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Tax Alert

March 2021

COVID-19: What are the tax obligations which come with claiming Government support?

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What are the tax obligations which come with claiming COVID-19 Government support?

By Robyn Walker

Current business and employee support

With Auckland currently sitting in Alert Level 3 and the remainder of New Zealand sitting at Alert Level 2, there is a range of government support available for businesses and their employees. You can read more about the wage subsidy, resurgence support payment, leave support, and short-term absence payment schemes here.

Businesses around the country have been in receipt of a range of different support packages from the Government over the last year. Almost 760,000 businesses and sole traders have claimed wage subsidies or claimed under the leave support scheme; 18,234 have since made repayments of the wage subsidy. In February, applications opened for the new Resurgence Support Payment in respect of the February 14 Alert Level change.

While many businesses are focused on survival, it's important that businesses who have claimed support understand the obligations on them in relation to both income tax and GST; to ensure they're not under-paying or over-paying tax by taking an incorrect position in an income tax or GST return.

Wage Subsidy / Leave Support Scheme / Short-Term Absence Payment

The Government's Wage Subsidy, Leave Support and Short-Term Absence Payments are paid to employers in order to be passed on to employees. Other than self-employed recipients, which are covered below, the receipt of any assistance through any of these schemes is treated as "excluded income" for the employer (albeit is taxed in the hands of the employees when they are then paid their salary and wages). What this means is fairly simple, the amount is not subject to income tax in the hands of the employer but on the flipside, a tax deduction cannot be claimed for salary and wage costs to the extent they were funded by the payment from the government.

While many businesses are focused on survival, it's important that businesses who have claimed support understand the obligations on them in relation to both income tax and GST

For example: MacDonalds Motors Limited (MML) claimed $250,000 in wage subsidies in the year ended 31 March 2021. MML also spent $1,000,000 on salary and wages. MML does not include the $250,000 wage subsidy as income in its tax return, but it also can only claim $750,000 as a tax deduction for its salary and wage expense.

For self-employed persons, the receipt of one of these payments is taxable and needs to be included as income in the individuals IR 3 tax return. This is because they are the end beneficiary of the payment, which is different from an employer who is acting as an intermediary step between the government and the employee.

From a GST perspective, all payments granted under the wage subsidy, leave support and short-term absence payment schemes are all specifically excluded from GST. No GST output tax should have been returned for any wage subsidies, leave support scheme payments or short-term absence payments.

Wage subsidy repayments

Employers who have elected to make repayments of any government assistance need to ensure that the reversal is also treated correctly from a tax perspective. An important point to note is that if a repayment has been made, this is treated as a reversal of the government grant, and as such, a tax deduction is now able to be claimed for the salary and wage costs at the time they were paid. If a business has made a repayment in the year after the payment was originally received, the salary and wage costs still need to be adjusted in the year they were paid rather than the year the repayment was made.

For example: MacDonalds Motors Limited (from the previous example) has recovered well from COVID-19 and its shareholder Hugo decides in May 2021 that the company is in a better financial position such that it wants to voluntarily repay $100,000 of the wage subsidy previously received. MML should now claim a tax deduction for a total of $850,000 as salary and wage costs in its tax return for the year ended 31 March 2021.

Resurgence Support Payment

Since Tuesday 23 February 2021, businesses (including the self-employed) have been able to apply for the Resurgence Support Payment if they have suffered a 30 percent or greater loss of income as a consequence of the elevated COVID-19 Alert Levels. The scheme can be applied for each time there is an escalation in COVID-19 Alert Levels for a period of seven days or more. As such, applications can be made for two periods to date:

- 14 February to 22 February 2021 – applications opened on 23 February and remain open until 23 March 2021
- 28 February for an unknown period exceeding seven days – applications expected to open on 8 March and remain open for one month

These payments are designed to assist businesses with cashflow and there is no requirement for businesses to pass this payment through to employees, rather it can be used to meet any business expenses. The payment includes a core per business rate of $1,500 plus $400 per employee up to a total of 50 FTEs. The maximum payment available is $21,500. More details about the Resurgence Support Payment are available from Inland Revenue.

The Resurgence Support Payment is not subject to income tax. Consequently, tax deductions cannot be claimed for expenses to the extent they are funded by the Resurgence Support Payment.

The Resurgence Support Payment does however differ in relation to GST. Any recipient of the payment that is registered for GST is required to include the GST portion (3/23rd) of the payment received as GST in their next GST return. The business will then also be able to claim back GST when the money is spent.

For example, MacDonalds Motors Limited has met the eligibility criteria to claim the Resurgence Support Payment. MML has 20 employees, it receives $9,500 on 25 February 2021. MML includes $1,239 as GST output tax in its next GST return due on 28 March 2021. MML spends the payment on additional personal protective equipment for staff and uses the balance to help fund its car yard rental charge. Provided it holds tax invoices, MML can claim back GST on all these expenses.

A word on transfer pricing for multinationals

While the various government support payments are not subject to income tax, multinational businesses need to ensure that government support packages both in New Zealand and overseas are correctly treated from a transfer pricing perspective. In particular, the recipient of a wage subsidy should not be treated as a reduction in costs for the purposes of determining the arms-length price to be charging an associated party. You can read more about this in our previous article here.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

The tax cost of your fringe benefits is about to increase

By Nick Cooke and Angie Leung

From 1 April 2021, the new personal income tax rate of 39% will apply to income earned by individuals over $180,000. As a result of this new personal income tax rate, the Fringe Benefit Tax ("FBT") rates are also increasing. It is important to note that all employers will need to consider how they apply the new FBT rates, even if the employer has no employees earning over $180,000. There has never been a better time to undertake an FBT review to look at your FBT controls, processes and use of FBT software. This is something that we can help with to ensure FBT compliance risks are managed and to ensure any FBT exemptions are fully utilised. If you would like to know more, please contact us.

What are the new FBT rates which apply from 1 April 2021?

It is important for employers to understand they have options when it comes to FBT. Fringe benefits can be attributed to individual employees and taxed at a rate appropriate to the marginal tax rate of the employee, or else FBT can be paid at a flat rate. The flat rate of FBT is increasing from 49.25% to 63.93% from 1 April 2021.

All-inclusive pay range	New rate
$0 – $12,530	11.73%
$12,531 – $40,580	21.21%
$40,581 – $55,980	42.86%
$55,981 – $129,680	49.25%
$129,681 upwards	63.93%

Do I need to consider these FBT rate changes, even if no employees within my organisation earn over $180,000?

Yes - according to Inland Revenue statistics, approximately 90% of employers are currently paying FBT at the current flat rate of 49.25% rather than undertaking a full FBT attribution process. As a result, the vast majority of employers are likely to see an increase in FBT costs from 1 April 2021.

Why? Because the single rate of FBT is increasing to an eye-watering 63.93%, and the FBT pooling and alternate rates are increasing to 49.25%. To put it another way, if you currently use the single rate of FBT and will continue to do so from 1 April 2021, all other things being equal, your organisation's FBT cost will increase by 30%.

That said, employers can minimise the increase in FBT by performing an FBT attribution calculation in the final FBT quarter (1 January to 31 March each year). This means fringe benefits over the course of the year are taxed at applicable marginal rates based on each employee's income level, determined after taking into account the value of the benefits received and their employment income, rather than using the single rate or short form attribution options.

In the past you may have determined that full attribution was not worth performing for your organisation, as the costs of doing so outweighed any FBT savings. The old rule of thumb used to be that unless you had a high number of employees earning less than $70,000 per annum or you had a high turn-over of staff, it wasn't worth doing as the compliance costs could exceed any tax savings. However, because the new top tax rate band is so much higher than the old one, this rule of thumb no longer applies from 1 April 2021, and it is likely that the majority of employers should consider performing an attribution calculation in order to minimise their FBT cost increases.

Why is the new FBT rate so high?

New Zealand's FBT rules are designed to ensure that benefits in kind are effectively taxed at the same rate as cash salary & wages. For this reason, FBT marginal rates are the gross-up of the income tax marginal rates. To help illustrate how this works, let's look at the following example:

But I don't have to do anything until this time next year, right?

Wrong. In order to be able to perform your attribution calculation in the final quarter of next year, you need to ensure you have the right data available from 1 April 2021. This includes knowing which employees have received which benefits, and the respective benefit values. This may be something you can do already, but if not, you need to think now about the changes you need to make to your FBT data collection methods to ensure you are collecting this level of detail from 1 April 2021.

Ernie earns $200,000 a year and is therefore subject to the current top marginal tax rate of 33%. If his employer wanted to provide Ernie with a take-home allowance of $100, they would have to make a gross payment to Ernie of $149.25. If instead his employer wanted to provide Ernie with a voucher of $100, this would be subject to FBT at 49.25% payable by the employer.

Cash	
Gross payment	$149.25
Tax payable to IR @ 33%	($49.25)
Net received by Ernie	$100.00

Voucher	
Benefit value	$100
FBT payable to IR @ 49.25%	$49.25
Total cost to employer	$149.25

In both instances, Inland Revenue would receive tax of $49.25, Ernie receives $100 in the hand, and the employer has a cost of $149.25. Everything's equal.

Under the new income tax and FBT rates from 1 April 2021, in order to keep things equal, the example above will change to look like this:

Cash	
Gross payment	$163.93
Tax payable to IR @ 39%	($63.93)
Net received by Ernie	$100.00

Voucher	
Benefit value	$100
FBT payable to IR @ 63.93%	$63.93
Total cost to employer	$163.93

However, had Ernie been earning only $100,000 per annum, if the single rate of FBT is used from 1 April 2021 then the cost for the employer is different depending whether the benefit is provided in cash or kind:

Cash	
Gross payment	$149.25
Tax payable to IR @ 33%	($49.25)
Net received by Ernie	$100.00

Voucher	
Benefit value	$100
FBT payable to IR @ 63.93%	$63.93
Total cost to employer	$163.93

The moral of the story

If you disregarded FBT attribution in the past, now's the time to revisit this. When the new rates apply, it is likely that performing an attribution calculation will result in FBT savings that outweigh the compliance costs of doing so. You also need to plan now, to ensure you collect the right data from 1 April 2021.

Software is available to help with the attribution calculation. Deloitte is also able to perform these calculations for you, providing the right data is available. As discussed above, we are also able to help with FBT reviews, to ensure FBT compliance risks are managed and to ensure any FBT exemptions are fully utilised. If you would like to know more, please contact us.

FBT and employment taxes update

With the upcoming 39% marginal tax rate change and consequential FBT rate increase, now is the perfect time to up-skill on recent FBT and other employee tax related developments, and to hear from Inland Revenue on their FBT focus areas.

Webinar details

Date	Thursday 25 March 2021
Time	10:00am –11:45am
CPD Hours	1.5 hours
RSVP	Use the button below to RSVP, and confirm your details with us by **Friday 19 March 2021**.

Yes, I would like to attend

Contact

Nick Cooke
Associate Director
Tel: +64 9 952 4201
Email: nickcooke@deloitte.co.nz

Angie Leung
Senior Consultant
Tel: +64 9 975 8645
Email: angleung@deloitte.co.nz

The new 39% tax rate puts tax structuring back into the spotlight – why it may be time to talk about tax avoidance

By Ian Fay, Brendan Ng and Charlotte Monis

Tax avoidance isn't normally something most businesses are thinking about. However, with the introduction of a new top personal tax rate of 39% on annual income exceeding $180,000, ordinary business activity such as paying shareholder salaries and dividends, making trust distributions and paying bonuses may require consideration of these rules. This is particularly significant where payments are being made around the application date of 1 April 2021 (for standard March balance dates).

This article considers some questions taxpayers may be, or should be, mulling over ahead of the tax rate change. For more on the tax rate change, including your FBT obligations, see our article in this month's Tax Alert on FBT, and our high level summary of consequential changes from the new tax rate in the December 2020 edition of Tax Alert.

What is tax avoidance?

A 'tax avoidance arrangement' is one that is entered into (either directly or indirectly), where any tax avoidance purpose or effect is more than merely incidental. Any tax avoidance arrangement will be deemed void by the Commissioner. You can read more on Inland Revenue's recent views on tax avoidance in our article in the February 2021 edition of Tax Alert. At first glance, this may capture even the simple act of paying an amount on 31 March 2021 (as opposed to 1 April 2021) to take into account the new 39% tax rate.

Recently, Chartered Accountants Australia New Zealand hosted a webinar with a panel of Inland Revenue Officials to discuss the implications of the new 39% top personal tax rate. Officials highlighted two powerful tools at their disposal: increased disclosure obligations on taxpayers, and the capability of their new IT system to carry out data-analytics to identify behaviour changes that may be due to the increased gap between the top individual tax rate and the company and trust tax rates. Inland Revenue will be on the lookout for any restructuring carried out solely for the purpose of avoiding tax, and have made it crystal clear that they will be monitoring behaviour to ensure that the integrity of the tax system is maintained.

What do I need to consider, keeping the 39% tax rate and tax avoidance in mind?

a) Trusts

While the differential in the trustee tax rate of 33% and the new top personal tax rate of 39% may be seen by some as an opportunity, there has been strong signalling that if the trust regime is exploited the Government will move to crack down on those who are exploiting it, potentially with consequential changes to the framework for taxing trusts.

Going forward, Inland Revenue will be more closely analysing trust activity, including the establishment of new trusts, movement of funds, and other related activity. This monitoring will be aided by increased trust disclosure requirements in relation to the financial position of the trust, settlement and distribution details, including identifying beneficiaries receiving non-taxable distributions from trusts. You can find out more about these disclosures in this article in this month's Tax Alert. This information could then be used by Inland Revenue to review individual taxpayers or by the Government to inform decisions about whether the trustee tax rate should be amended. Minister of Revenue, Hon David Parker, has made it clear that if trusts are being used to avoid the 39% tax rate then further work will be done to shut this down, stating "*If that behaviour becomes apparent, then we'll move to increase the trust rate to avoid that being used as an avoidance loophole*".

Trusts continue to have a valuable role to play, for example in relation to asset protection and estate planning. With the Trust Act 2019 coming into force from January 2021, trustees need to ensure trusts are being managed consistently with the purpose of the trust and the obligations under the Act. The introduction of the 39% tax rate adds another dimension to the management of trusts and the making of distributions and loans to beneficiaries, so we recommend that clients consider their wider facts and circumstances before they undertake any action, and discuss with their Deloitte advisor to ensure that appropriate care is being taken.

b) Dividends, bonuses, salaries and other payments

There are a variety of commercial reasons for businesses to be paying out dividends, bonuses, salaries, etc, either before or after 31 March 2021, with payments on or before 31 March 2021 being taxed at the lower top personal tax rate of 33%. While a commercial reason will assist with an argument that an arrangement is not a 'tax avoidance arrangement', this may not be enough when viewed in the context of all of the relevant facts.

When making decisions that relate to the payment of bonuses, dividends and salaries, vesting of share schemes, or redundancy payments, etc, it is important to also consider the wider facts and circumstances surrounding these actions and how these arrangements are put into effect. With this in mind, we recommend seeking further advice if you are undertaking any of these actions before 31 March to ensure that all relevant considerations are taken into account.

In relation to shareholder salaries, it will also be important to ensure that there is a definitive commitment before 31 March to pay the shareholder salary. The commitment to pay a shareholder salary before 31 March cannot be satisfied by mere payment after year-end. This is an obligation which may come under greater scrutiny with the new top tax rate so appropriate steps must be taken.

IRD to tackle tax avoidance with SMART new tools

Inland Revenue still has a couple of mountains to climb to complete its technology-driven transformation, but their new START computer system is seeing more detailed data being received more frequently. This will enable Inland Revenue to monitor trends and changes in behaviour, then use this information to decide whether something should be investigated further.

The key message here is that if you are considering restructuring, using trusts or even relatively simple actions such as paying dividends or bonuses, you should be considering the wider facts and circumstances surrounding these actions.

Inland Revenue's intention at this time is to undertake more real-time monitoring. Previously, under their old system, Inland Revenue would not have been able to analyse top tax rate data until 2022 tax returns filed were filed, so after 31 March 2023. However, with more data points being received more frequently, Inland Revenue can intervene earlier and have stated that their intention is to analyse any trends that emerge and to consider any significant changes from previously filed returns.

Inland Revenue will also be monitoring new company incorporations and trust registrations, as well as closing of companies and trusts, partly to determine whether there is any commonality and to ensure that there isn't a significant change in behaviour.

Conclusion

The key message here is that if you are considering restructuring, using trusts or even relatively simple actions such as paying dividends or bonuses, you should be considering the wider facts and circumstances surrounding these actions. This is particularly true when considering the tools Inland Revenue now has at its disposal. What is acceptable behaviour, or not, in the context of the 39% tax rate may depend on these wider considerations and how the arrangements are put into effect. Having a clear commercial rationale for your decisions will assist, but the (heavy) caveat to this is where other factors and circumstances begin to add up and point towards a non-commercial or tax only rationale, the risk of Inland Revenue taking an interest is likely to increase.

We are currently assisting a number of clients in meeting their obligations arising from the 39% tax rate, including in relation to FBT, employee share schemes, salary setting, dividends and so on. If you would like to discuss any of these issues please contact your usual Deloitte advisor.

Contact

Ian Fay
Partner
Tel: +64 4 470 3579
Email: ifay@deloitte.co.nz

Brendan Ng
Manager
Tel: +64 4 495 3915
Email: brng@deloitte.co.nz

Charlotte Monis
Consultant
Tel: +64 4 470 3634
Email: cmonis@deloitte.co.nz

Are you ready for the new Trust Disclosure Rules?

By Joanne McCrae

With the move to the 39% tax rate for individuals, close scrutiny is going to be put on transactions between individuals and trusts. This includes harsh new disclosure rules designed to ensure the Inland Revenue has clear visibility over such transactions whether they are taxable or not.

In the past, trusts have filed returns declaring taxable income including distributions to beneficiaries that are subject to NZ tax. However they have not been required to file financial statements, nor provide details of transactions which are not subject to tax. This is to change from the 2022 tax year (from 1 April 2021 in most cases) with trusts being required to prepare IRD minimum standard financial statements and to make significant other disclosures.

These include:

- Details of all settlements on the trust which includes all transfers of value along with full details identifying those entities or individuals making the settlements. Transfers of value include all things monetary and non-monetary other than the value of minor services provided at less than market value.
- Details of all distributions (whether taxable or not; monetary or non-monetary) including details identifying the recipients.
- Details identifying those who have the power to appoint or dismiss a trustee, add or remove a beneficiary, or to amend the trust deed.
- Any other information required by the Commissioner.

This provides a large increase in compliance for trusts in that a lot of this information is not always readily available. The first year will be particularly challenging and trustees should be starting to think about how to collect this information.

Aside from the difficulty of collecting the information required, it is important to recognise that Inland Revenue will be able to identify ways in which individuals benefit from trusts other than through taxable beneficiary distributions. It is clear from public statements made by the Minister of Revenue that if they see a systemic use of trusts to fund annual income by way of capital distributions from income taxed at the lower trust tax rate of 33%, serious consideration will be given to raising the trustee tax rate to 39% to match individuals (noting though that this will likely apply to the first dollar of income).

The consequence of trusts having a higher tax rate in the future has material implications to the way trusts have typically been used for asset planning and creditor protection. This in itself is something all individuals with trusts should want to avoid.

However there are other implications of these trust disclosure rules. This information will then be available for sharing under International Exchange of Information Agreements with foreign tax authorities. Often non-taxable transactions have flown under the radar and trustees may have had interest free loans or capital transactions with foreign beneficiaries that have not been taxed in their country of residence and for which little thought has been given. All trustees and beneficiaries should expect this information to be freely available to the foreign tax authority as the identifying details of beneficiaries will include their tax residence and tax file numbers. There is increased interest in this worldwide and you can expect revenue authorities to be keen to review this information and identify those who may have tax exposures in their country of tax residence.

Another area that may have also not been so visible previously is capital transactions with beneficiaries. These may also become more visible to the Ministry of Social Development. A little known requirement for recipients of income tested benefits is that additional income for testing purposes includes non-taxable distributions as well as taxable distributions. Again this information has not previously been available but given there is an agreement for information sharing between MSD and IRD, this will likely become more visible in the future.

Where Inland Revenue reviews the 2022 return filed and finds something of concern, they have the right to request the same information for the previous eight years. We recommend trustees consider the reporting required for the 2022 year as early as possible to consider what information needs to be collected and what the result will look like when viewed through the lenses we have mentioned here. And for those who have not been keeping good financial records, now is the time to get them up to date.

If you want to discuss your trust disclosure obligations, contact your usual Deloitte advisor.

Contact

Joanne McCrae
Partner
Tel: +64 9 303 0939
Email: jmccrae@deloitte.co.nz

The consequence of trusts having a higher tax rate in the future has material implications to the way trusts have typically been used for asset planning and creditor protection. This in itself is something all individuals with trusts should want to avoid.

Good news for businesses with new shareholders

By Robyn Walker

One thing the COVID-19 crisis has highlighted is that businesses will often need new capital in order to grow and innovate… or to survive a one in one-hundred year pandemic. Likewise, in some cases, businesses of all sizes may need new shareholders for a variety of reasons. If a company being sold or raising capital has tax losses, the introduction of new shareholders has long caused a tax headache. This is because tax losses are currently only able to be carried forward to offset future profits if 49% shareholder continuity has been maintained. The reason for this rule has been to prevent "loss trading", where a profitable business could acquire a business with considerable losses for a low price and use this to shield its profits from tax.

In response to this perennial problem, in April 2020 the Ministers of Finance and Revenue announced that New Zealand would be supplementing its existing tax loss carry forward rules with a new "same or similar business test" with effect from the commencement of the 2020/21 income year (generally 1 April 2020). Since that time, Officials have been working with a private sector reference group to develop the regime. As a member of that Group, it was an extremely productive and well-run process, and the result has been a development of a regime which will be a great benefit, particularly to start-ups who need more capital to grow.

Some high-level details of the proposed regime have now been publicly released, which we summarise below.

What is the proposal?

When this proposal was originally announced, the plan was to model our new rule on something Australia does; their rules essentially say you can carry forward tax losses if the business is the same or substantially the same (i.e. similar) both at the time the losses were incurred and when the losses are used. After examining the Australian approach and comparing it to what other countries do, it was decided to adopt a slightly different (and better) approach. A same or similar business test has limitations because it's necessary to continuously prove that the business satisfies the test, which can be onerous. Instead the approach proposed is a "major change test" which will allow losses to be carried forward unless there is a major change in the nature of the company's business activities, having regard to the assets used (other than land) and other relevant factors.

There are certain things which will not be a "major change", for example companies will be able to make changes to increase efficiency, increase scale, keep pace with technology, or rationalising the companies product or service range, including adding new items produced using the same, or largely the same, assets of the company. Whether a change is major or not really comes down to the facts and circumstances of each individual case.

The test will apply to tax losses incurred from the 2013/14 income years onwards and to shareholder continuity breaches in the 2020/21 and later income years. Once a company has had a breach in shareholder continuity, in order to carry forward tax losses the business can't have had a "major change" until the earlier of when the losses are utilised or the end of five years after the ownership change (subject to some exclusions).

For example:

Buffalo and Reindeer Yoghurt Limited (BARY) has been running a yoghurt manufacturing and sales business for some time, however in recent years it has begun to run at a tax loss. As at 1 April 2020, BARY has tax losses of $5million. To help remedy this, BARY approaches a well-known chef and yoghurt-maker, Claire, to help run the business. In March 2021 Claire agrees to bring her considerable intellectual property to the business in return for a sixty percent ownership share. Claire comes into the business and helps turn its fortunes around by developing new recipes and changing some product offerings. For example, reindeer yoghurt is dropped as a product line as it is unprofitable, and a new cashew yoghurt is introduced to appeal to the growing market of customers following a plant-based diet. BARY uses all the same manufacturing assets both before and after the shareholding change. BARY is able to carry forward its tax losses despite 49% shareholder continuity not being maintained. BARY incurs a further $1million tax loss in the year ended 31 March 2021; but then goes on to make $1million of taxable income in the 2022 year, $2million of profit in the 2023 year and $3million in the 2023 year. Because at the end of the 2023 year BARY has used all of its tax losses, it no longer needs to satisfy the major change test.

Are there any complications?

With most things associated with tax, there will be complexities which businesses looking to benefit from these rules will need to understand. However, as a general comment, the complexity comes about to prevent taxpayers manipulating income and expenses to exploit the rules; so businesses operating within the spirit of the rules should have no issues.

Some points to note are:

- The rules will contain a purpose statement to help taxpayers apply the rules. The stated policy purpose is "to remove an impediment to sensible business reorganisations while preventing loss trading.
- The rules won't apply to mineral mining companies as they have a separate tax regime.
- Dormant companies cannot apply the rules.
- There will be anti-injection rules to stop income from being added to the company and an anti-cost transfer rule to stop costs being removed from the company artificially.
- A business will not be able to apply the rules if the business has had a "major change" in the two years prior to the change in shareholding.
- The rules will apply differently for finance companies.

Next steps

The next steps are that legislation will be added to the Taxation (Annual Rates for 2020-21, Feasibility Expenditure, and Remedial Matters) Bill as a supplementary order paper in the second half of March. While these changes will not be going through the usual full "generic tax policy process" and public consultation, the changes are taxpayer favourable and remove an impediment to growth and innovation which should be applauded (despite the non-standard process adopted).

What else is happening with losses?

Readers may recall that at the time the Government announced these loss carry forward rules, it also announced that it would introduce a temporary loss carry back regime which would then be replaced by a permanent loss carry back regime. The temporary loss carry back regime has been in place since April 2020, you can read more about those rules here.

At a recent tax conference the Minister of Revenue advised that at this stage the Government will not be immediately implementing a permanent loss carry back regime.

With most things associated with tax, there will be complexities which businesses looking to benefit from these rules will need to understand. However, as a general comment, the complexity comes about to prevent taxpayers manipulating income and expenses to exploit the rules; so businesses operating within the spirit of the rules should have no issues.

Contact

Robyn Walker
Partner
Tel: +64 4 470 3615
Email: robwalker@deloitte.co.nz

GST and agency, are you doing it right or is there a hidden cost?

By Jonathan Doraisamy and Nathan Lardner

Do you have someone selling your products or incurring costs on your behalf? Inland Revenue have identified that taxpayers have been facing difficulties understanding and applying the agency rules in the Goods and Service Tax Act 1985 ('the GST Act'). In a bid to provide some clarity, Inland Revenue have released an interpretation statement that dives into all the details of when you may be a party to an agency relationship and what this means for GST purposes.

From a GST perspective it is important to be certain whether an agency relationship exists to ensure all parties involved have a clear understanding of who has to return or claim GST. Getting this wrong can be costly. Sometimes the position can look to be GST neutral, but without proper documentation, technical issues can arise. In other areas, an outright cash cost can occur.

While considering your current agency relationships you may want to ask yourself:

Do you have someone selling products on your behalf? How much GST should you return?

Where you have someone else selling your products on your behalf, it is important that you know whether they are a re-seller, or acting as your agent. Where they are acting as your agent, the responsibility to return and pay the GST on the full gross sale price will normally fall on you. The agent would be required to return GST on the commission charged and you (as the principal) would be able to claim the corresponding input credits, provided you have a valid tax invoice from the agent. Therefore, you will ultimately be paying GST on the net cash (after commission) you receive – however you can't short-cut this in your GST return, the full gross sale needs to be included as a sale (and output tax) and the commission claimed as an expense (and input tax).

Further, Inland Revenue has confirmed that it is your responsibility to ensure you have the correct processes in place to be returning GST at the right time.
For example, if your agent receives a deposit or issues an invoice this will trigger the GST obligation for you as the principal. As a result, you may have a liability to return the GST on the sale well before you actually receive the cash.

Do you have someone who incurs costs on your behalf? What GST can you claim?

Similar to the above, an agent can incur costs on your behalf and still give you the ability to claim the input tax credits. One of the most common examples we see is when an employee will incur business costs that are subsequently reimbursed by their employer. The statement confirms that an employee can act as agent for their employer and incur costs for which the business is able to claim the GST portion even when the invoice or receipt is in the employee's name. It is important however to remember to keep all supporting documentation and invoices to meet standard record keeping requirements.

What if you have an overseas agent, is there a risk of real GST cash costs?

If you have an overseas agent (such as an overseas web based sales platform) who is taking a commission from sales made in New Zealand, we recommend you review your processes to ensure that the correct amount of GST is being returned to Inland Revenue. The commission being charged by the non-resident does not generally have any GST on it, so the commission cannot be offset for GST purposes against the gross selling price.

For example, an overseas agent that is not registered for New Zealand GST will make a supply of hotel accommodation on behalf of the New Zealand based principal and take a commission on the payment.

The principal needs to ensure that the GST is being returned on the full price of the hotel accommodation (not the net amount after commission).

Can the agent be responsible to return GST? Overrides to the default rules.
There may be instances where it is more practical for the agent to be the deemed supplier and therefore be responsible for returning the GST on the supply. This could be due to accounting system constraints or because the underlying supplier is situated outside New Zealand.

In these situations, it is possible to make an election to split the underlying supply into two separate supplies (one being from the principal to the agent, and another from the agent to the third party). It is important if this election is made that the appropriate steps are taken such as a written agreement between the agent and principal that the supplies will be split and that two separate invoices will be raised.

If you are not sure whether an agency relationship exists
If you're unsure whether an agency relationship exists, we recommend taking the time to read through Inland Revenue's interpretation statement. The document provides useful guidance on how to step through determining whether an agency relationship exists, and how this overlays with the GST rules.

Inland Revenue have confirmed that the following need to exist before any legal agency relationship can be created:

- **Authority**: the agent must be authorised to act on behalf of the principal to create or affect the legal relations between the principal and a third party, for the relevant supply; and
- **Consent**: the agent and the principal must both have consented to the conferral of such authority on the agent.

Therefore, the crucial aspect to determine whether an agency relationship exists is that an agent must have the ability to create the legal relationship between the principal and the third party. It is important to understand that the written contractual terms are not definitive. It could be possible for a contract to have a clause that purports to remove any agency relationship. However, if the actions taken by each party evidence that an agency relationship exists (such as the transfer of ownership not flowing through to the agent and the agent receives a commission), then the common law definition could prevail and deem an agency relationship to exist.

Agency is a difficult area of tax law, if you have any questions about this article or GST generally, please get in touch with your usual Deloitte advisor.

Contact

Jonathan Doraisamy
Manager
Tel: +64 9 303 0822
Email: jdoraisamy@deloitte.co.nz

Nathan Lardner
Senior Consultant
Tel: +64 4 831 2449
Email: nlardner@deloitte.co.nz

The crucial aspect to determine whether an agency relationship exists is that an agent must have the ability to create the legal relationship between the principal and the third party.

Counting down to the new year

By Bridget O'Meara and Anna Zhang

As we are fast approaching the end of the 2021 tax year, there are some key developments that need to be actioned before 31 March (for those with a standard balance date) along with some standard year-end tax issues to consider. There are also a number of changes which will take effect from 1 April 2021 as the new tax year begins.

Updates resulting from the new 39% individual tax rate

If not already in motion, there's not much time left to ensure you are implementing process and technology changes that you need to make as a result of the new 39% tax rate for individuals. This also provides an opportunity to review your tax governance of these processes to ensure they are operating in line with best practice.

Payroll changes

Employers need to ensure payroll systems are updated for the new income tax rate of 39% on annual income of $180,000 and above. As a result of this rate change, FBT rates are consequentially increased, so these also need to be addressed. See this month's article on these changes. There is also a new Employers Superannuation Contribution Tax (ESCT) rate of 39%, with the ESCT threshold being $216,001 and an increase to the minimum family tax credit threshold. Your payroll system and associated processes need to be updated to deal with these changes from 1 April 2021.

Withholding tax

A new Resident Withholding Tax (RWT) rate of 39% on interest, will take effect from 1 October 2021. Again, processes and systems need to be updated for this. The later implementation date is to allow lenders to implement such changes.

Tax policy and control frameworks:

In light of these changes, it's a good time to review your tax policies on these processes and ensure appropriate controls are in place to mitigate both financial and reputational risks. See our earlier article on how we can help with adopting best practice tax governance.

Have you remembered these developments for 31 March 2021?

This is a good time to make sure you've taken into account changes to the tax rules in the 2021 year, both to check you've complied with new rules, and to ensure you're making the most of opportunities to save money when you're finalising your income tax return.

Have you bought new assets?

The low value asset threshold which allows assets to be deducted immediately, as opposed to being capitalised and depreciated, temporarily rose to $5,000 (up from $500) for purchases made between 17 March 2020 and 16 March 2021. From 17 March 2021 the threshold will permanently reduce to $1,000.

Do you have feasibility expenditure?

If you've spent $10,000 or less on completing, creating or acquiring property that would be depreciable property (including depreciably intangible property) or revenue account property and if progress of the asset is abandoned, you may get an immediate deduction.

Note that the legislation which enacts this is currently going through the parliamentary process, but is expected to be enacted before 31 March 2021 with application from the 2021 income tax year, so keep an eye out for this. See our previous article for more details on the proposed new rules.

Did you pay working from home allowances?
In response to the first nationwide lockdown, you may have paid allowances to employees for working from home. Inland Revenue issued a determination which stated that such payments to employees of up to $15 per week are treated as exempt income for the employee, which is in addition to $5 per week to be provided as a tax free telecommunication allowance. Inland Revenue also provided that $400 can be paid tax free when paid to employees to purchase furniture and equipment required to work from home. This applies to payments made from 17 March 2020 to 17 September 2020.

For payments made from 18 September 2020 to 17 March 2021, Inland Revenue issued a variation that removed the requirement that the expenditure or loss must be incurred by the employee as a result of the COVID-19 pandemic. The good news is that Inland Revenue has recently issued a further determination, which confirms this treatment will apply to payments made from 18 March 2021 until 30 September 2021.

Given all this, you need to ensure appropriate records are maintained documenting the nature of allowances and substantiating that any amounts treated as tax exempt are reasonable.

Have you claimed all your tax depreciation?
With effect from the 2021 income year, tax depreciation rates on commercial and industrial buildings increased from zero to 2% diminishing value and 1.5% straight line. If you are able to claim this, both the tax and accounting implications needs to be worked through. See our previous article for more details.

Did you receive a wage subsidy in the current year?
This is a good time to double check that you have treated any wage subsidy claimed correctly in your tax return, Check out our article to make sure you know how to treat the receipt of COVID-19 government assistance and as well any repayments that may have been made.

Are you making losses this year?
If you are expecting to make tax losses in the current tax year, remember that (subject to certain criteria being met) these can also be carried back to the immediately prior year. See our previous article for more information on the rules and how to apply for the carry back.

Have you checked these standard items before year end?

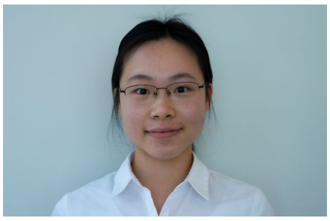
Remember to check these standard year-end items, as it could save you money on your final tax bill:

- Write off bad debts: a deduction can only be claimed when a bad debt is properly written off in your accounts before year-end.
- Check your fixed asset register: make sure you're using correct depreciation rates and depreciating new assets for the full month of purchase, not just from the day of purchase. Ensure assets you have sold or lost are properly disposed of on the fixed asset register, as this might result in a deduction.
- Review trading stock valuations: If any trading stock is obsolete, you might be able to revalue to market selling value provided this is lower than cost and can be substantiated.
- Check the imputation credit account: a debit balance at 31 March results in a penalty, so you need to make sure it's not in debit. This applies to all taxpayers, regardless of balance date.
- Check your losses: If you have had a shareholding change during the year, you might have forfeited tax losses. Check that the shareholder continuity rules have not been breached, noting that a new business continuity test is expected to be in place before 31 March 2021; you can read about this here).
- Thin capitalisation: If your company's debt has fluctuated over the year, you should check debt to asset ratio.

If you have any questions about any of the new rules, or managing any other aspect of the tax year-end please reach out to your usual Deloitte advisor.

Contact

Bridget O'Meara
Associate Director
Tel: +64 9 303 0702
Email: bomeara@deloitte.co.nz



Anna Zhang
Consultant
Tel: +64 9 953 6187
Email: azhang8@deloitte.co.nz

Snapshot of recent developments

Tax legislation and policy announcements

COVID-19 resurgence support for businesses

The Taxation (COVID-19 Resurgence Support Payments and Other Matters) Act 2021 received Royal Assent on 18 February 2021. It contains the details of the COVID-19 resurgence support payments scheme and sets the minimum family tax credit threshold for the 2021–22 and later tax years. The minimum family tax credit threshold for the 2021–22 and later tax years is increased from $29,432 to $30,576 per annum.

Budget Policy Statement 2021

On 9 February 2021, Finance Minister Grant Robertson delivered the Budget Policy Statement for 2021 which sets out the high-level priorities in line with the Government's objectives for this term. Included in the priorities, is a focus on housing. While acknowledging the supply side is "critical", they will address the demand side particularly of those who are speculating with such measures coming shortly.

OECD International Compliance Assurance Programme

On 19 February 2021, the OECD published a new handbook for tax administrators and Multinational Enterprises as part of the International Compliance Assurance Programme (ICAP). It contains information on the process for ICAP reflecting the experience and feedback of tax administrations and Multinational Enterprises that participated in the pilot programmes in 2018 and 2019.

Inland Revenue statements and guidance

Employees' working from home

On 16 February 2021, Inland Revenue released determination EE002B – Variation to Determination EE002A – Payments to employees for working from home costs. This determination is to vary and extend the timeframe of Determination EE002A. It applies to reimbursement payments made by employers from 18 March 2021 to 30 September 2021. This variation will ensure that, for this extended period, the determination will continue to apply to any employee that works from home and that qualifying payments continue to be treated as exempt income under section CW 17 of the Income Tax Act 2007. The new determination does not change the outcomes under Determination EE002A (explained here).

Small Business Cashflow Loan updates

A reminder the new eligibility criteria for the Small Business Cashflow Loan scheme (SBLS) came into effect on 28 January 2021. IR has updated its website to reflect this. In addition, the terms and conditions of the loan have been refreshed to include the changes, including extending the interest free period from one year to two years and broadening the use of the loan to cover capital expenditure. IR unilaterally changed the terms and conditions of existing loan contracts at the end of last year.

Facilitation payments to farmers and forgiveness of debts

On 18 February 2021, Inland Revenue issued Commissioner's Statement CS 21/01 – Income tax treatment of facilitation payments to farmers and debt remission on settlement of a loan. The Commissioner's view is that facilitation payments will be taxable income to the recipient under the financial arrangement rules in the Income Tax Act 2007. Any debt forgiveness or remission under the settlement with the lender will also be income to the borrower under the financial arrangement rules.

2021 national standard costs for specified livestock
On 28 January 2021, Inland Revenue published national standard costs for specified livestock determination 2021. This determination is made in terms of section EC 23 of the Income Tax Act 2007. It shall apply to any specified livestock on hand at the end of the 2020-2021 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

Fair dividend rate determination
On 12 February 2021, Inland Revenue issued determination FDR 2020/01 – A type of attributing interest in a foreign investment fund for which a person may not use the fair dividend rate method (HSBC Global Liquidity Funds plc: HSBC US Dollar Liquidity Fund – Class H (Distributing) Shares). This determination states that such investment, is a type of attributing interest for which the investor may not use the fair dividend rate method to calculate foreign investment fund income from the interest. This determination applies for the 2021 and subsequent income years. However, under section 91AAO(3B) of the Tax Administration Act 1994, this determination does not apply for a person and an income year beginning before the date of the determination unless the person chooses that the determination applies for the income year.

Monthly retirement payments from the United Nations Joint Staff
On 29 January 2021, Inland Revenue published finalised Questions We've Been Asked QB 21/01 – Income tax – monthly retirement payments from the United Nations Joint Staff Pension Fund (UNJSPF). The conclusion has remained the same as the consultation document, whereby the tax exemption in section CW 64 of the Income Tax Act 2007, the Diplomatic Privileges and Immunities Act 1968, and Orders in Council for the United Nations and its agencies do not apply to monthly retirement benefits from the UNJSPF. In general, monthly retirement payments received by retired United Nations staff members are taxed as pensions under section CF 1(g).

Consultation documents
The following documents have recently been published for public consultation:

Shifting GST liability to the purchase of land
On 16 February 2021, Inland Revenue released draft Questions We've Been Asked PUB00256 – When does section 5(23) of the Goods and Services Tax Act 1985 apply to shift GST liability to the purchaser of land? This consultation item explains how section 5(23) may apply to shift GST liability to the purchase of land if the supply has been incorrectly zero-rated. Submissions close on 31 March 2021.

GST – registration of non-residents
On 29 January 2021, Inland Revenue released consultation document PUB00354 – GST – Registration of non-residents under section 54B. This draft interpretation statement provides guidance on whether a non-resident is eligible to register for GST under section 54B of the GST Act 1985. Section 54B allows non-resident businesses that do not make supplies to end consumers in New Zealand to recover GST input tax on goods and services acquired in New Zealand. Since section 54B was introduced, there have been legislative changes that treat certain supplies by non-residents as being made in New Zealand. These changes include the supply of remote services and low value goods. This means a greater number of non-residents must register under the standard registration provision and fewer non-residents are eligible to register under section 54B. There are a number of requirements that must be met and commentators have indicated that these have not been well understood. The item steps through the requirements and provides examples of their application. Submissions close on 12 March 2021.

Other
Deloitte Tax Calendar – Order yours now
We're currently working on the Deloitte tri-fold tax calendar containing key tax payment dates, rates and quick tax facts for 2021-22. If you would like a free copy for your desk or for members of your accounting team, please click here to order. The calendar will be sent out in early April. Please order your copy by 19 March 2021.

Note: The items covered here include only those items not covered in other articles in this issue of Tax Alert.

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Queries or comments regarding Alert including joining our mailing list, can be directed to the editor, Emma Marr, ph +64 (4) 470 3786, email address: emarr@deloitte.co.nz.

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The Editor, Private Bag 115033, Shortland Street, Auckland, 1140.
Ph +64 (0) 9 303 0700.
Fax +64 (0) 9 303 0701.

New Zealand Directory

Auckland Private Bag 115033, Shortland Street, Ph +64 (0) 9 303 0700, Fax +64 (0) 9 303 0701
Hamilton PO Box 17, Ph +64 (0) 7 838 4800, Fax +64 (0) 7 838 4810
Rotorua PO Box 12003, Rotorua, 3045, Ph +64 (0) 7 343 1050, Fax +64 (0) 7 343 1051
Wellington PO Box 1990, Ph +64 (0) 4 472 1677, Fax +64 (0) 4 472 8023
Christchurch PO Box 248, Ph +64 (0) 3 379 7010, Fax +64 (0) 3 366 6539
Dunedin PO Box 1245, Ph +64 (0) 3 474 8630, Fax +64 (0) 3 474 8650
Queenstown PO Box 794 Ph +64 (0) 3 901 0570, Fax +64 (0) 3 901 0571
Internet address http://www.deloitte.co.nz