis) to determine (i) whether total income or expenditure is below NZD100,000 (proposed to be raised to NZD200,000 in the Bill) and (ii) whether the difference with "cash" basis income (i.e. amounts paid or received, such as interest, and on realisation) is below NZD40,000 (proposed to be raised to NZD100,000). The requirement to undertake these additional calculations removes the main benefit of the cash basis person exemption. We recommend that for natural persons, at least, the cash basis person exemption should be based solely on the absolute market value of all financial arrangements held (i.e. NZD2 million as proposed in the Bill).

- A frequent issue we come across is foreign currency denominated mortgages over property tipping taxpayers into the financial arrangement rules (i.e. out of the cash basis person exemption). This can have significant adverse tax consequences, including foreign exchange movements in the mortgage value being taxed on an unrealised basis if it is a gain (in contrast, unrealised losses will generally not be allowed). While the increase in the thresholds will assist in some cases, on principle, we consider that a foreign currency loan that is used as a mortgage over a property should either be excluded from the calculation of the cash basis person thresholds or alternatively should be removed from the application of the financial arrangement rules.

Short selling and foreign shares

The Bill legislatively clarifies that short selling of foreign shares will generally be subject to revenue account taxation treatment. We agree that clarification is necessary to prevent both potential over taxation (i.e. the share user being taxed on the sale of "borrowed" shares with no deduction for the cost of acquiring "replacement shares") and potential under-taxation (if the share user treats both the "borrowed" and "replacement" shares as FIF interests, and depending on the timing of acquisition and disposal, the FDR quick sale rules may result in no taxable income). It seems reasonable to us to align the taxation treatment for short selling of foreign shares with that of New Zealand shares.

We also recommend the following issues be addressed:

- Based on our reading of the legislation, where a "replacement payment" is made by a share user that is a NZ resident (or operating in NZ through a FE) to the share lender, under a "share lending arrangement", in respect of foreign shares that are FIFs, there is a technical risk that a withholding tax obligation may arise in relation to that payment. The withholding tax is converted to a non-refundable imputation credit. While the imputation credit may be available to the lender to offset their income tax liability, this appears inconsistent with the

scheme and purpose of the share-lending rules, given the lender should be treated as continuing to hold the "borrowed" foreign shares for the purposes of the FIF rules. Further, RWT withheld on the "replacement payment" is unlikely to be an accurate reflex of the share lender's tax liability calculated under the FIF rules.

- The share-lending rules do not fully consider the tax treatment of income receipts (e.g., interest, dividends) to a share lender on the collateral received (and returned) under a "returning share transfer" or "share-lending arrangement". From a policy perspective, we consider that share lenders should not be subject to tax in relation to income generated on collateral provided by a borrower to secure the lending transaction. This reflects what we understand to be the economic position for the lender. We consider this would mirror that of the share borrower in respect of the lent securities, i.e., with the tax effect being to treat the lent shares as remaining with the lender and the collateral shares with the borrower. However, there appears to be no provisions in the share-lending rules to give effect to that economic position for the lender in respect of income generated on collateral.

Detailed submissions on other matters

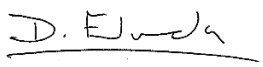
The attached appendix contains detailed submissions on:

- GST and unincorporated joint ventures
- GST remedials
- Employee share schemes

Further information

We would appreciate the opportunity to discuss our submission with the Committee. Please contact us – Darshana Elwela on 09 367 5940 or Rachel Piper on 09 363 3535 – if you require any further information on our submission.

Yours sincerely



Darshana Elwela
Principal

Rachel Piper
Partner

Detailed submissions on the Bill

GST and unincorporated joint ventures

Issue 1

There is uncertainty regarding the GST treatment of the disposal of an interest in a joint venture that does not qualify as an output-sharing joint venture under the proposed new rules.

Submission

We recommend that Inland Revenue urgently finalise PUB00436 ("GST – Disposal of an interest in a joint venture including land") which is currently on-hold according to Inland Revenue's Public Guidance Work programme 2025-26.

This is critical to enable members in non-output sharing joint ventures to make informed decisions about whether to elect into the new flow-through joint venture regime. The absence of clarity creates significant uncertainty, particularly for non-resident joint venture members, as the GST consequences of disposal can differ materially depending on whether the flow-through or unincorporated body rules apply.

Comment

We support the proposal in the Bill to introduce a flow-through regime for joint ventures, allowing members to individually account for GST on supplies made or received in the course of the venture, rather than registering the joint venture separately. This regime will apply by default to output-sharing joint ventures and by election to other joint ventures, with a transitional period for existing joint ventures to opt in by 1 April 2027.

However, joint ventures that do not meet the output-sharing definition and do not elect into the flow-through regime will remain unincorporated bodies and will need to apply the current GST rules for unincorporated bodies. Under these rules, the joint venture is treated as a separate person for GST purposes, and members cannot claim input tax deductions for costs incurred by the joint venture unless the joint venture itself is registered for GST. Inland Revenue's draft QWBA item – PUB00436 confirms that, for GST purposes, the disposal of a joint venture interest is generally treated as the supply of a "chose in action" (a service), and not a supply of the underlying joint venture property. GST is only chargeable if the member disposing of the joint venture interest is GST-registered and the supply is made in the course or furtherance of their taxable activity. The supply is not subject to the compulsory zero-rating rules for land, even if the joint venture property includes land.

For non-resident members, the distinction is particularly significant. Under the flow-through regime, a non-resident member should be able to register in respect of their proportionate share of the joint venture' taxable activity. The disposal of their interest is expected to be zero-rated (assuming the relevant zero-rating conditions under new section 11(1)(md) in the GST Act are satisfied). Under the unincorporated body rules, the non-resident may not be entitled to register for GST as holding an interest in an unincorporated joint venture itself does not amount to a taxable activity. Under the unincorporated body rules, the acquisition of the interest in the unincorporated joint venture may attract GST (assuming the disposing member is making the supply in the course or furtherance of their taxable activity). Although the non-resident acquirer could recover the GST charged under section 54B of the GST Act, there would be compliance costs involved in getting the refund.

Given that existing GST-registered joint ventures must decide whether to opt into the new rules before 1 April 2027, Inland Revenue's position on the GST treatment of disposals of interests in non-output-sharing joint ventures (including incorporated bodies) should be clarified as soon as possible. The current uncertainty makes it difficult for taxpayers to make informed decisions and

increases the risk of inconsistent or unintended tax outcomes. Finalising PUB00436, would provide much-needed certainty and support effective implementation of the new regime.

Issue 2

It is not clear how flow-through treatment will interact with the invoicing rules.

Submission

We recommend more practical guidance is provided on this and have made some suggestions below.

Comment

The Bill Commentary discusses situations where members elect to be a "flow-through joint venture" under proposed new section 57B(1) and issue shared invoices as members of a supplier group (Example 29). It is less clear what the invoicing requirements are for input tax recovery purposes and what documentation would need to be held by the members to support input tax recovery evidence that they have claimed *x%* of a particular tax invoice and why, etc.

While there are specific rules for "Supplier Groups" in Section 55B of the GST Act, consideration could be given to adding a new section for "Recipient Groups" for members of an incorporated joint venture under the proposed flow through rules where each member will be treated as supplying goods or services in an individual capacity.

We recommend that a "Recipient Group" be able to nominate a member of the joint venture to be treated as the recipient of all supplies of goods and services for the joint venture and have their "Recipient details" included on taxable supply information issued to the joint venture. Having nominated members details on taxable supply information would be sufficient for all members of the joint venture to claim their portion of input tax (irrespective of whether their details are displayed on taxable supply information).

Alternatively, if a supply is made to a member of a joint venture in respect of activities undertaken by the joint venture, it could deemed to be sufficient for that supply to be treated as made to all members of the joint venture and the taxable supply information to be valid for all members (this would be a similar concept to the agency provisions under Sections 60(2) and 60(3) of the GST Act, where the "principal" is entitled to claim an input tax deduction where taxable supply information is issued in the name of the "agent").

GST remedial – sale of land as a separate supply

Issue 1

Despite being introduced as a remedial measure, the scope and use of new section 5(15)(e) of the GST Act remains ambiguous.

Submission

We recommend not proceeding with the proposed change and reassessing its practical impact across various situations to better achieve the intended simplification/remedial change to the GST adjustment rules.

Comment

The proposed amendment in the Bill expands the scope of section 5(15) of the GST Act to treat the "exempt portion" of the land as a separate supply for GST purposes from 1 April 2026.

It is proposed that where the new section 5(15)(e) applies, this would replace the requirement to complete a section 21F adjustment on disposal.

As outlined below, the proposed amendment does necessarily achieve the same net GST result. In effect, the proposed deemed supply rule would significantly disadvantage the vendor of the

relevant transactions by moving the benefit of the GST credits which would otherwise be available to the vendor to the purchaser.

Further, it is unclear whether new section 5(15)(e) would apply to:

- A supply of land which has partially been subject to private use (not exempt use); and
- A supply of bare land which was intended for an exempt use, but the actual exempt use did not occur before disposal.

Under the current rules, when mixed use land is disposed of as part of a taxable activity, this disposal will be fully subject to GST (unless existing section 5(15) applies to treat part of the supply as a separate supply (e.g., principal place of residence, or residential dwelling subject to section 14(1)(d)). To account for any non-taxable use of the land, a final adjustment is available under section 21F. An example of this would be the shared areas (e.g. the office building) within a retirement village, where the operator of the village provides both exempt and taxable accommodation services.

In contrast, under the proposed section 5(15)(e), when mixed use land is sold, a separate supply is deemed to take place to the extent the land has been used for making exempt supplies. If this section applies, only the "taxable portion" of the land is subject to GST. The proposal to split a single supply of mixed-use land into two separate supplies would benefit the purchaser at the expense of the vendor by moving the benefit of the GST deductions which would otherwise be available to the vendor under section 21F to the purchaser. This is illustrated in the example below.

Illustrative example

Vendor is GST registered and is selling land for $115,000 (total consideration including GST if any) to another GST registered person. The calculated "exempt use" is 10% (in this case, we have assumed that the calculation of the exempt use is the same under section 21F and the new amendment).

Under the current rules, the GST cashflow would be as follows:

Purchaser is not GST registered

	Vendor	Purchaser
GST on sales proceeds	$15,000	($15,000)
GST to pay	($15,000)	
Section 21F adjustment*	$1,500	
Net GST	**$1,500 GST credit**	**($15,000) GST cost**

**Note – section 21F adjustment is calculated as 3/23 x $115,000 x 10%, assuming the vendor is not a property developer.*

Purchaser is GST registered and intends to use the property solely for making taxable supplies

	Vendor	Purchaser
GST on sales proceeds	$0	($0)
GST to pay	($0)	($0)

Second-hand goods credit		($0)
Section 21F adjustment	$1,500	
Net GST	**$1,500 GST credit**	**($0)**

The purchaser is not entitled to any second-hand goods credit as the supply is wholly subject to GST.

Purchaser is GST registered and intends to continue the current use by the vendor (i.e., 90% taxable, 10% exempt)

	Vendor	Purchaser
GST on sales proceeds	$0	($0)
GST to pay	($0)	($0)
second-hand goods credit		($0)
Section 20(3J) adjustment		($1,500)
Section 21F adjustment	$1,500	
Net GST	**$1,500 GST credit**	**($1,500) GST Cost**

The purchaser would not be entitled to any second-hand goods credit as the taxable use portion of supply is wholly zero-rated.

Under the proposed section 5(15)(e), the GST cashflow would be as follows:

Purchaser is not GST registered

	Vendor	Purchaser
GST on sales proceeds –taxable portion**	$13,500	($13,500)
GST to pay	($13,500)	
Section 21F adjustment	$0	
Net GST	**$0**	**($13,500) GST cost**

***Note – based on the proposed section 5(15)(e), only the taxable use portion is treated as being subject to GST, the 10% would be treated as being GST exempt. Therefore, GST to pay on the sales proceeds would be 3/23 x $115,000 x 90%.*

Compared to the current rules, the purchaser will pay $1,500 less GST to the vendor. Effectively shifting the $1,500 GST benefit available under section 21F to the purchaser.

Purchaser is GST registered and intends to use the land solely for making taxable supplies

	Vendor	Purchaser

GST on sales proceeds	$0	($0)
GST to pay	($0)	($0)
second-hand goods credit		$1,500
Section 21F adjustment	$0	n/a
Net GST	**$0**	**$1,500 GST credit**

Compared to the current rules, the purchaser will get a GST refund of $1,500 for the second-hand goods credit, effectively shifting the $1,500 GST benefit available under applying section 21F to the purchaser.

Purchaser is GST registered and intends to continue the current use by the vendor (i.e., 90% taxable, 10% exempt)

	Vendor	Purchaser
GST on sales proceeds	$0	($0)
GST to pay	($0)	($0)
second-hand goods credit		($0)
Section 20(3J) adjustment		($0)
Section 21F adjustment	$0	
Net GST	**$0**	**($0)**

The purchaser would not be entitled to any second-hand goods credit as the taxable use portion of supply is wholly zero-rated. Further the purchaser would not be entitled to the second-hand goods credit as the exempt portion will continue to be used for making exempt supplies.

As identified above, while the overall result for Inland Revenue might be the same under either approach, the outcomes can be significantly different for the vendor and purchaser.

Issue 2

The section 21F calculation differs to the calculation made under section 5(15).

Submission

If new section 5(15)(e) is introduced, the reference to "exempt use" should be amended to align with the concept of "non-taxable use", to be consistent with the current section 21F formula ("1 – previous use").

Comment

The formula for calculating a section 21F adjustment is as follows:

Tax fraction x Consideration x (1 – Previous use)

The value of the section 21F adjustment is reduced by the "previous use" of the asset. The concept of "previous use" is defined in section 21F as follows: ***"percentage intended use** or the **previous actual use** in the period before the period in which the disposal occurs*.

"Percentage intended use" has application only (in this case) on the acquisition of the goods as established under section 20(3G). Percentage intended use is defined in section 21G(1), with application to Section 21F, as follows:

> *percentage intended use, for a registered person, means the extent to which the goods or services are intended to be used by the person for making taxable supplies, estimated at the time of acquisition under section 20(3G) and expressed as a percentage of total use:*

"Percentage actual use" is defined in Section 21G(1) as follows:

> *For the purposes of this section and sections 8(4B)(b), 9(2)(h), 20(3H) and (3JC), 21 to 21F, and 21H,—*
>
> *(a) percentage actual use, for a registered person and an adjustment period,—*
>
> *(i) means the extent to which the goods or services are actually used by the person for making taxable supplies; and*
>
> *(ii)* ***is calculated for the period that starts when the goods or services are acquired,*** *or if section 21FB has been applied to the goods or services, from the point of the calculation made under that section and* ***finishes at the end of the relevant adjustment period;*** *and*
>
> *(iii) is expressed as a percentage of total use:*

In contrast, the calculation of the exempt portion under section 5(15)(e) does not explicitly refer to the calculation of "the percentage taxable use" which would require the taxpayer to take into account the actual use over the entire ownership period starting from when the asset was acquired.

Further, we note the formula for calculating a section 21F adjustment takes into account any exempt use of the asset, as well as any other non-taxable use (such as private use). This is because the calculation of "previous use" refers to the level of taxable use over the entire ownership period and the section 21F adjustment is calculated on based the percentage of any non-taxable use, not just exempt use (i.e., 1-previous use).

In contrast the new section 5(15)(e) only refers only to exempt use. We submit if the section is to be introduced, the reference to "exempt use" should be amended to be aligned with the concept of "non-taxable use", to be consistent with the current section 21F formula ("1 – previous use").

Issue 3: Appropriateness of the section 21F calculation

Overall, we consider that the section 21F adjustment achieves a more appropriate outcome than an expansion of section 5(15).

In our view, section 21F helps to ensure that only a portion of the supply applied to taxable use is accounted for on disposal. If the application of section 21F is replaced by new section 5(15)(e) for certain mixed-use land, this would not achieve the policy intent of only taxing the taxable use portion of the capital gain.

We consider the GST treatment on disposal of a mixed-use land should take into account the total taxable use of the land over the entire ownership period. This provides a more equitable outcome for land which has been used predominantly used for private/exempt purposes, but was only 'caught' in the GST net for a short period of time.

Issue4: Application of section 5(15)(e) to bare land.

We note that new section 5(15)(e) refers to "a supply of land, to the extent to which the land has been used to make ***exempt supplies***".

It is unclear whether the new rule would apply to bare land where at the time of acquisition there was an intention to use the land for making exempt supplies, some work has been done on the

land but due a change of circumstances, the bare land was never actually subject to any exempt use before disposal. The following example illustrates/

Illustrative example

Bare land was purchased by a retirement village operator to build residential housing units. Some preparatory work has commenced (e.g., resource consent application, feasibility study etc). However, no buildings were ever erected on the land. Due to a change of market conditions, the operator decides to sell the land, and the purchaser is GST registered

Assuming 10% exempt use and the land being initially purchased by the vendor for the same price, the practical application of new section 5(15)(e) is demonstrated below.

Application of section 21F (before introduction of section 5(15)(e))

	Vendor	**Purchaser**
Section 20(3J) Adjustment on acquisition	$1,500	$1,500
GST on sales proceeds	$0	($0)
GST to pay to IRD on disposal/acquisition	($0)	$1,500
Second-hand goods credit		($0)
Section 21F Adjustment	($1,500)	n/a
Net GST	**$0**	**$1,500 Cost**

Application of new section 5(15)(e)

	Vendor	**Purchaser**
Section 20(3J) Adjustment on acquisition	$1,500	$0
GST on sales proceeds	$0	($0)
GST to pay to IRD on disposal/acquisition	($0)	$0
Second-hand goods credit		($0)
Section 21F Adjustment	$0	n/a
Net GST	**$1,500 Cost**	**$0**

We are aware of different views on this matter. For example, that new section 5(15)(e) should apply on the basis that the land has been subject to “exempt use” due to the preliminary work done on the land. This would mean the operator would not be entitled to any credit adjustment under section 21F.

We believe in this case, the vendor should continue to apply section 21F, meaning the vendor should be entitled to the claw-back of the section 20(3J) GST nominal adjustment under section

21F and the entire supply of the land should be treated as being zero-rated. This would ensure an equitable outcome reflecting the economic reality that the land was never subject to any exempt use.

In summary, to better achieve the intended simplification of GST adjustment rules, we submit the new section 5(15)(e) is not proceeded with and further consideration is given across a wide range of scenarios.

Employee share schemes

Employee share scheme tax deferral regime

We generally support the proposals for taxing employee share schemes ("ESS") implemented by start-up companies to address, in particular, the liquidity issues that employees of start-ups face when benefits are received. However, we have several concerns with how the proposals operate as set out below.

Issue 1: Deferral of the SSTD may significantly increase tax payable by employees of start-ups and therefore is of limited appeal

The broad proposal, which is to defer the share scheme taxing date ("SSTD") until there is a "liquidity event" (such as listing of the shares or sale of the company) to fund the tax on the income is, in our view, unlikely to achieve the objectives of the reform.

We understand one of the Government's primary objectives is to encourage the growth of the start-up sector in New Zealand. The current tax settings for ESS have been identified as problematic for the sector. One of the key issues faced by employees of start-ups are liquidity concerns where employees are unable to fund tax on ESS income, e.g. because they are unable to sell shares to cover their tax bill. There are also concerns that shares may be difficult to value if they are unlisted.

Under the proposals in the Bill, it is not only recognition of ESS income that is deferred until a liquidity event (when employees can fund the tax), but also quantification of the benefit. Where the election is made, the SSTD is deferred until the liquidity event meaning the employee would be taxed on the market value of the shares at the liquidity event date (less any payments by the employee) rather than on the date vested shares are acquired (otherwise the SSTD if the election is not made).

Given the nature of start-up companies, it is likely that the share price on a liquidity event such as a trade sale or IPO (if the company succeeds in reaching such a milestone) may be significantly (many multiples) higher than when the shares were acquired. By making the election, the employee's shares will effectively be held on "revenue account", with tax payable on the increase in value at the employee's marginal rates (up to 39%). In effect, this would amount to a capital gains tax on shares employees hold in start-up companies.

The election is, of course, optional. We expect there may be limited uptake given the above and accordingly the proposals may do little to advance the Government's objectives.

Submission

We recommend including an option to calculate ESS income on the SSTD under current law but to defer payment of the tax until there is a "liquidity event".

While not our preference, if deferral of the payment of tax until a liquidity event is a fiscal concern, then an appropriate finance charge could be applied to compensate the Crown. This is not preferred due to complexity of what should be a simple rule. Further, any finance charge should not be set at a penal rate (like current use of money interest rates are).

Further comments

We agree the tax payment date should be deferred until there is a liquidity event, however, the taxable benefit should be able to be calculated at the time the employee receives the shares free of any (substantive) employment conditions (i.e. on the SSTD under current law).

This is necessary to ensure that start-up ESS benefits are not over-taxed (that is, only the genuine employment income component, and not the additional capital gain, is taxable).

We note that the difficulty of valuing shares in start-ups is one of the reasons for deferring both the taxing point and the calculation of taxable value. While we accept there may be difficulties in valuing the shares, we do not see this issue as insurmountable.

Further, if the shares are issued to an employee at an early stage (when the idea / product / company is untested), the value of the benefit conferred should reflect this. Any subsequent increase in share value (e.g. from that idea/product subsequently being developed and commercialised by their employer) does not relate to the person's employment income and should not be taxed. (However, this will be the case if the taxing date is on listing or trade-sale of the business.) We note that there can often be long lead times between a start-up issuing the shares and a particular liquidity event occurring. This will, therefore, invariably result in over-taxation under the deferral regime.

Accordingly, we recommend that the option be available to base the ESS income calculation on an independent valuation at the time the SSTD arises under current law.

If, however, the employee or company does not wish to incur such costs, the amount of the ESS income can be calculated at the time of the liquidity event.

Issue 2: Election solely at discretion of employer is not appropriate

It is proposed that it would be at the discretion of the employer to offer shares under this regime to their employees by notifying the Commissioner of Inland Revenue and the employee at the time of issuing of transferring the shares. It is suggested in the Commentary on the Bill that *"[e]mployees who do not want the taxing point to be deferred would need to ensure that the shares are not referred to as "employee deferred shares*".

Submission

We recommend the deferral regime be elective by the employee.

Comment

Our support for the deferral regime is based on this addressing genuine concerns around liquidity. While this will generally be the case where a start-up's shares cannot be traded, meaning there is no cash-flow but a tax liability nevertheless, some employees may have other sources (e.g. salary or wages, investment income or wealth generally) from which to pay the tax, meaning the liquidity issue does not arise for them.

We expect this will particularly be a consideration if there is no option but for the calculation of taxable income to be based on the value at the time of a "liquidity event", under the deferral regime. Employees may wish to opt out to avoid over-taxation.

Therefore, we recommend that the deferral regime be elective rather than mandatory and at the employee's choice, as they will suffer the tax impost.

We further note that the quantum of deduction arising for the employer is tied to the quantum and timing of the income arising for employees. The employer's ability to unilaterally elect to apply the deferral regime could generally be expected to result in larger tax deductions for the employer (commensurate with the greater tax paid by employees). As noted above, in the context of start-ups, much of the increase in share value is likely to relate to the company's ideas/products being developed and commercialised, rather than truly relating to the person's

employment income. The mechanism proposed in the Bill will effectively give the company a tax deduction equal to the increase in its share price due to these (essentially capital) developments, to the extent shares are held by employees.

The design of the rules may also be challenging to apply in practice for employees of New Zealand subsidiaries of overseas unlisted companies. Share schemes within the scope of the ESS rules are unlikely to contemplate concepts of "employee deferred shares", but nevertheless the New Zealand employer would have the unilateral ability to elect (at the time employees receive shares in the foreign parent company) to cause the taxing point to be deferred for the New Zealand based employees.

Issue 3: payment of a dividend should not be a triggering liquidity event

In addition to the listing of the company or a sale or cancellation of shares, it is proposed that the payment of a dividend in respect of the shares would be a "liquidity event" triggering the SSTD. This is inappropriate for several reasons.

Submission

The payment of a dividend on the shares should not trigger a liquidity event under the deferral rules.

Comment

The primary justification for this rule appears to be that it may address liquidity concerns because employees could use the dividend income to pay tax on their ESS benefits. We consider this rationale is flawed for several reasons.

Firstly, the payment of *any* dividend on the employee deferred shares would trigger full taxation, regardless of quantum of the dividend. A $10 dividend could trigger tax on $100,000 worth of shares.

Secondly, the concept of what constitutes a "dividend" under subpart CD of the Income Tax Act 2007 is significantly broader than what constitutes a dividend as a matter of company law. As a result the SSTD could be inadvertently triggered by transactions which may not be intended to be within the scope of the proposals.

Thirdly, this proposal is inconsistent with the concerns put forward around valuations. The payment of even a small dividend would trigger full taxation on the deferred shares which may still not have a readily ascertainable market value, necessitating a valuation exercise.

Given the policy intention behind the proposals, we consider liquidity events under the deferral regime should be limited to the listing of the company or a sale or cancellation of shares.

Clarifying timing of employers' deductions

Issue 1: Effective date for proposed change and transition between rules

The proposed change to the timing of the employer's deduction under s DV 27(6) will shift the deduction to the share scheme taxing date ("SSTD"), which is 20 days before the date the deduction generally arises under current law, on the "ESS deferral date".

It is proposed that the change comes into force from 1 April 2026.

Submission

The effective date of the law change should be amended to ensure the deduction is not lost because of the transition to the new timing rule.

Comment

The proposed effective date of 1 April 2026 does not address transitional issues between the two different timing rules.

For example, if a company with a standard balance date has an ESS where shares vest on 31 March 2026 and this is the SSTD, it is unclear whether the employer can claim a deduction:

1. in the 2027 income year, because current law applies and the deduction arises on the ESS deferral date (20 April 2026); or
2. in the 2026 income year, because the new law applies and the deduction arises on the SSTD (31 March 2026).

If the law change does not take effect until 1 April 2026, it appears to us that the company cannot claim a deduction in the 2026 income year, because under the law in effect for the 2026 income year the deduction does not arise until the 2027 income year.

However, it also appears that the company cannot claim a deduction in the 2027 income year because under the law that applies from 1 April 2026, the deduction is treated as having arisen in the 2026 income year (on the SSTD). But because the new law does not come into force until 1 April 2026 (i.e. the 2027 income year), it would seem the company could not claim the deduction in its 2026 tax return either. The deduction may be forfeited entirely.

The Bill does not contain any timing rules in the commencement section to deal with the mismatch/overlap between rules. We note that section 39 of the Bill (with the amendment to s DV 27) does not have any specific rules, and section 2(23) of the Bill (commencement) only says the new law "comes into force on 1 April 2026".

Unless this issue is addressed, it appears that taxpayers with ESS schemes with vesting dates within 20 days of 31 March 2026 could potentially lose their deductions entirely. The effective date should be amended to include a transitional rule to ensure the deduction is not lost as a result of the law change.

Issue 2: Impact of the proposed law change on transactions negotiated prior to effective date

In our experience it is a common feature of employee share schemes for a SSTD to be triggered by a "liquidity event" such as a majority share sale.

Typically, the SSTD is triggered shortly prior to settlement while the vendors legally own the company being sold. However, due to application of the 20 day "ESS deferral date" rule, under current law the deduction typically arises post-settlement after the buyer has acquired the company. Because the deduction arises after the buyer owns the company, but the sellers typically economically bear the cost of the scheme, it is commonly negotiated in sale and purchase agreements (SPAs) for the sellers to "claw back" the value of the post-completion deduction via purchase price adjustment mechanisms. In our experience, a significant amount of effort is often spent in negotiating these pricing mechanisms to ensure the economic effect of the ESS deduction arises for the "correct" party.

We expect there are many SPAs that have been negotiated on the basis the current law applies but where settlement may occur post law change. If settlement occurs post 1 April 2026, the change in law will fundamentally impact on the economics of the transaction and, in our view, create unintended "winners" and "losers".

In addition to SPAs that have already been signed, agreements currently being negotiated must consider how to deal with the potential for law change (which might not occur), as well as uncertainty as to whether settlement might occur pre- or post-law change, e.g. where settlement is conditional on obtaining Overseas Investment Office (OIO) consent.

Submission

We strongly recommend that parties should be able to elect to apply the current law where a binding SPA was entered into prior to the law change.

In addition to our principal submission, we question more generally whether the new rule should be mandatory to apply in all cases. The 20 day "ESS deferral date" rule was broadly intended to be concessionary for taxpayers when it was introduced, to give employers more time to manage employment information reporting obligations (and PAYE, where applicable). We favour a more flexible approach where application of the deferral rule (both as to timing of the employer's deduction and the employee's income) should be optional. There are several precedents for this type of optionality in existing legislation, for example the option to elect for companies to exit a consolidated tax group with effect from the date eligibility is lost (e.g. due to shareholding changes) or the start of an income year. Notification of elections to the Commissioner of Inland Revenue could be filed within appropriate time periods.