

New tax legislation currently before Parliament proposes significant changes to the time limits for refunds of overpaid tax and GST, plus changes to the four-year statute bar on increases to tax assessments.

New tax legislation currently before Parliament proposes significant changes to the time limits for refunds of overpaid tax and GST, plus changes to the four-year statute bar on increases to tax assessments. This newsletter discusses the potential impact of these proposals.

The Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill (the Bill) introduces these new rules as part of wider changes to the disputes resolution process. The Bill also deals with a number of other issues (including the treatment of venture capital, sale and leaseback arrangements for intangibles, and various other matters).

As the Bill was only recently introduced, it is difficult to predict when it will be passed. When it is, the changes in respect of income tax refunds and statute barring will apply from the 2004/2005 income year and the changes in respect of GST refunds will apply for return periods starting on or after 1 April 2005.

Eight-year limit on refunds to be slashed

Under the current rules, you have eight years to claim a refund of excess income tax and there is no time limit for claiming for GST credits.

The Bill proposes a four-year time limit on claims for a refund of either income tax or GST. The Commissioner would have the ability to extend this period to eight years but only in cases of "a clear mistake or simple oversight".

The reasons given for this change include:

- government being exposed to a "significant but unquantifiable revenue risk from large, backdated refund claims";
- providing certainty for taxpayers;
- an inconsistency with the four-year statute bar on the Commissioner's ability to increase a tax assessment.

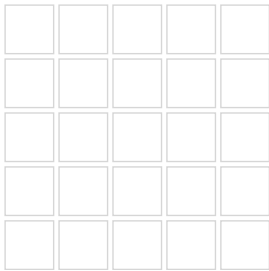
The Bill also proposes changes to the four-year statute bar, and this is discussed in more detail below. The effect of the changes to the statute bar is that the four-year time limit on the Commissioner increasing assessments is likely to apply in fewer situations.

Given this, it is questionable whether restricting the refund period to four years can be justified on the basis of consistency with the statute bar period. It seems unfair to be out of time for a refund of overpaid tax, yet the Commissioner has unlimited time to increase the amount of tax you have to pay in an increasing number of situations.

It also remains to be seen what the Commissioner will consider to be "a clear mistake or simple oversight" allowing an extension of the four-year refund period. Judging by his apparent reluctance to decrease assessments outside of the disputes resolution process under the current rules (in section 113 of the Tax Administration Act 1994) to ensure correctness, one expects he will take a restrictive view.

GST— A refund yes but don't delay claiming it

Currently, if you pay GST and don't claim it back at the first available opportunity



Time limits – more for IRD but less for you

(which clearly is what you should be aiming to do) then there is nothing to stop you claiming the refund later.

Some taxpayers don't get around to claiming their GST credits for some time. Some simply don't have the tax invoices they need and take a while getting these, some are a little disorganised and others are unsure about their entitlement to a refund – some still believe that GST on non-deductible capital expenditure is also not recoverable!

Irrespective of the reason for not claiming the refund as soon as possible, and given that (with some limited exceptions) GST is not meant to be a cost to business, if people are happy to wait to claim the credit, that is to Government's advantage and that should be the end of the story.

However, under proposed changes unless your delay is because you were waiting for a tax invoice or because of some clear mistake or oversight, then welcome to the world of NOPAs, NORs and SOPs.

These are all acronyms for formal processes that you will need to go through to claim a refund of the GST you paid and left with Inland Revenue for longer than necessary on an interest-free basis. The less cynical of us would be grateful for Government's proposal to extend to two years (rather than the current two months) the period in which these processes would need to be commenced.

While it is understandable that Government would like to be able to close its books at some stage, one would have thought it could make a reasonable estimate on the size of any unclaimed refund and make provision for this without denying taxpayers their refunds.

Statute bar – a rare commodity?

Currently, a four-year time limit, or statute bar, is imposed on the Commissioner's ability to increase an assessment for income tax.

This four-year statute bar does not apply where the Commissioner is of the opinion that a tax return is:

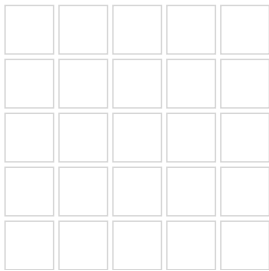
- (a) Fraudulent or wilfully misleading; or
- (b) Does not mention gross income of a particular nature or derived from a particular source.

The Bill proposes to amend the position to require that any omission of income must be material before the Commissioner can extend the four-year period. More importantly, the Bill also provides that the statute bar will not apply if you provide a return of income that "materially overstates the amount of a deduction that is allowed".

Justification for extending the four-year limit on reassessments for overstated deductions is that, in the past, taxpayers would file full information on deductions claimed in their returns. This information would then be audited by Inland Revenue. It is said that this is no longer the case, since taxpayers must now self-assess their income tax liability.

We believe that the information provided by taxpayers is generally little different from what was provided in the past. As a matter of practice, we expect that a copy of the financial statements should be provided with the income tax return.

The difficulty for taxpayers is that the new exception to the four-year statute bar is not based on disclosure, unlike the exception applying to omission of



Time limits – more for IRD but less for you

income. You can disclose the deductions claimed, but this will not prevent the Commissioner from extending the four-year period if he considers that those deductions are materially overstated.

We believe there is a real risk that these changes will mean the statute bar could no longer apply in most – if not all – cases where the issue is one of deductibility. For taxpayers, this will create the very thing that changes to the disputes resolution process are meant to reduce – uncertainty.

Submissions

Bell Gully proposes making submissions to Government. We would welcome your thoughts and comments. Please email us if you have any views you would like to have included or if you would like to add your name to the list of people supporting the submissions.

Advice and information

If you require any further information on this matter, please contact any member of the Tax Team listed below or your usual Bell Gully adviser.

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

Auckland

Niels Campbell	niels.campbell@bellgully.com	64 9 916 8944
Joanne Hodge	joanne.hodge@bellgully.com	64 9 916 8942
David Simcock	david.simcock@bellgully.com	64 9 916 8945
Willy Sussman	willy.sussman@bellgully.com	64 9 916 8952
John Bassett	john.bassett@bellgully.com	64 9 916 8946
Bevan Miles	bevan.miles@bellgully.com	64 9 916 8709

Wellington

Graeme Smail	graeme.smail@bellgully.com	64 4 915 6995
--------------	----------------------------	---------------

Auckland

Vero Centre, 48 Shortland Street
PO Box 4199, Auckland, New Zealand, DX CP20509, www.bellgully.com
Telephone 64 9 916 8800, Facsimile 64 9 916 8801

Wellington

HP Tower, 171 Featherston Street
PO Box 1291, Wellington, New Zealand, DX SX11164, www.bellgully.com
Telephone 64 4 473 7777, Facsimile 64 4 473 3845

Disclaimer: This publication is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this publication.
© Bell Gully 2004. All rights reserved.