

Out with the old and in with the new

“The Income Tax Act 2004 comes into force on 1 April, replacing its aging predecessor, the Income Tax Act 1994.”



Monique Mackie - Senior Solicitor

1 April 2005 is a significant date for tax legislation. The Income Tax Act 2004 (the new Act) comes into force, replacing its aging predecessor the Income Tax Act 1994 (the old Act).

The new Act applies to most taxpayers from 1 April 2005. However, for taxpayers with a balance date other than 31 March 2005, the new Act applies from the start of their 2005/2006 income year.

Legislation rewritten

The new Act is essentially a rewrite of the old Act, apart from a few identified policy changes. The language in the old Act is complex and, in parts, rife with uncertainties and ambiguities. The main purpose of the rewrite was to produce tax legislation that is clear, uses plain language and is structurally consistent.

The new Act rewrites the first five Parts (A to E) of the old Act, which deal with the purpose and interpretation of the new Act, the core provisions, income, deductions and the timing and quantifying rules. Related definitions (generally contained in section OB 1) have also been rewritten.

The remaining parts of the old Act are still to be rewritten and enacted.

The new Act is not intended to change the law, except for the limited generally minor policy changes identified in Schedule 22A.

Unintended changes

It is almost inevitable that such a substantial rewording and reordering of the Act will result in unintended changes.

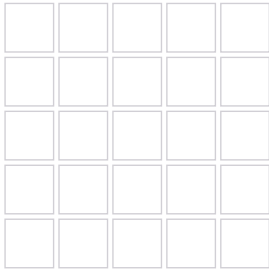
Taxpayers will need to check that the new wording has the same effect as the old wording had, or was thought to have had.

An advisory panel, chaired by Sir Ivor Richardson and including representatives of the IRD, Treasury, the Law Society and the Institute of Chartered Accountants of New Zealand, will consider submissions on the of unintended changes. A number of submissions have already been received and are being considered by the panel.

It is expected that unintended changes will generally be reversed by appropriate retrospective amendments to the new Act.

An exposure draft published by the IRD suggests that if the new Act is amended to reverse an unintended change of meaning and this results in a taxpayer being left with a tax shortfall, no interest or penalties will be imposed provided that an acceptable tax position was taken in the first place. The amount of the shortfall would still need to be paid.

The new Act makes it clear that if the new wording produces uncertainty or an absurdity then the wording in the old Act should be used to determine the intended meaning in the new Act.



Taxation

No policy changes

The IRD has said that the rewrite will not be used as an opportunity to change current policy or tilt the playing field to its advantage. Any policy changes will be implemented through the usual legislative process rather than via the rewrite.

The IRD expects that the rewrite of the remaining Parts of the Act will take two to three years. Parts H and I, which deal with the taxation of certain entities and losses, have already been rewritten but are still in draft form. Submissions on the rewritten Part H are due by 30 April 2005.

The draft legislation can be viewed online at www.taxpolicy.ird.govt.nz.

Advice and information

For further advice or information, please contact any member of the Tax Team listed below.

For further information, please contact your usual Bell Gully adviser or:

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