Tax-e-mail

DON'T LET THE IRD NAIL YOU
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Transferring pension scheme from overseas

Pensions or lump sums received by a New Zealander who returns to New Zealand after being a non tax resident, are non-taxable for the first four years after their return. The 10 year rule for transitional residency does not apply to foreign superannuation. Your client might have been out of the country for eight years and they could still take advantage of this concession.

Certain NZ pension schemes have been approved as "Qualifying Recognised Overseas Pension Schemes" by the UK government. KiwiSaver is not one of them because it is possible to draw money out of the scheme, before the age of 55, to pay New Zealand tax. You may find some useful information on this website

To find out how the tax law works between countries, refer to the appropriate DTA.

If the client retains his/her overseas pension scheme, he/she will be taxed on a cash basis after the four years has elapsed. Likewise lump sum withdrawals received after four years are taxed in accordance with either the schedular or formula method. This also applies if the scheme is transferred to New Zealand.

Lump sum payments are likely to work out better than pension payments. Be careful if the client wants to bring home lots of lump sum payments as IRD is aware of this and could consider them to be taxable income.

There are specialists doing this type of work. It could be prudent to consult them.

Use of home for business

OS 19/03 is an operational statement, which sets out the correct way of claiming Use of home for business, using the square metre rate method (Section DB 18AA). It arises out of ED0207, which we mentioned in Tax-e-mail 1807. Using the square metre rate is voluntary. You should note the following:

There needs to be an area separately identifiable as being set aside for business. This area has to be obvious to a reasonable person that it is being used primarily for business. For example, one might expect to see a computer.

Any area that cannot be used for a business purpose has to be excluded.

Should you wish to use the square metre rate, which is set down at $41.70 per square metre for the 2019 tax year, you will also need to calculate the share of mortgage interest and rates or rent.

UOMI increases

From 29 August 2019 UOMI will be 8.35% (presently 8.22%). From the same date the interest paid by the Commissioner will drop from 1.02% to 0.81% per annum. Yes, the interest rate paid by the taxpayer is going up even though the OCR is coming down!

Multiple property ownership

If a client owns multiple properties and wishes to have them owned by a company, there is an advantage in having each in a separate company. In the event of wishing to sell one of the properties, the client is not going to be able to get the money out tax effectively without liquidating the company or making it an LTC. The downside of multiple companies is the additional administrative cost. You should regularly remind clients with property in a company to let you know as soon as they sell and before they take out any capital gain so you can take proactive steps.

Personal claim – Use of home by company

We recently saw a question about claiming use of home in a personal tax return. This, of course, cannot be done because the expense cannot be claimed against a salary. The shareholders in a company wished to keep their current accounts equal. One of them was using their home for the benefit of the business. Solution: **Record in a simple agreement, before year-end,** to pay rent **of a specific amount** to the person using their home for business. Pay the other shareholder a corresponding amount of salary. The person incurring costs would deduct them from the rent and return the difference as income.

Research and development tools

Inland Revenue has developed calculators and tools to assist you to determine whether your client is eligible for the R & D tax incentive.

Schedular payments

The new withholding tax regulations for contractors working for a labour hire business under a labour hire arrangement, appear to be voluntary, well at least for complying taxpayers with a good track record.

IR 23BS is the special tax code application form. At number 5 in the form it states you can apply for a 0% special tax rate so long as you have a good record of filing returns and making payments on time. We know of a number of instances where Inland Revenue has accepted an application for a 0% special tax rate. When making an application, there is no need to fill in the remaining boxes.

Interest paid on money borrowed to pay tax

Where the money is borrowed by an individual who is not in business just to pay tax, the interest will generally not be tax deductible. However, if the money has been raised to prevent an income earning asset, the interest is tax deductible. For example, borrowing money to pay tax in order to avoid selling shares.

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Proposals in the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Bill

Attribution rule tidy up

The new tax Bill proposes to permit the use of foreign tax credits where services are provided to a foreign buyer. It also clarifies the only dividends the company can pay free of tax are from retained earnings, which have already been included in the person's personal tax return.

Trusts

The new tax Bill tidies up a number of issues. It aims to ensure consistency within the trust rules on the treatment of distributions when a trustee pays New Zealand tax on worldwide trust income. It also clarifies the relationship of the residence rules to trustees, rules relating to the value of a settlement and aims to ensure there is internal consistency between the treatment of distributions, beneficiary income, taxable distributions and the ordering rules.

Thin capitalisation

The Bill clarifies the de minimus of $1 million of group finance costs is not intended to apply if the New Zealand taxpayer borrows from a non-resident related party.

Employee share schemes

The Bill has proposals to allow the use of a wider range of methods for determining market value of shares. Rules are also modified for shares having to be held for a restricted period, particularly where an employee works for a trans-tasman company. Companies will be able to continue with the current rules or allow all departing employees the option of keeping their shares.

Research and development

The Bill proposes changes to the tax credit regime including some broadening of the availability of the tax credits based on the payroll taxes paid by a firm each year. The proposal would not apply to approved research providers.

Refunds will not be available to entities who receive exempt income except in the form of foreign dividends and dividends received from a New Zealand wholly owned group. Surplus credits claimed in the 2020 tax year and carried forward would be cancelled in the 2021 tax year.

There is a section tidying up the allocation of tax credits to members of a joint venture.

Student loans

There are five changes to the student loan policy, all of which are fairly minor and contribute to improving administration of the scheme. For example, an overseas-based borrower who is seriously ill or disabled and who cannot meet their student loan obligation will be able to be treated as though they were living in New Zealand.

KiwiSaver

The introduction of payday filing means interest on employer and employee contributions can begin from the employees payday.

The provisional period for Inland Revenue to hold contributions is to be reduced from 3 months to 2 months.

At the moment, members can only change their employee contribution rates by giving notice to their employer. The Bill proposes that members would be able to change their contribution rate by notifying either their scheme provider or Inland Revenue.

Employers are to provide IRD with information on any difference between an employee's income tax for PAYE and KiwiSaver purposes and information on the employee's ESCT. Inland Revenue could then more easily verify the correct KiwiSaver contributions have been made and correct tax paid.