Tax-e-mail

DON'T LET THE IRD NAIL YOU

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Tax planning 39% tax rate

There is little which can be done to avoid the new 39% tax rate for those who have incomes in excess of $180,000, which is not already obvious. The two ideas which come to mind are the use of a family trust or retaining profits within a company and paying 28% tax.

The Commissioner has made it clear in the past she does not see the use of family trusts as shareholders and the ultimate distribution of profits to beneficiaries on lower tax rates as being a tax avoidance scheme. Therefore, clients who wish to circumvent the top tax rate ought to be safe transferring some or all of their shares to a family trust. They should, of course, be sure to pay out dividends, as soon as possible, to clear the imputation credit account before making their share transfers if they intend to exceed the threshold for carrying forward imputation credits.

As a consequence of Penny and Hooper, companies which are selling the services of their shareholders may be limited to the amount they can retain as company profit and distribute as dividends. As a rough guide, Inland Revenue considers 80% of the income generated by these people should be paid to them as salaries. The 80% is not hard and fast it is only a guide.

Anecdotally, IRD have suggested it could be higher in certain circumstances and in some cases it may be possible to justify smaller salaries.

The Government has recently stated it will be watching the use of trusts and will consider increasing the trust rate to 39% if it appears they are, in their view, being used to incorrectly shelter personal services income.

Backdated GST registrations

On 23 November 2020 Inland Revenue added a comment about back dated GST registrations to its website. It says, in exceptional circumstances, it can backdate your GST registration start date. The department would require you to attach relevant documents to your application and an explanation as to why the registration was not filed sooner.

Negative interest rates and RWT

Inland Revenue has produced ADV000097. This looks at whether RWT would apply to negative interest as is happening already in some other countries. It concludes, what you would expect. There would be no RWT.

The discussion document avoids other tax issues. Since investments at banks, for example, are financial arrangements it would seem if a base price adjustment was negative, one should expect the loss to be tax deductible. The other argument for a deduction is that the account could generate income so the negative interest is simply a cost related to that potential income and deductible under the general rules.

2021 tax year approaches

There are three new things you will need to remember when preparing financial statements for the 2021 financial year:

- Assets bought between 17 March 2020 and 16 March 2021 can be written off as tax-deductible expenditure up to a cost of $5000 provided they meet the usual criteria for low value asset write offs.
- Don't forget to allow depreciation on commercial buildings (this is very easily overlooked). You can claim 2% DV or 1.5% SL from the beginning of the 2021 tax year. For buildings in existence when depreciation ceased at the end of 2011, you need to use the adjusted tax value at that time as your base for future claims. You must deduct any amount claimed under sec DB 65 ie the 2% deduction on 15% of the adjusted tax value of the building on 31 March 2011.
- Transfer the balance of the Covid 19 wages subsidy to income.

Get GST refunds more quickly

On 4 November 2020 Inland Revenue issued a determination – Covid 19 variation.

If you have a client who sends in their GST returns every six months and whose business is being materially affected by Covid 19, you can apply to change the taxable period to one monthly. A client who elects to have one monthly GST returns will, of course, get their refunds more quickly and more frequently. However, they will have to continue sending in one monthly GST returns through to at least 30 September 2021. After that, they can switch back to 6 monthly if they wish.

The taxpayer has until 31 March 2021 to notify Inland Revenue they wish to elect to have one monthly GST returns.

Extension of finance leases

Determination COV 20/12 allows the lessee to extend the period of the finance lease by 18 months and still have a finance lease, subject to certain conditions.

- The lease has to have been entered into before 14th February 2020
- The lease term was not more than 75% of the estimated useful life when the lease was entered into
- The lease term is not extended more than 18 months beyond the end of its term as at 14th February 2020
- The lease was extended because, in the period between January 2020 and 31 March 2021, the lessees business has experienced a significant decline in actual or predicted revenue which means the lessee had difficulty satisfying their existing lease agreement and this decline is due to Covid 19

The variation applies from 5 November 2020 to 31 March 2021.

Small business cash flow loan update

In case you missed it, Inland Revenue has made some changes to the scheme:

- Loan is interest free for two years not one year, provided it is repaid within the two years.
- Loan can be used for other purposes like capital expenditure and is no longer restricted to core operating costs.

All other aspects of the loan scheme remain in place.

Student loan repayments – options for relief

Inland Revenue has produced SPS 20/05 which is operative from 10 November 2020 and replaces SPS 11/03. Relief can be granted in the form of reduced repayment obligations and small amounts can be written off. The Commissioner can also grant hardship relief. A borrower who intends to go overseas may request a temporary repayment suspension: the statement specifies conditions for this.

MBIE payments – leaky homes

On 21 September 2020 Inland Revenue issued a statement CS 20/05. When the Government makes compensation payments it does so through MBIE, which collects payments from central Government and from the local body in equal amounts. Each contributes 25% of the repair cost. The local authority only makes a contribution if it is liable to do so. For example, if a contractor was employed to carry out the inspection the liability might be on the contractor rather than the local body.

If the recipient of the money from MBIE is a body corporate and is GST registered it is required to pay output tax on the money received. Inland Revenue states this is in accordance with section 5(6D) of the GST Act. This section states that any payment in the nature of the grant or subsidy paid on behalf of the Crown or any public authority… will be deemed a supply of goods or services…

A city council is not a public authority and therefore the body corporate does not need to account for GST on its share of the contribution.

The body corporate which is not GST registered does not have to account for any output tax.

GST and agency

Inland Revenue has produced publication PUB00327. Sometimes it may be difficult to determine whether a person is acting as a principal or as an agent. The Commissioner says there are two essential features, being authority to act on behalf of the principal and both parties consenting. The publication considers features strongly indicating an agency such as documentation, payment of the commission and so on. We are providing a link to the document in case you have an issue.

ACC Admin fee

Reminder: the administration fee charged to those who wish to spread their ACC payments contains GST and an input tax claim can be made on this amount.

When is development or division work "minor"?

Inland Revenue has produced Interpretation Statement IS 20/08. It is a detailed analysis of what constitutes work of a minor nature. There is a lot of detail and there seems little point in trying to summarise.

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