Summer 2021/22

Stephen Larsen and Co
TAX AND BUSINESS ACCOUNTANTS

# TAXTALK

## Bill passes to restrict tenancy terminations if people are required to stay at home due to a COVID-19 outbreak

**The Government has passed legislation that can restrict tenancy terminations when people are required to stay at home due to public health measures.**

The new legislation will give landlords and tenants clarity and will help support tenants to comply with public health guidance.

These restrictions do not currently apply.

The restrictions on tenancy terminations will be able to be switched on and off by Ministerial Order (a 'COVID-19 tenancies order') in response to public health measures which generally restrict people from moving house (for example, Alert Level 4 restrictions).

This continues to be a challenging time for many. Landlords and tenants are encouraged to talk to each other to resolve issues together.

**Rules if the termination restrictions are activated**

- Landlords will not be able to end tenancies, except in limited circumstances.
- Most terminations will be postponed until at least 28 days after the restrictions lift.
- Tenants will still be able to give notice to end their tenancy as usual, but must consider if doing so would affect their ability to comply with COVID-19 public health requirements to stay at home.
- If a tenant had previously served a notice to end the tenancy before the restrictions period, or agreed with the landlord that the tenancy would end, but now wants to stay, they will be able to withdraw the notice or agreement by notifying the landlord in writing.
- Tenants can terminate a tenancy by giving two days' notice if they are unable to move in due to COVID-19 public health order restrictions. Any bond or rent in advance (relating to the period after the termination) that was paid must be returned to the prospective tenants.
- If a new tenancy was due to begin but new tenants are not able to move in as the property is not vacant, then any agreement between prospective tenants and the landlord will be cancelled. Tenants and landlords should work together to make a plan for when restrictions lift. Any bond or rent in advance that was paid must be returned to the prospective tenants.
- If fixed-term tenancies become periodic due to the restrictions, the landlord may end the tenancy by giving 28 days' notice within 28 days of the restrictions lifting.
- Landlords will still be able to apply to the Tenancy Tribunal to terminate tenancies for limited reasons, for example where a tenant engages in significant anti-social behaviour or substantial property damage.
- If a tenant had previously got a termination order from the Tenancy Tribunal before the restrictions period, and now wants to stay, they can withdraw the termination order by notifying the landlord in writing. If the tenant still wants to terminate the tenancy once the restrictions are lifted, they can do so by giving 14 days' notice within 14 days of the restrictions lifting.
- If a landlord had previously got a termination order from the Tenancy Tribunal before the restrictions period, which had not come into effect, the termination date is suspended until 14 days after the restrictions lift (unless the termination order was for one of the limited reasons allowed during the restrictions period or the tenant decides to end the tenancy on the original date).
- If the Minister wants to lift restrictions they must give seven days' notice that they are going to lift the restrictions, so that tenants have time to make the necessary arrangements to move properties.

## *in this issue >>>*

# High-wealth individuals research project

About 400 high-wealth individuals have been selected to take part in a statistical research project to help IRD fill a gap in their knowledge of effective tax rates relative to economic measures of income. The project will use household income as the unit of analysis, so people taking part will be asked for financial information about themselves and their dependent children. Their partners will also be asked for financial information. Individuals will be legally required to provide this information.

IRD will be asking for information in 3 stages:

- In November 2021, individuals will be asked to provide details of their partner and dependent children. This will give IRD accurate information about whose income will be included in the analysis.
- In January 2022, individuals and their partners will be asked for information about the entities and business undertakings they have an interest in. Individuals will also be asked about the entities their dependent children have an interest in.
- In May 2022, individuals and their partners will be asked to provide further information to help IRD calculate measures of income for their analysis. All the information provided will be kept confidential and will not be used to reassess anyone's tax liability. The research will be published in a report to be made public in mid-2023.

The project will not make any policy recommendations, but the analysis will improve future tax policy advice. IRD have contacted the individuals' tax agents to let them know their clients who have been selected to take part in the study. If you have any questions about the project, email etrproject@ird.govt.nz

# New sale rule splits business components

**A new rule from 1 July 2021 states that when you sell your business, you're expected to split the price into its component parts.**

**For example, you're selling a shop. It has stock, shelves, some equipment and you want to be paid some goodwill.**

**You're expected to put figures on all of these.**

**As a consequence, the buyers split the price in the same way when they do their accounting.**

**Before this rule came in, it was common for a seller to split the figures one way and the buyer to split the figures another way – both of them for best tax advantage.**

**What if you overlooked doing this?**

**As seller, you have three months in which to notify the buyer of the split. Since the split could favour the seller and disadvantage the buyer, buyers should beware.**

**After the three months, it's the buyers turn.**

# How to retain company losses when selling a business

**Until recently, if more than 51 percent of the shares in a company changed hands, any company losses were no longer available to be set off against future years' profits.**

The law is being changed. Effective for the 2021 year (for most people 31 March 2021) you need only to make sure there is no major change in the company business when the new shareholders take over.

Permitted changes include:

- to achieve increased efficiency
- to respond to advances in technology
- the scale of the business
- using existing assets to produce new products or services related to the existing ones.

Losses incurred before the 2014 year will still need to be written off. There are several complications and special cases, so if this affects you, get advice.

# Recent Court Cases for your Interest

## Company Directors beware of H & S requirements

WorkSafe is warning company directors that if they are not making sure their company's operations are safe and healthy, they face enforcement under the Health and Safety at Work Act 2015.
The warning follows the first WorkSafe prosecution and subsequent conviction and sentencing today of a director and his company for health and safety failings.
"Directors have explicit legal duties to undertake due diligence on their company's adherence to health and safety obligations and failing to do so not only puts their workers at risk, but it also puts them in our sights," WorkSafe's Head of Specialist Interventions at the time Simon Humphries said.
"As governors of their businesses, they have more ability than anyone else to influence their business' operations to ensure they're taking all the steps required to protect workers and others on their sites from health and safety risks. If they're not doing so, they're failing in their duties," Mr Humphries said
On 18 October 2021 in the Tauranga District Court, a Director and his company were convicted and fined over a November 2018 incident in which a worker suffered crushing injuries while operating a metal press. The ends of his right middle and ring fingers required amputation as a result.
WorkSafe investigated the incident and found that the press was not properly guarded and did not have the required emergency stop button. The investigation also found previous history of the machine not operating as expected and had not identified this as a risk.
Mr Humphries said the company's induction and staff training was haphazard and undocumented, and the company could not produce any evidence of the victim having been properly trained in the press' use.
"What makes this case all the more concerning is that the company has had two previous convictions for incidents involving presses and injuries to workers' hands and fingers.
"At the time of the incident the company was also non-compliant with three WorkSafe Improvement Notices relating to non-implementation of a health and safety manual; inadequate safe operating procedure; and training issues.
"With that history, the Director should have known he had to step up and fix the litany of problems evident in his business. He did not, and a worker was unnecessarily injured," Mr Humphries said.

**Notes:**

- The Director appeared in the Tauranga District Court.
- He was sentenced under sections 44(1), 48(1) and 48(2)(b) of the Health and Safety Work at Act 2015
    - ◊ Being a director of a PCBU, and having a duty as an Officer to exercise due diligence to ensure that his company complies with its duties as a PCBU, did fail to comply with that duty, and that failure exposed workers, including the victim, to a risk of serious injury arising from exposure to a crushing hazard created by the moving parts of the press when in operation.
- The maximum penalty is a fine not exceeding $300,000.
- A fine of $35,000 was imposed.
- The Company was sentenced under sections 36(1)(a), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015.
    - o Being a PCBU, having a duty to ensure so far as is reasonably practicable the safety of workers who work for the PCBU, including the victim, while the workers are at work in the business or undertaking, namely operating the press, did fail in that duty and that failure exposed workers to risk of serious injury arising from exposure to a crushing hazard created by the moving parts of the press in operation.
- Carries a maximum penalty of $1,500,000.
- A fine of was $120,000 was imposed.
- Reparation of $30,000 was ordered.

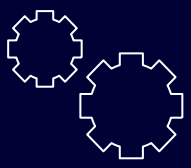
Source: www.worksafe.govt.nz

CUSTOMER SERVICE SOLUTIONS

**On-time courtesy**
If you're always late, is it suggesting to other people your time is worth more than theirs? Perhaps not what you intend but still the message. Being punctual is a courtesy.

WEB SOLUTIONS

**Tax for online content**
If you're a creator of online content, your activities could give rise to taxable income.



TAX SOLUTIONS

Reminding customers about their Small Business Cashflow loan This month IRD are contacting tax agents of customers who took out the Small Business Cashflow loan (SBCS) between May and July 2020. IRD will remind them of their client's loan obligations and the option to avoid interest by repaying the loan in full within the first 2 years if they can. IRD will contact SBCS loan customers without a tax agent directly. IRD understand the pressure many business owners are under, and that it might not be possible to pay the loan off before the interest is charged. That's ok. Repayments are not compulsory in the first 24 months. For more information about the loan, including applying head to ird.govt.nz/sbcs

# Reimbursement for use of telcos

**Telecommunications usage plans by Inland Revenue allows for personal usage of telephone and internet connections.**

The department has created rules for reimbursing employees. This would also include shareholder employees.

If an employee is using the telecommunications less than half the time then an employer can reimburse the employee for 25 percent of the costs. If it is more than half the time the maximum reimbursement increases to 75 percent.

You are not allowed to make an arrangement with an employee to take a smaller salary and then top them back up with the allowance.

If the purchase of an asset is involved, the reimbursement by the employer has to be related to the depreciation rate each year.

These rules don't apply to the self-employed. Generally the maximum claim for a self-employed person for reimbursement of telecommunications costs is 50 percent, however it must be related to the actual usage.

## Quick Quote

Accounting does not make corporate earnings or balance sheets more volatile.
Accounting just increases the transparency of volatility in earnings.
*Diane Garnick*

# Family trusts – new tax law

When you put in a family trust tax return in the coming year (2022 tax year), more information is going to be required by Inland Revenue:

- transfers by associated people (generally means relatives of the beneficiaries) to the trust
- loans between the trust and related parties
- more details about distributions to beneficiaries
- more details about any settlements (includes free services to the trust and money donated) on the trust
- information about the power to appoint or dismiss trustees

Inland Revenue could ask for information back-dated for seven years.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