KPMG Centre
18 Viaduct Harbour Avenue
PO Box 1584
Auckland 1140
New Zealand
Telephone +64 9 367 5800
Fax +64 9 367 5875
Internet www.kpmg.com/nz

Thomas McKay
Policy Advisor
Policy, Inland Revenue Department
P O Box 2198
Wellington

Our ref KPMG submission - TSPWP (17.09.25).docx

17 September 2025

Dear Thomas

Tax and Social Policy Work Programme

Thank you for the opportunity to provide feedback on suggestions for inclusion in the Tax and Social Policy Work Programme (the "Work Programme").

Our suggestions are limited to the Tax Policy part of the Work Programme as we are not experts on Social Policy and we assume parties more qualified to comment on these matters will make submissions on those items.

The areas we consider to be priorities are those that broadly align with the Government's objectives of making New Zealand more attractive as a destination for foreign capital and labour and reducing compliance costs for business.

We have limited our suggestions to five key areas, and specific issues/problems we have identified in those areas, as we acknowledge that tax policy resources are limited. That said, we note that in a number of cases, the underlying issues are known and accepted, and solution development will be well progressed.

1. Reform of the FBT rules

We remain strongly supportive of a number of the proposals consulted on in the *Fringe Benefit Tax – options for change* – consultation document released in April this year (refer our earlier submission).

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 proposed for reform: motor vehicles and unspecified benefits. Therefore, we would welcome further clarity and simplification of these rules.

It is disappointing that misinformation in relation to the current operation of the FBT rules for work-related vehicles, and the impact of the proposals, has seemingly resulted in a hiatus of these reforms.

We acknowledge the FBT proposals need to be viewed as package of measures, from a fiscal perspective, therefore it is not possible to separate the motor vehicle proposals from the other proposals. We support the progression of the motor vehicle proposals in some form (including retention of the current work-related vehicle definition, if necessary) alongside the other measures.

2. Limited partnership taxation issues

We note that while Inland Revenue's Tax Counsel Office ("TCO") has recently finalised its guidance on partnership (including limited partnership) taxation issues, the interpretation statement ("IS 25/11") omits consideration of several important issues relating to limited partnerships, due to lack of legislative and policy clarity. There are also interpretations in IS 25/11 which, in our view, create practical issues for the operation of limited partnerships.

Given the ubiquity of limited partnership structures internationally, and their common use for inbound investment (including in infrastructure assets, which is a key area of focus for the Government), we believe that it is critical that the partnership tax rules not create barriers to their use.

The following examples illustrate the areas we believe that (further) legislative clarity is desirable:

- The application of the withholding tax rules to limited partnerships, to clarify the obligations on payers, intermediaries and limited partnerships. We note that IS 25/11 excludes any detailed consideration of these issues. This remains an area of significant uncertainty for taxpayers as well as the potential risk of inconsistent Inland Revenue application/enforcement of the rules.
- The application of the intention test for partners in limited partnerships. We are concerned by the view in IS 25/11 that, in certain circumstances, the intention of an investor when acquiring their interest in a limited partnership can taint the taxation treatment of the underlying partnership property. This is notwithstanding the intention or purpose of the partnership when acquiring the partnership property may be different.
- Ensuring that a limited partnership (or partnership), when completing its partnership return (and the partner allocations/schedule), is not required to source income information from the partners. Inland Revenue's partnership guide (IR7G), for example, suggests that a partnership holding interests in a foreign company, is required to source information from its partners in relation to the calculation of their FIF income (or if FIF exempt, income under ordinary rules), for inclusion in the partnership return and partner schedules. However, this is impractical, particularly if partners have different balance dates to the partnership.
- The "no streaming" rule in section HG 2(2) overreaches its policy intention of counteracting integrity concerns such as streaming foreign-sourced income to non-resident partners and overrides commercial agreements between partners that have genuine economic substance. This is illustrated in Example 6 in IS 25/11, where applying TCO's interpretation of section HG 2(2) results in a tax outcome departing from the economic substance of the partnership agreement despite there being no tax mischief to counteract. This creates winners and losers. The result is some partners pay what should be other partners' tax liabilities. We agree with comments in the paper presented at the recent New Zealand Law Society tax conference that this overreach "is not consistent with the norms for international limited partnership tax treatment" and "may adversely affect achievement of the broader objective of attracting investment to New Zealand of the type sought in enacting the [limited partnership] regime."

3. Investment boost tax deduction

We note that the Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Matters) Bill contains a number of investment boost remedials and further TCO guidance is expected on certain interpretive issues (such as when an asset is "available for use").

Two practical issues that are of concern to us, which are not addressed in the Tax Bill, are:

- 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. 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 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 again illustrates the uncertainty with how a partnership is intended to complete partnership returns and partner allocation schedules (see point 3 above in relation to limited partnerships).
- 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). Consideration should be given to introducing a broader set of "rollover relief" rules for circumstances where there is no change in the ultimate economic ownership.

Another concern that has been raised with us is the long-term sustainability of investment boost as a policy tool and the impact of this on 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 will be 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, taxpayers may be reluctant to factor in the value of the investment boost tax deduction for longer-term capital investments (such as buildings and new plant machinery and equipment), meaning the policy is not fully achieving the Government's stated aim of encouraging investment in productive assets.

We acknowledge that tax policy is subject to 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.

While investment boost is the obvious example, we note that this concern is prevalent across a range of different tax settings.

4. Taxation rules for Māori Authorities

We note that the Work Programme includes simplifying tax compliance for Māori Authorities ("MAs"). We agree that this needs to be a focus area, as we consider the tax policy settings are

not fit-for-purpose, particularly given the important role MAs play in both the Māori and wider New Zealand economy. The issues include:

- The over-taxation of income from MA investments that are held through corporate structures (which are taxed at the company rate of 28% versus the Māori Authority tax rate of 17.5% if held directly by the MA). The current tax rules create commercial constraints on how MAs operate and structure their investments and business activities. This includes the utilisation of limited partnerships in MA structures to obtain flow-through tax treatment to retain the benefit of the 17.5% rate. Unlike for corporate groups, it is not possible to form a consolidated group comprising an MA and its limited partnerships, meaning compliance costs for preparing separate tax returns increase exponentially as additional limited partnerships are established for different commercial ventures. While the MA rate is ultimately a withholding rate, due to the tax rate profile of members, 28% is likely to over-tax in most circumstances. The 2019 Tax Working Group recommended extending the 17.5% rate to the corporate subsidiaries of Māori authorities but the issue remains unaddressed.
- The withholding tax treatment of MA distributions to non-resident members is inappropriate. Unlike dividends, MA distributions are always classified as resident passive income subject to the RWT rules, rather than the NRWT rules. Various issues flow from this:
    - Non-resident members of MAs (e.g. beneficiaries of PSGE trusts who reside in Australia), are overtaxed, and are subject to additional compliance burdens (i.e. technically, they need to file NZ tax returns). A withholding rate of 39% applies in certain circumstances (e.g. if the member's IRD number is not provided to the MA), due to all distributions being treated as resident passive income for tax purposes. In virtually all cases, this represents over-taxation of non-resident members (under domestic law but even moreso when DTAs are considered).
    - Application of the Māori authority credit ("MAC") rules further complicates matters. Unlike imputation credits, which are not included in assessable income for non-residents and are not refundable, MACs are treated as being assessable income for non-residents and are refundable. RWT is accordingly applied to the gross MA distribution (inclusive of MACs) received by non-residents, which further exacerbates over-taxation.
    - These positions also do not take into account New Zealand's commitments to tax treaty partners under our DTAs. The DTA analysis for MA distributions is unclear in many cases. The outcomes will depend on whether the MA distribution is legally from a trust or a company, and, if from a company, whether the MA distribution meets the definition of "dividend" in the particular DTA (such that the reduced DTA rate under the dividend article should apply) or otherwise is captured by the "other income" article (such that NZ has no right to tax the MA distribution at all).[1] Ultimately, this means that non-resident members are being unfairly overtaxed in NZ and are required to file NZ tax returns (that they would not otherwise be required to file) in order to obtain refunds. The time and cost of doing so generally means they simply forfeit refunds they are rightly entitled to. Getting the tax treatment "correct" at source through the withholding rules should be prioritised.

[1] We have previously been advised that IR does not consider an MA distribution to be a "dividend" under Article 10 of the Australian DTA. Instead, IR considers the distribution is covered by Article 21 ("other income"). On this basis, IR considers that MA distributions to Australian residents should not be taxable in New Zealand *at all*. Despite this, New Zealand continues to incorrectly tax many Australian resident members at 39%.

- For MAs that are companies, the interaction of the MA tax rules and the ordinary company tax rules are unintuitive and problematic. For example, ordinary company dividends arise from transfers of value from the company to a shareholder *or a person associated with a shareholder* (where the transfer is on account of shareholding relationship). For a corporate MA, only transfers of value to a shareholder (a "member") constitute a MA distribution. Transfers of value from an MA to *a person associated with a shareholder (member)* are "dividends", as there are no provisions that "turn off" the ordinary dividend rules. Because MAs cannot maintain imputation credit accounts, or attach MACs to such dividends, any transfers of value to associates of shareholders are fully taxed with no credits available (and as a practical matter this issue is often overlooked). There is no clear policy rationale for this inconsistency. We consider the outcome is likely unintended, and the rules should be amended to address this issue.

5. Capitalisation of insolvent companies to repay third-party debt

Section EW 46D was recently introduced to deal with "debt-equity swaps" where a lender subscribes for shares in an insolvent borrower to allow the borrower to repay the debt owing to the lender (e.g. where a shareholder capitalises a shareholder loan to an insolvent company). The provision as enacted overreaches the policy intention.

Currently, if an insolvent company has debt owing to an unrelated third-party (e.g. a bank) and its shareholder subscribes for shares (i.e. capitalises the company to restore solvency), the company's use of the subscription proceeds to repay the third-party lender is treated as giving rise to taxable debt remission income for the company. There is no good policy rationale for this, and we understand that this outcome was unintended and the issue has been added to the public remedials log, subject to further resourcing and consideration of priority.

We consider that a remedial amendment should be prioritised, consistent with the Government's objectives of making New Zealand a more attractive place to invest and supporting and growing New Zealand start-ups. It is common for start-up companies to be unprofitable for many years and frequently they rely on shareholder capital injections to remain solvent. Shareholder capital infusions used to repay third-party creditors (transactions which have genuine economic substance) clearly should not give rise to taxable debt remission for the company.

Further information

Please do not hesitate to contact us, if you have any questions about the issues covered in this letter.

Yours sincerely

Darshana Elwela
Principal, Taxation Advisory

Rachel Piper
Partner, Taxation Advisory