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## WEEKLY COMMENT: FRIDAY 26 APRIL 2024

1. Over the next few weeks, I am moving my focus away from GST and back to income tax and the changes to the bright-line test and related rollover relief rules, the exemption for partitioning of land between co-owners and the cessation of building depreciation for commercial buildings.
2. The *Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Act 2024* (the “Multinational Tax Amendment Act 2024”), with a date of assent of 28 March 2024, contains major amendments to the bright-line test rules and the related rollover relief rules, which apply to a person’s disposal of residential land if the “bright-line end date” as defined in the Multinational Tax Amendment Act 2024, is on or after 1 July 2024.
3. Before that, the *Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act 2023* (the “Platform Economy Amendment Act 2023”), with a date of assent of 31 March 2023 contained amendments to the bright-line test rules and additional amendments to the rollover trust rules, which continue to apply to disposals of residential land if the bright-line end date is before 1 July 2024.
4. Prior to that, the *Taxation (Annual Rates for 2021–22, GST, and Remedial Matters) Act 2022* (the “March 2022 Amendment Act”), which received the Royal assent on 30 March 2022, introduced the 10-year bright-line test rule and the rollover trust rules. I reviewed these rules over 3 weeks in *Weekly Comment 3 June 2022*, *Weekly Comment 10 June 2022* (in which I reviewed the rollover trust rules as originally introduced), and *Weekly Comment 17 June 2022*.
5. This week, I am going to review the changes to the rollover trust rules enacted in the Platform Economy Amendment Act, which follow on directly from the amendments I reviewed in June 2022. As noted above, these amendments continue to apply to residential land disposals before 1 July 2024. (Inland Revenue has provided an explanation of “Bright-line rollover relief – Consolidated amendments since 2022” on page 106 onwards of *Tax Information Bulletin* Vol. 35, No. 6, July 2023 (“the Platform Economy Act TIB”).)
6. Next week and the week-after-next, I will review the completely revised bright-line test and rollover relief rules which will apply from 1 July 2024 onwards, and two other important changes in the Multinational Tax Amendment Act 2024:
  - (a) The reinstatement of interest deductibility for residential properties: 80% in the year ending 31 March 2025 and 100% thereafter; and
  - (b) The 0% depreciation rate for commercial buildings that will apply from the 2024-25 income year and related changes.

## **Platform Economy Amendment Act rollover rules changes**

7. An important amendment to the rollover relief rules contained in the Platform Economy Amendment Act 2023 originally applied only from 1 April 2023, but a subsequent amendment in the Multinational Tax Amendment Act 2024 should, based on the wording of the revised provision) mean that the amendment applies to transfers on or after 1 April 2022 (although the commencement date of the revised provision is 1 April 2023). This was the insertion of s CB 6AB(2)(c) which provides rollover relief for a transfer from a trust if the trust is a rollover trust and:
  - (a) The transferees had not transferred the land to the trustee; and
  - (b) All transferees are principal settlors at the time the trustee transfers the land to the transferees and also at the time the trustee acquired the land.
8. Section 9(1) of the Multinational Tax Amendment Act 2024 has replaced s CB 6AB(2), effective from 1 April 2023. The replaced s CB 6AB(2) provides that when persons (the transferees) dispose of land that was transferred to them from a trustee of a trust that is a rollover trust, the bright-line acquisition date for the land is the bright-line acquisition date that the trustee had for the land, if the trustee transfers the land on or after 1 April 2022 and either:
  - (a) If the transferees had previously transferred the land to the trustee, the transferees acquire proportionally the same amount of land back from the trustee and, at the time the trustee transfers the land to the transferees:
    - (i) The transferees are beneficiaries of the transferor trust; and
    - (ii) At least 1 transferee is a principal settlor of the transferor trust; or
  - (b) If the transferees had not previously transferred the land to the trustee, all transferees were principal settlors at the time the trustee acquired the land and at the time the trustee transferred the land to the transferees.
9. A new s CB 6AB(2B) inserted by s 9(2) of the Multinational Tax Amendment Act 2024, effective from 29 March 2024 (the date following the date of assent of the Amendment Act) provides that for the purposes of the proportionality requirement in s CB 6AB(2)(a), in the case where a settlor who had previously transferred the land to the trustee has died, the proportionality requirement is met if the transferees receive at least the same proportion of the land back from the trustee as they had previously transferred.
10. An equivalent provision to s CB 6AB(2B) applying to Maori family trusts has been inserted as s CB 6AC(2B).
11. In relation to the requirement previously in s CB 6AB(2)(c) and subsequently in s CB 6AB(2)(b) (before its repeal as from 1 July 2024 under the new rollover rules, which will be discussed on next week's *Weekly Comment*) Inland Revenue noted in the Platform Economy Act TIB on page 100-101 that:
  - (a) Rollover relief does not apply to transfers to settlors who are not principal settlors of the trust either at the time the land was acquired by the trustee or the time the trustee transfers the land, which ensures that:

- (i) A beneficiary of the trust cannot become a principal settlor immediately before the transfer to them just so they receive the land without bright-line test tax implications; and
  - (ii) Rollover relief does not apply to a transfer to someone who is no longer a principal settlor of the trust;
- (b) This is a relatively limited provision and only applies in the specific scenario where the transferee had not originally owned the land: sections CB 6AB(2)(a) and (b) already provide for transferees who owned the land before transferring it to the trustee;
- (c) This rule only has effect for transfers occurring on or after 1 April 2023 (note that this requirement has ceased to apply and the rule has effect for transfers on or after 1 April 2022).
12. The rules in s FC 9B and s FC 9C (as amended by s 76 of the Multinational Tax Amendment Act 2024, removing the requirement for an “original settlor”) continue to apply:
- (a) The rollover is deemed to occur, under s FC 9B, at the greater of the cost of the land to the transferor or the consideration they derive from the disposal, for the purpose of calculating any net income under the bright-line test rules;
  - (b) The transferee is deemed, under s FC 9C to have a cost base for the transferred property equal to the greater of the cost to the transferor or the consideration given to the transferor.
13. A related amendment has been made by s 75 of the Multinational Tax Amendment Act 2024 “switches off” the deemed market value rule in s FC 2(1) for distributions from a trust, by amending s FC 2(3) so as to provide that the market value rule in s FC 2(1) is overridden by s FC 9B and FC 9C. This amendment applies from the date following the date of assent, which is 29 March 2024.
14. A second amendment that applies only from 1 April 2023 is the replaced s CB 6AB(6)(c) which includes as a “close family beneficiary” a company in which a beneficiary, who is either a principal settlor of the trust or is a close family associate of another beneficiary that is a principal settlor of the trust, has at least a 50% voting interest. (Previously, a ‘close family beneficiary’ included only a company that was owned 50% or more by a beneficiary that was a close family associate of a principal settlor, and a company owned by a beneficiary who is a principal settlor was not included in the definition.)
15. The remainder of the amendments are backdated to the introduction of the rollover relief rules on 27 March 2021. These include:
- (a) An amended s CB 6AB(2)(a) and (b) resulting in the removal of the “original settlor” requirement for residential land transferred from a family trust to settlors of the trust, meaning that the transferee need not have made the original settlement of property on the trust (previously, rollover relief was arguably not available if the land was transferred to a person who became a settlor of the trust after the trust was originally settled, even if the settlor was in fact the original owner of the land and had become a principal settlor at, or by, the time they transferred the land to the trustee);

- (b) An amended definition of “rollover trust” in s CB 6AB(5) resulting in the removal of the “original settlor” requirement, so that a rollover trust is one where, at the time of the relevant transfer to or from the trust:
  - (i) All principal settlors are beneficiaries of the trust;
  - (ii) All principal settlors are close family associates; and
  - (iii) All beneficiaries are close family beneficiaries.
- 16. Inland Revenue explained that the effect of the above amendments is to allow rollover relief when land is transferred from a family trust to a settlor – i.e. the bright-line start date for the land for the transferee is the bright-line start date for the trustee, if the following conditions are met:
  - (a) The trustee transfers the land to the transferee(s) on or after 1 April 2022;
  - (b) The transferee (along with all other transferees if there is more than one) is a settlor of the trust and had originally transferred the land to the trustee;
  - (c) If there is more than one transferee, the transferees acquire proportionally the same amount of land they originally transferred to the trustee; and
  - (d) At the time the trustee transfers the land to the transferee(s):
    - (i) All transferees are beneficiaries of the trust;
    - (ii) At least one transferee is a principal settlor, and
    - (iii) The trust is a “rollover trust” (as set out in paragraph 15 above).
- 17. Inland Revenue notes that rollover relief is provided for trust resettlements, under sections CB 6AB(1)(b) and CB 6AC(1)(b) where the transferors are trustees of a rollover trust and the transferee trust is also a rollover trust and:
  - (a) All beneficiaries of the transferee trust are the same as for the transferor trust; or
  - (b) All the natural person beneficiaries of the transferee trust are either, the same as those of the transferor trust, or, close family associates of a principal settlor of the transferor trust.
- 18. Inland Revenue notes, on page 102 of the Platform Economy Act TIB that:
  - (a) To qualify for rollover relief, each natural person beneficiary of the transferee trust must be a close family beneficiary, and, in the case of multiple principal settlors, each principal settlor must be a close family associate of the other principal settlors;
  - (b) At a minimum, each natural person beneficiary of the transferee trust must be either a principal settlor, or a close family associate of a principal settlor, of the transferor trust;
  - (c) The transferee trust may not necessarily have the same beneficiaries as the transferor trust, however, provided the above conditions are met, this would not preclude the resettlement from qualifying for rollover relief - for example, if an additional generation were added to the transferee trust’s beneficiaries, rollover relief would still be available if the close family beneficiary requirements were satisfied;

- (d) Rollover relief also applies even if the principal settlor of the transferor trust is deceased.
19. Section CB 6AC(1)(b) similarly provides rollover relief for resettlements of Maori rollover trusts.
20. Amendments have been made to the definition of “close family beneficiary” in s CB 6AB(6) (before its repeal by the Multinational Tax Amendment Act 2024) as follows:
- (a) A new paragraph (ab) has been added to include a trustee of another trust if at least one beneficiary of the other trust is a close family associate of a beneficiary of the relevant trust;
  - (b) A new paragraph (ac) has been added so the definition includes organisations whose funds are applied wholly or principally to any civic, community, charitable, philanthropic, religious, benevolent, or cultural purpose, whether in New Zealand or elsewhere; and
  - (c) The scope of paragraph (c) has been expanded to include a company at least 50% owned by a beneficiary who is a principal settlor, as discussed in paragraph 14 above.
21. Amendments have been enacted to clarify that when rollover relief applies, the transferee also has the same acquisition date of the land as the transferor, for the purpose of determining whether the bright-line test rules apply, and if so, which, bright-line test rule applies:
- (a) Section CB 6A(1AB)(b) provides that the 10-year bright-line test does not apply to a person who has rollover relief if the transferor first acquired an estate or interest in the land before 27 March 2021; and
  - (b) Section CZ 39(1B) provides that the 5-year bright-line test does not apply to a person who has rollover relief if the transferor first acquired an estate or interest in the land before 29 March 2018.
22. An amendment has also been enacted in new s FC 9(4) to provide that if residential land is transferred by a beneficiary of the deceased person on or after 1 April 2022 to a person who is a recipient to whom rollover relief applies (as described in section FC 9B(a) to (e)) and the person disposes of it, sections CB 6A and CZ 39 do not apply to the disposal. This ensures that when a beneficiary of an estate transfers inherited residential land to a rollover person, the beneficiary’s exemption from the bright-line test for the inherited land is rolled over.



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