

Tax Time

Special points of interest:

- New Rules for Working For Families Tax Credits
- Formal Written Agreements for Family Arrangements
- Depreciation on Buildings
- Travel Expenditure
- LTCs and FBT
- VisaView
- GST Adjustments and Depreciation
- Minimum Wage Increase

New Rules for Working For Families Tax Credits

On 28 March 2011, an announcement was made that, due to the changes to Working for Family Tax Credit entitlements enacted in the Taxation (Budget Measures) Act 2010 and the Taxation (GST and Remedial Matters) Act 2010 relating to exclusion of investment losses and community service card changes, the Inland Revenue Department has announced that from 1 April 2011 it is necessary for a taxpayer to advise the Inland Revenue Department if they receive income from the following sources:

- Attributable trustee income.
- Attributable fringe benefits.
- Portfolio Investment Entity income.
- Passive income of children.
- Income of non-resident spouses.
- Tax exempt salary or wages.
- Pensions and annuities.
- Other payments.
- Income equalisation scheme deposits.

Each of the above income types must be included in the "other income" box of the Working for Family Tax Credits application form (Form FS1), along with income from interest, dividends, rents, royalties, estates, trusts, and Maori authorities.

The Inland Revenue Department advises that those already receiving Working for Family Tax Credits and who receive any of the above listed incomes must notify the Inland Revenue Department before 1 April 2011 of the income being received so as to ensure that the correct entitlement is assessed.

Notification to the Inland Revenue Department can be done by telephone on 0800 227 773.

How it affects you

If you are in receipt of a Working for Family Tax Credit and you earn income from any one or more of the listed sources, phone the Inland Revenue Department or your tax advisor immediately.

The alternative is that an incorrect assessment may be made including the incorrect level of income. The risk is that you may be assessed to receive a higher or lower Working For Family Tax Credit than you are entitled to. If you are overpaid, this will become a debt owing to the Inland Revenue Department that will accrue interest and penalties.

- From WHK Sharp-As Tax



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ANZAC Day and Easter Monday

ANZAC Day (25 April) is observed on the day it falls. In 2011, ANZAC Day and Easter Monday fall on the same calendar day. This results in the simultaneous observance of two public holidays. An employee who normally works on this day will receive ONE paid day off, and if required to work will receive time and a half, and ONE alternative holiday if the day is an otherwise working day for the employee.



ANZAC Day is also a restricted trading day until 1:00pm on April 25th. Easter Monday (under normal circumstances) is not. Because the two public holidays coincide, businesses will still be required to comply with shop trading restrictions and (unless they fall within the allowable exemptions) will be required to remain closed until 1:00pm on Monday 25th April 2011.

Formal Written Agreements for Family Arrangements

A recent High Court decision highlights the importance of having carefully worded signed agreements for family arrangements to avoid misunderstandings. In this case, a son allowed his mother to occupy a property of his. She occupied the property for 7.5 years. No rent or outgoings were paid for by the mother but she did purchase chattels and maintained the gardens. The son and mother fell out and the son served a Notice to Quit the property.

The mother sued the son. Since she had only been given an "indication" from her son that she could live at the property for the rest of her life and did not have a legally

binding agreement, the court found it to be "an unenforceable promise". If the mother had had a formal written agreement setting out the basis on which she could occupy the property, no court case would have been required.

An agreement of this nature should include the basis of the right to occupy i.e. permanent or temporary, whether there is a requirement to contribute to the maintenance and the outgoings of the property and what alterations are allowed to be made to the property. A formal written agreement would protect everyone involved in such a family arrangement.

Depreciation on Buildings

From 1 April 2011 depreciation on most buildings will be eliminated as per the legislation enacted following the budget announcement in May 2010. A new Schedule 39 is in the Income Tax Act which lists the types of buildings on which depreciation may continue to be claimed as they are deemed to have a useful life of less than 50 years.

Some of the items in Schedule 39 are:

- Carports (hired out to householders);
- Portable Huts;
- Cool-stores and freezing chambers;
- Slaughterhouses on farms;
- Plastic hothouse and PVC tunnel houses;
- Glasshouses;
- Buildings affected by acid;

- Milking sheds;
- Wintering barns and simple loafing barns;
- Temporary buildings

Some of the assets in Schedule 39 do not exactly agree with the IRD Depreciation Table. For example, the IRD table deems all "barns" to have a useful life of less than 50 years, and are therefore depreciable, but Schedule 39 deems only "wintering and simple loafing barns" as depreciable. There is no comment on where the "drying barns" or "hay barns" stand. Similarly the IRD Table allows depreciation on "dairy sheds and yards" whereas Schedule 39 allows only on "milking sheds".

The IRD is aware of these discrepancies and attributed it to the lack of time in the Budget legislation. Amendments are expected shortly, so watch this space.

Travel Expenditure

Travel expense, like any other expense, is deductible for tax purposes provided it is incurred in the course of business. Travel including accommodation and meal expenses must be connected to the income-earning process of the taxpayer for it to be deductible.

Holiday or Business?

The most common form of travel expenditure is overseas travel. Often taxpayers tag a holiday to an overseas business trip. If the principal purpose of the trip is business, then airfares and all business-related expenses are fully deductible. Expenditure relating to the holiday component of the trip is not deductible. A mere allocation on a percentage basis is not normal – records of the trip must be kept, such as the itinerary, places of business visited, actual business conducted, items of expenditure etc. Any element of private expenditure must be treated as drawings when analysing the expenses for accounting at

year end.

If business is merely incidental to a holiday trip then airfares may not be deductible. There has to be a nexus between the trip and the production of income for business portion to be deductible. Where overseas travel to conferences, trade fairs etc relate to the business operations, then such travel is deductible. Often the taxpayer is accompanied by their spouse on such trips. If the spouse is assisting the taxpayer in presenting a paper or expected to attend the function, then usually the spouse's travel expenses may also be deductible.



Purpose of the business trip?

If the business trip is in relation to purchasing a capital asset e.g. a farmer may make a trip to buy a tractor, the travel cost must be capitalised to the fixed asset cost which is then subject to depreciation. Where such travel costs result in the failure to purchase a fixed asset, it is likely not to meet the nexus test for the income-earning

LTCs and FBT

As many New Zealand shareholders come to grips with the new Look Through Company (LTC) regime and their decision as to the future of their Qualifying Company, yet another matter to consider is the Fringe Benefit Tax (FBT) implications of the new structure.

If we assume a common New Zealand shareholding structure of Ma and Pa holding 1 share each in a company, with the other 98 shares held by a family trust, then the interaction of the LTC regime, working owners rules, and FBT, make for interesting consideration.

If Ma and Pa work in the business and are paid a salary (albeit, perhaps differentially) for their contributions, then by definition they would be working owners (unless the company was primarily investing in land, shares, or financial arrangements). This assumes they have a written employment contract and that the salary/wages are subject to PAYE.

FBT is a tax on benefits provided by an employer to an employee in connection with their employment activities. Thus, the definition of employee is key to the workings of this regime. Employee includes any present, past, or future employees of a business.

Upon the introduction of the LTC regime, the definition of

VisaView

The new Immigration Act means employers need to be more careful checking prospective employees can work for them

The Immigration Act 2009, which came into effect from 29 November 2010, continues the principle that employers must not employ non-New Zealanders who are not entitled to work for them.

Employers' obligations essentially remain the same as under the previous Act - but there is a key change to the 'reasonable excuse' provisions.

A tax code declaration IR330 form is not a reasonable excuse for employing someone who is not entitled to work for you.

The Department of Labour recommends it is good practice to confirm all prospective employees are entitled to work in New Zealand and in the jobs offered, and to keep good records of this.

process in which case it becomes black hole expenditure. However, if the travel is to gain knowledge of the market or to investigate expanding operations, then the travel cost may be deductible.

As is the case with the deductibility of most expenditure items bordering on grey areas, the above serves as a guideline only and you should seek advice from your advisor.

employee was amended so that it specifically excluded a person who holds an owners interest in an LTC, unless they are a working owner.

Accordingly, if Ma and Pa were working owners, even though they hold an interest in an LTC, they would still be subject to FBT. If the company provided a vehicle to them, that vehicle would be dealt with under the FBT rules.

However, if Ma and Pa still held their 1 share each, but were not working owners, then FBT would not apply, and the apportionment rules that we would find in a partnership scenario would limit the deductibility in respect of vehicle costs to the business proportion. This may or may not produce a better result than the FBT calculation.

The third scenario is where Ma and Pa in fact sell their shares to the family trust so the family trust has a 100% interest. If that same vehicle was provided to Ma and Pa and they had previously been employees, as they don't hold an interest in the LTC, then they would continue to be subject to FBT.

How it affects you

FBT is yet another matter which may complicate the view one takes as to the choice or structuring, of an LTC.

- From WHK Sharp-As Tax

The easiest way to check is to use VisaView, Immigration NZ's online tool at www.immigration.govt.nz/visaview.

This webpage also includes links to Work Entitlement Guide and check list for employers, along with information about how to register for and use VisaView.



GST Adjustments and Depreciation

In the past few months awareness has increased of changes to building depreciation, GST apportionment rules, which all draw distinctions between the use of assets for residential and commercial use, or the use of assets for making taxable or non-taxable supplies from a GST perspective.

As part of these changes, new definitions were incorporated into the Income Tax Act 2007, in particular, new definitions for commercial building and for a dwelling, which apply from 1 April 2011, with application for the 2012 and later income years.

A commercial building is simply defined as a building that is not, in part or in whole, a dwelling, unless use as a dwelling is a secondary and minor use.

A dwelling is defined as any place used predominantly as a place of residence or abode, including any appurtenances belonging to or enjoyed with the place, but does not include a hospital, hotel, motel, hostel, or boarding house, serviced department (occupied under the Residential Tenancy's Act), convalescent home, nursing home, or hospice, a rest-home or retirement village (to the extent that it is occupied as the person's principal place of residence for independent living), and a camping ground.

Both of these definitions are important when it comes to



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considering some of the borderline situations. For example, is a building used as a bed and breakfast a commercial building? If we look at our GST situation first where we are required to do an apportionment between taxable and non-taxable use, and we reach a conclusion that our non-taxable use is 25%. We then make a GST input claim accordingly. Does this then colour our position with respect to whether the building is a commercial building?

This is important when we consider what depreciation deduction is available to us. Further, if we have a subsequent change of use for GST, there is a flow-on effect to the depreciable value of the mixed use asset.

How it affects you

If you are in a situation where you have a property that has mixed taxable and non-taxable uses, this will have an impact on whether the building can be classified as a commercial building and then whether you are subject to the wider commercial building depreciation rules or the much narrower residential property rules.

For other assets, you may have adjustments to the depreciable value of the asset following a GST adjustment.

- From WHK Sharp-As Tax

Quick Bits

- **Minimum Wage Increase**
From 1 April 2011 the adult minimum wage has increased to \$13.00 an hour, and the new entrants' minimum wage and the training minimum wage has increased to \$10.40 an hour.
- The Supreme Court is set to hear the Penny and Hooper Appeal on 28 and 29 June 2011
- If you acquire a building from 1 April 2011 onward, you will no longer be able to claim depreciation on a commercial fit-out pool, but you will be able to claim individual fit-out items.
- Because the Canterbury earthquake is an emergency event, the Inland Revenue Department has special power to remit interest in circumstances where the earthquake has impacted on a person meeting their tax obligations

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Tax Time Newsletter. Items herein are general comments only and do not constitute nor convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Tax Time Newsletter is issued as a helpful guide to our clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.