MARCH 2019

SNIPPETS

THE TAX WORKING GROUP'S FINAL REPORT

The final report recommends a broadly based capital gains tax (CGT) on all land and improvements (except the family home), shares, intangible property and business assets. Only gains and losses after the valuation day (expected to be April 2021) will be taxed. The valuation day approach will require taxpayers to establish a market price to form the 'cost base' for CGT. Taxpayers have five years to determine the market price on valuation day, otherwise a default rule will apply. The tax will be based on a realisation basis and taxed at the marginal rate without any discount in the year of sale. Some relief will be available relating to death, relationship transfers and small business reinvestments.

While the focus has been on the potential introduction of a capital gains tax as one of the most topical issues in the Tax Working Group's ("TWG") Report, another key area discussed is the taxation of retirement savings. The TWG considers high-income earners are likely to be saving adequately, hence they have suggested a package of modest retirement saving incentives aimed at middle and low-earners. This includes: (a) the removal of Employer Superannuation Contribution Tax (ESCT) for employees earning up to $48,000 per annum; (b) a five percentage point reduction for each of the lower PIE rates applying to KiwiSaver accounts; (c) taxpayers on paid parental leave to be given the maximum member tax credit (currently approximately $520 per annum) regardless of the actual level of contribution, and; (d) increasing the member tax credit from $0.50c per $1 of contribution to $0.75c per $1 of contribution (still to a maximum of $520 per annum).

As far as international tax goes, the Government should be ready to implement an "equalisation tax" on digital services if it is implemented by the majority of other countries. The TWG does not want to suggest a regime that could potentially cause negative retaliatory action from other countries, risking harm to our export industries.

The TWG is also recommending an increase in the low income tax threshold which is currently $14,000 to $20,000 for personal income tax from 1 April 2023. The TWG focus appears to be ensuring tax compliance by the rising number of self employed.

For business, the TWG recommend maintaining the current company tax regime and rates, including retention of the imputation system. They have not recommended the introduction of a progressive company tax, or an alternative basis of taxation for smaller business. Instead they are focussed on providing support for smaller businesses through simplification of the tax compliance process – e.g. by increasing the provisional tax application threshold to $5,000. They also recommend the reintroduction of depreciation on buildings (1%DV) if a capital gains tax is introduced. And the TWG have specifically excluded consideration of an increase in the GST rate - however it received many public submissions on the potential for a reduction. The TWG will not recommend this, nor the removal of GST from certain food and drink products on the basis such measures would be poorly targeted and that there are more effective ways to provide assistance to low and middle income families.

The Government response to this report is due April 2019.

Ir-FILE DISCONTINUED…….

On 11 March, the ir-File service in myIR, currently used to file Employer Monthly Schedules (EMS) and Employer Deduction forms (EDF), will be discontinued. The Payroll Returns accounts replaces this and will show in your myIR account from 28 February. As an Employer, you will be required to use this Payroll returns account in the Business section of myIR to file the monthly schedules for the months of February and March. File upload and online entry options will still be available. This is to assist you to become familiar with the payroll returns account processes before all employers must begin payday filing from 1 April 2019.

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2018 LAW CHANGES – A ROUND-UP

From payday filing to the paid parental leave extension, here is a summary of what is new and what has changed for small and medium sized businesses – check which apply to you:

Charging Tenants for Letting Fees Banned:

When: 12 December 2018

What: Letting fees can no longer be charged to tenants and anyone who does charge them could be fined up to $1,000 by the Tenancy Tribunal

You need to: Be aware Letting Agents and Solicitors can still offer services related to renting a property but they cannot charge the tenant for such things as viewings

Payday Filing:

When: Currently voluntary, compulsory from 1 April 2019.

What: Businesses will need to file payroll information every payday, rather than once a month. This will replace the employer monthly schedule (EMS).

You need to: Figure out how and when you'll opt in. If you already use payroll software, check when your provider will provide software to support payday filing.
If you don't use payroll software, you will have a variety of methods after your payday to file the return. Payment due dates for PAYE and other deductions haven't changed.

Comment:
If you are considering changing to fortnightly pay runs to halve the compliance work - employers who pay their employees on a weekly basis will be required to complete payday filing 52 times per year - you will need to gain your employees' signed agreement to a variation document changing their Employment Agreement pay frequency clause.

Paid Parental Leave Extended:

When: For employees taking parental leave for a child born (or who came into the employee's care) from 1 July 2018

What: The number of weeks that a parent can get government funded parental leave payments increased from 18 weeks to 22 weeks.
The number of hours that an employee can do paid work while they are on parental leave increased from 40 hours to 52 hours during the parental leave period.

Anti-Money Laundering & Countering Financing of Terrorism:

When: 1 July 2018 for Lawyers & Conveyancers
1 October 2018 for Accountants and Bookkeepers
1 January 2019 for real estate agents
1 August 2019 for dealers in high value goods

What: The AML/CFT Act is being expanded to cover a lot more New Zealand businesses to make sure we meet international standards and protect our reputation as a good place to do business.

You need to: If the law applies to you, you are required to meet new reporting requirements, meet new requirements to verify the identity of your customers, develop an AML/CFT programme and keep good records.

New Hazardous Substances Regulations:

When: From 1 June 2018, new regulations apply around:

- additional training requirements for hazardous substances
- requirements for storing certain classes of hazardous substances outside a hazardous substances location
- requirements around storing certain classes of hazardous substances at a transit depot

What: Changes to the Health and Safety at Work Regulations 2017 regarding the management of hazardous substances have been staggered – further regulations will come into effect June 2019 and December 2019

You need to: Check which changes apply to you. WorkSafe's Commencement and Transitional Arrangements page provides details on specific regulations and commencement dates for when they apply. It is also a good idea to talk to your industry or trade body about how best to comply.

UPCOMING EMPLOYMENT LAW CHANGES

A raft of changes to the Employment Relations Act have been enacted, largely applying to the role of collective bargaining in the workplace. Many of the changes are familiar to employers, as they roll the law back to how it was as recently as 2015. Changes coming into effect in 2019 include:

The right to set rest and meal breaks will be restored:

When: From 6 May 2019

What: The set number and duration of rest breaks will depend on the hours worked – for example, an eight hour work day must include two x 10 minute rest breaks and one 30 minute meal break, while a four hour day must include one 10 minute rest break.

You need to: As an Employer you will need to pay for minimum rest breaks and come to an agreement with your employees when they are to take their breaks. If you cannot agree, the law will require the breaks to be in the middle of the work period, so long as that is practicable.

90 day trial periods will be restricted to businesses with less than 20 employees:

When: From 6 May 2019

What: This change is intended to give the majority of employees' legal protections against unjustified dismissal when they start a job

You need to: If you employ more than 20 people, you will need to check your Employment Agreement template to amend the "trial period" clause**.** Businesses with 20 or more employees can continue to use probationary periods to asses an employee's skills against the role's responsibilities. A probationary period clause must lay out a fair process for managing performance issues and ending employment if the issues are not resolved.

REMINDERS RE EMPLOYEE DOCUMENTATION

Casual employees are those employed on an "as required" basis, generally in farming, orcharding or horticulture employment - therefore their tenure should not be continuous work week after week on a regular hours basis for more than short or seasonal work periods.

All casual employees, including those of school age, are required to complete an IR330 and have PAYE deducted from their wages at the Casual Agricultural Employee (CAE) tax rate of 18.89%.

Accurate details recording date of birth, address, email address and/or phone number should be retained for **all employees**, including casuals, as this information will be required for pay day filing from 1 April 2019. New Team Member Details forms are available from Graham & Dobson to assist you to capture to this information – email payroll@grahamdobson.co.nz for your template.

New Team Member Details			
Please fill out these details and return promptly to your Employer			
Surname:		Forenames:	
Job Title:		Gross Hourly/ unit rate:	
Address:		Join Date:	
		Emergency Contact name & Ph no/s:	
Email address:		Date of Birth:	
Contact Ph No:		Mobile No:	
Bank Name:		Account Name:	
Bank Branch:		Account Number:	
IRD No:		IR330 filled out with this number	Yes/No
KiwiSaver:	Yes/No	Deduction rate:	3%, 4%, or 8%
Contributions holiday	Yes/No	Copy of IRD notification re Contributions Holiday	Yes/No
Signed Employment Agreement held		Yes/No	

All employees, including casual staff such as open shed shearers and shed hands, are required by the Employment Relations Act to have a written employment contract, stating rate of pay per hour/unit, hours if applicable, place of work and other agreed terms and conditions.

Casual employees must have holiday pay calculated on gross earnings at the rate of 8% and this is required to be identified and paid each pay day. You can include this in the hourly rate but you must show that this includes holiday pay.

Employees on temporary contracts of less than 28 days are not required to be enrolled in KiwiSaver. However, if they are already members, they must provide their employer with a KiwiSaver deduction form (KS2) in order to have deductions made from their gross earnings at their chosen rate.

DEDUCTIBILITY OF BAD DEBTS

Many of the costs associated with running a business can be claimed as a tax-deductible expense, but not all. The Income Tax Act dictates that to be deductible, expenses must be incurred in the course of deriving assessable income, or in running a business. Whether a bad debt deduction could be claimed was the subject of a recent High Court decision, Boon Gunn Hong v Commissioner of Inland Revenue, where the taxpayer was ultimately unsuccessful.

The taxpayer was a barrister and solicitor working as a sole practitioner. He made loans of $50,000 and $122,280 respectively to two of his legal practice's clients, both of whom were facing financial difficulties. When the debtors became unable to repay, the taxpayer claimed a tax deduction for the bad debts in the 2011 year.

The Court denied the deduction on several grounds. Firstly, the Court considered the general principle requiring a connection between an expense and the income derived by the business and concluded the taxpayer was not in the business of lending money nor was there a connection between the taxpayer's legal services business and the bad debts. Hence the loans were not expenses incurred in deriving his assessable income.

Secondly, under the specific bad debt provisions, the taxpayer's own accounting procedures failed to show that the loan had been written off in the 2011 year. He had also failed to establish that the debtors were legally released from making any further repayments. One debtor was only released from bankruptcy in 2013 and the other had not been adjudicated bankrupt at all. The case had initially been heard in the lower courts, with the taxpayer charged shortfall penalties for taking a lack of reasonable care in forming his tax position. In addition to finding against the taxpayer, the High Court upheld the penalty, with the taxpayer also forced to pay the legal costs involved in taking the case to the High Court.

Comment:
This case highlights the importance of ensuring the deductions claimed in your tax return are properly allowable under the Income Tax Act 2007. If you have any expenses that could possibly raise red flags it is important to take advice from your tax advisor.

THE ITALIAN BOOK KEEPER

A Mafia Godfather finds out that his bookkeeper, Guido, has cheated him out of $10,000,000.00
His bookkeeper is deaf. That was the reason he got the job in the first place.
It was assumed that Guido would hear nothing so he would not have to testify in court.
When the Godfather goes to confront Guido about his missing $10 million, he takes along his lawyer who knows sign language.

The Godfather tells the lawyer, “Ask him where the money is!”

The lawyer, using sign language, ask Guido, “Where’s the money?”
Guido signs back, “I don’t know what you are talking about.”

The lawyer tells the Godfather, “He says he doesn’t know what you’re talking about.”
The Godfather pulls out a pistol, puts it to Guido’s head and says “Ask him again or I’ll kill him.”
The lawyer signs to Guido, “He’ll kill you if you don’t tell him.”
Guido trembles and signs, “OK! You win! The money is in a brown briefcase, buried behind the shed at my cousin Bruno’s house”.

The Godfather asks the lawyer, “What did he say?”
The lawyer replies, “You don’t have the balls to pull the trigger.”