AUGUST 2020

SNIPPETS

PAID PARENTAL LEAVE INCREASES

The duration of paid parental leave increased by four weeks on 1 July so twenty-six weeks paid parental leave will now be available for eligible parents whose babies are due on or after this date. The maximum weekly payment also increased from $585.50 to $606.46 gross in line with increases in the average wage. For the self-employed, the amount paid cannot fall lower than $189 per week.

The “keeping in touch” allowance is also increasing to 64 hours. With agreement between the Employer and Employee, these hours allow an employee to work a limited amount of time during the paid parental leave period without losing their entitlement for payments.

IN WORK TAX CREDIT CHANGES

From 1 July working families with children who do not receive a main benefit and have employment income each week will not have to satisfy the hours test to receive the In Work Tax Credit (previously a minimum of 20 hours a week for sole parents and 30 hours a week for couples with children). These are introduced as permanent changes.

ACC LEVIES REMAIN UNCHANGED

The Government recently announced ACC levy rates will remain at the current level for the next two years in order to provide certainty for businesses and other levy payers in the wake of COVID. The ACC Minister also stated that the invoices normally sent in early July would be delayed until October and other invoices issued this year would be on hold for three months.

APPRENTICES AND OTHER LEARNERS BECOME ELIGIBLE FOR SUPPORT

1 July also marks the commencement of measures whereby apprentices in any industry or people wanting to train in targeted areas will have between $2,500 and $6,500 in costs paid for them.

This follows Budget announcements that costs would be removed altogether for learners in vocation programmes relating to primary industry, construction, community support, manufacturing and mechanical engineering and technology, electrical engineering, and road transport. The list of targeted industries eligible is expected to be refined over time. However, all apprenticeships will be eligible for some degree of fees support. Apprentices and learners whose courses started earlier in the year but still continue will be eligible for a partial refund.

Employers will also be able to tap into the $380 million Apprenticeship Boost scheme, open to apprenticeships in all fields, from August this year until April 2022. The subsidy is focused on the first two years of apprenticeship and will pay businesses $1,000 per month for each apprentice in the first year of training and $500 per month for apprentices in the second year. The subsidy will be attractive to school leavers but will also give employers flexibility to retain and train.

THE PRIVACY ACT 2020

The Privacy Act 2020 was assented to on 30 June, its key provisions coming into force on 1 December 2020. It is an effort by Parliament to create privacy protections more appropriate to the Internet Age, with its capacity to store, retrieve and send around the world vast amounts of data.

While retaining the previous Act’s information privacy principles, the new legislation strengthens privacy protection, particularly to better protect personal information sent overseas. “Agencies” (that is any organisation or individual handling personal information) will only be able to disclose information to an overseas person if the individual concerned authorises it and only if that information can be reasonably expected to be safeguarded by privacy standards comparable to New Zealand’s.

Significantly, the new Act requires “agencies” to notify the Privacy Commissioner and affected individuals of any unauthorised access to or disclosure of personal information where that might create a risk of serious harm. Not notifying the Commissioner would be an offence.

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THE COVID 19 PANDEMIC DOES NOT PROVIDE THE GREEN LIGHT TO IGNORE EMPLOYMENT RIGHTS

Regular employment law continues to apply to all employment relationships, regardless of the circumstances employers and employees find themselves in post COVID lockdown. This means that normal obligations to act in good faith, abide by anything that has been agreed to in an employment agreement and to keep in regular contact with each other is more important than ever. Moreover, employees must be paid in accordance with their employment agreement and general employment law obligations which means employees must be paid for each and every hour that they work, at their agreed wage rate.

However, employers and employees can temporarily agree to vary the agreed wage rate – provided this rate is not below the minimum hourly wage rate. Any change requires good faith consultation and a written agreement.

Under the Wage Subsidy, Wage Subsidy Extension or the Leave Support Scheme, employers are required to use their best endeavours to pay employees at least 80% of the normal wages or salary. If the employee is continuing to work their normal hours, a reduction in their pay to 80% still requires good faith consultation and a written agreement as reducing employees wages or salaries without consultation is no more appropriate during a pandemic than it would have been at any other time.

A recent Employment Relations Authority determination on this issue demonstrates this.

When Level 4 Lockdown was implemented, Dove Trust, the employer, immediately applied for and received the government wage subsidy. This was granted on the condition that staff would be paid at least 80% of their regular income. Without any prior consultation, the employer advised its entire staff that they would be paid 80% of their regular wage.

Some days later, it advised six office employees that it proposed restructuring their positions – feedback was invited and given. A short while after that, the six employees received letters advising that their positions were disestablished as at the date of their respective letters, that the first four weeks of notice would be paid at 80% of their usual salary and that the second four weeks of notice (an extension of what was contractually provided for) would be paid at the subsidy rate.

The employees challenged the short pays, amongst other matters continuing before the Tribunal.

The employees' argument was that the employer unlawfully made deductions from their normal salary in breach of its obligations under the Wages Protection Act 1983 and their employment agreements. Dove Trust's response was that under COVID restrictions the employees were not ready, willing and able to work and that the extended notice period, being generous and sensitive to the employees' predicament, was one they accepted.

The Authority found none of the clauses in the employment agreements permitted deductions in the circumstances faced by Dove Trust during the Lockdown – simply because the terms of employment cannot be unilaterally varied. Further, the Authority found that there was no agreement to the reduction and that the Trust's well meaning doubling of the normal notice period did not entitle it to set a remuneration rate different to that agreed within the relevant employment agreements.

The Authority was also not swayed by Dove Trust's argument that the wages paid under the subsidy were not payment for services or work. It was ruled that the employees' employment agreements did not provide for the suspension of wages, or part thereof, for the non-performance of work in the circumstances faced by the Employer. On the unchallenged evidence, the employees were deemed to be ready and willing to work at all times.

The Dove Trust was ordered to pay the employees all wages short paid.

RENTAL PROPERTY ALERTS

The temporary restrictions on tenancy terminations which were imposed under the COVID 19 Response Legislation with the amendment to the Residential Tenancies Act 1986 were removed in June. Landlords can now give notice to terminate a tenancy under the standard Residential Tenancies Act 1986 provisions – that is usual notice periods will apply from the day a notice is served.

However, the rent increase freeze remains in place. This means that landlords cannot increase the rent for their residential properties until after 25 September 2020.

It is recognised by the Government that, due to loss of employment income, some tenants may experience challenges with paying their rent or have rent arrears. So support with an Increased Rent Arrears Assistance package is available through the Ministry of Social Development for those who need it. Applicants do not need to be on a benefit to qualify for this help but will need to satisfy income criteria. Also required is a signed tenancy agreement and the commitment to stay in the rental accommodation if the rent owed is paid. If the application is approved, the rent arrears are paid directly to the landlord.

The assistance to the tenant is a one-off payment, available only once within a twelve-month period with this assistance being required to be repaid to the Government under an instalment arrangement.

Rental property owners should now consider taking advantage of the increased threshold (up to $5,000 to obtain 100% deductibility) to bring their rentals up to healthy homes standards with the purchase of the required capital items. The expenditure should be weighed up against the total income received from the residential rental property as the ring fencing of rental losses rule now applies.

HOW MUCH TOURISM DO WE WANT?

Before the pandemic, tourism was New Zealand's top export earner with the 3.9 million overseas visitors who came here last year spending the equivalent of $47 million a day. We now have international tourist destinations such as Hobbiton in the Waikato in semi-hibernation mode while a tsunami of unemployment is forecast for Queenstown and Rotorua's tourism sector.

Tourism will need to switch its focus to domestic visitors. That will be challenging for some operators who relied on revenue from premium ticket prices which international visitors were willing to pay for those once-in-lifetime experiences. However, given that New Zealanders took more than three million trips overseas in the year ending June 2019, there must be many dollars to be spent seeing our own places on and off the 'tourist' map. Indeed, the 1984 promotional message "Don't leave town 'till you've seen the country" has resurfaced in a new updated guise advertising the virtue of domestic travel to a currently captive audience of locals.

However, away from the highlighted hurt the tourism industry is experiencing right now, there is another tale. In a report on the environmental impact of tourism released more than six months ago, Simon Upton, Commissioner for the Environment, warned that the increasing numbers of tourists were eroding the very attributes that attracted travellers to New Zealand. In short, tourism's footprint is starting to become a source of environmental concern in New Zealand.

A report as part of this environment impact investigation revealed that many New Zealanders thought tourism growth prior to COVID was 'too much', and that tourism put too much pressure on the country with too many international visitors.

So maybe now is a good time, not only to tour our own country but to also consider what kind and how much tourism do we want in our future? Should we cap the number of tourists entering the country or impose a minimum daily package per tourist per night (the charge could include accommodation at a minimum of 3 star rating, food, tour guiding and transportation within the country). Bhutan has adopted this strategy which makes it an expensive remote place to visit but also ensures the experience is all the better for the lack of crowds. Bhutan's 'Sustainable Development' fee per tourist in addition to the minimum daily package is US$65 – so should we raise our tourist tax of $25-$35 per international visitor (with multiple exemptions)? New Zealand's tourist tax did not put a dent in the number of visitors coming in, nor did long distance 'flight shame' for that matter - it was 'talked up' but reality shows few travellers voluntarily paid to off-set their flights' carbon footprints.

LIVESTOCK VALUATIONS – DECLINES IN THE HERD SCHEME VALUES

The Inland Revenue recently announced this year's Livestock Herd Scheme Values. These are determined by a process involving a review of the national livestock market as at 30 April. As portrayed in the table in the June issue of 'News', National Average Market (Herd) values have fallen sharply with COVID 19 having had a significant impact on values and presenting significant uncertainty across all markets for the foreseeable future.

Beef values, especially R1, R2 and Mixed Age Cows which declined 26.64%, 19.05% and 19.56% respectively, are at the lowest in five years.

After four years of increasing values, 2020 has seen steep declines in sheep values with an average drop of 18%. Drought played a part in these depressed values but uncertainty in international markets, particularly with the high value restaurant trade in Europe and the United States restrained due to COVID, has also had an influence.

Deer values have also seen a significant reversal of the gains of the past five years.

Though changes have been made to the Herd scheme in recent years, there is still flexibility around how to value increases in livestock numbers – if numbers are increased during the year there is a choice of an alternative valuation option to value that increase. Whether that option is taken up or the choice is to value the increase using herd values will depend on factors such as:

- where the cycle of livestock values sits (i.e. at the bottom or at the top)
- if the increase in numbers is a permanent or a temporary one
- the longer term farming intentions

Careful consideration needs to be given to livestock election choices and as the decision is one that should be made on a case by case basis, we would be happy to discuss valuation options with clients on review of their 2020 farming year.

CHANGING OF THE GUARD!

After forty-four years with Graham & Dobson (37 years as a Principal of the firm), David Quinn retired earlier this year. David experienced first hand a period of significant advances within our firm, our clients businesses, and their lives, with the use of the computer and developments with telecommunications.

We wish David well in his retirement.