NEWSLETTER

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INSIDE THIS EDITION

Season's Greetings

From all of us at the firm, we wish all of you the very best for a Merry Christmas and New Year.

Take care and enjoy the break – we look forward to catching up again in 2019.

Please note our office closes on Friday 21 December and re-opens on Thursday 3 January 2019.

Staff News

We are pleased to welcome Tala Staples to our team. Tala hails from the Ukraine originally, but has been in New Zealand for the best part of 20 years. Living on a lifestyle block in Te Horo, Tala comes to us highly qualified (MBA) and with a wealth of experience with business and rural clients. Tala is proficient with MYOB and Xero client accounting systems.

We are also sorry to see Michael move on back to Corporate Accounting, as well as Rebekah Rowan who has been of great assistance in the office these last 3 years. Rebekah is off to study Biometrics and Japanese at Otago University next year and we wish her all the very best.

In this period too, Aleashia and Matt have brought their new baby Harland safely into their family – a young brother for Fletcher. Aleashia is already back on a (very) part-time basis with us, baby allowing.

Tax Working Group Interim Report

The Labour Government established the Tax Working Group ("the Group") in January 2018 to review the existing New Zealand tax framework and to provide recommendations for improvements to the fairness, balance and structure of the tax system over the next 10 years. An Interim Report was released on 20 September 2018, to provide interim conclusions on twelve areas of concern for New Zealanders, based on the thousands of submissions received during their two-month public consultation.

One of the most topical issues is the potential introduction of capital gains tax. The report discusses potential design options for a capital gains tax, but the report makes it clear that the Group is still forming its view on whether to recommend a capital gains tax at all. Broadly, a capital gains tax could apply on a realised basis as assets are sold or on a deemed return basis. Assets captured would include interests in land, intangible property, income-earning assets not already taxed on sale, and shares in companies. The Group confirms that family homes and personal assets such as cars, boats and jewellery should be excluded.

Another key area discussed is the taxation of retirement savings. The Group considers high-income earners are likely to be saving adequately, hence they have suggested a package of modest retirement saving incentives aimed at middle and low-earners. This includes the removal of Employee Superannuation Contribution Tax (ESCT) of 3% for employees earning up to $48,000 per annum, and a five percentage point reduction for each of the lower PIE rates applying to KiwiSaver accounts.

On the topic of international tax, the interim recommendation is to 'wait and see' what approaches are adopted by other countries. The Group does not want to suggest a regime that could potentially cause negative retaliatory action from other countries, risking harm to our export industries.

The Group is also "weighing up their options" for the current rates and thresholds for personal income tax. The focus for personal income tax is ensuring compliance by the rising number of self-employed.

For business, the Group recommend maintaining the current company tax regime and rates, including retention of the imputation system. They have not recommended the introduction of a progressive company tax, or an alternative basis of taxation for smaller business, instead focussing on providing support for smaller businesses through simplification of the tax compliance process. For example, by increasing the provisional tax application threshold and the $10,000 de minimis threshold for automatic deduction of legal fees.

The Group was specifically excluded from considering an increase in the GST rate, however it received many public submissions on a potential reduction. After analysing the effects this would have, the Group does not recommend a reduction, nor removal of GST from certain products such as food and drink, on the basis that such measures would be poorly targeted and that more effective ways are available to provide assistance to low and middle income families.

In addition to these main areas, the Group considered a few more specific topics, including recommending the retention of the 17.5% rate of tax for Maori Authorities, and extending the rate to subsidiaries of Maori Authorities.

The views expressed in the interim report are not final, and the Group are welcoming feedback from all New Zealanders before the final report is released in February 2019.

Payday filing

The way employers report payroll information to Inland Revenue (IRD) is changing. From 1 April 2018, IRD introduced a new electronic reporting system, providing employers the option of filing payroll information every payday. From 1 April 2019, the new system will be compulsory for most employers, so it is imperative business owners get to grips with the new rules to avoid the risk of non-compliance.

Under the new payday filing system, the information must be reported every time employees are paid, which could be complex for businesses with a combination of employees paid weekly, fortnightly and monthly.

From 1 April 2019, the new system will be mandatory for any NZ employer who withholds more than $50,000 of PAYE and Employer Superannuation Contribution Tax (ESCT, e.g. Kiwisaver) per year. Paper filing will remain available for smaller entities who do not exceed this threshold, although they may also opt in.

The details submitted to IRD will remain substantially the same, with additional information required in respect of ESCT payments, the pay cycle frequency, pay period start and end dates, and the payday date. There will also be amendments to the way information is collected for new employees, allowing electronic onboarding for new starters.

IRD's electronic system supports three ways of collecting the employment information. The most straightforward option is direct filing from compatible payroll software, bypassing the need for files to be uploaded through the 'myIR' system. Alternatively, information can be submitted electronically or manually through the employers online 'myIR' account.

Generally, payday filing will require employment information to be submitted within two working days of each payday. For a business with a combination of employees paid both monthly and fortnightly, the filing deadline will be within two working days of both the monthly and fortnightly payday. However, for IR56 taxpayers, or employers below the $50,000 threshold, the deadline will be extended to within 10 working days of each pay date, with an option to submit a single monthly report.

Despite the increased reporting frequency required by payday filing, PAYE payment dates and methods of payment will remain the same. This means employers will continue to pay PAYE monthly or twice monthly, as they currently do.

Although the increased reporting frequency may appear burdensome at first glance, there is an opportunity for payday filing to reform payroll processes, becoming an integral part of the general accounting system rather than an additional monthly task. This integration will work best for software systems that can upload directly to IRD. Some employers may need to upgrade their existing payroll systems and procedures to ensure compliance by the mandatory deadline, hence, it is important that employers start considering the impact the changes will have now.

Holiday pay

The MBIE Labour Inspectorate have recently announced that they are going to prioritise employer compliance with the Holiday Pay Act. They expect businesses to calculate leave and holiday pay entitlements accurately. However, a growing number of non-compliance cases suggest that this is easier said than done, with both small and large businesses finding the rules complex to tackle.

Over the past six years, MBIE has investigated 156 employers to measure their compliance with holiday pay rules, and every single employer was found to have some degree of non-compliance. In addition to financial loss, employers making mistakes also risk reputational damage and loss of employee trust.

There are many reasons behind the difficulties faced by employers in this area.

The Holiday Pay Act requires different rates to be used for the various types of payments made to employees. For example, a weekly rate must be applied to annual leave payments, however a daily rate should be applied to other employee entitlements such as sick leave and public holidays. There are also complex rules and methodologies that should be applied in special circumstances, for example when employment ends. The legislation often requires employers to compare two alternative calculation methods, so it is important that these are correctly understood.

Errors often occur in holiday pay calculations when payments other than salaries and wages need to be included. The average weekly and daily rates need to be calculated accurately; in addition to gross earnings the rates also needs to include allowances, overtime and incentives. If these are excluded, there is the risk entitlements are underpaid. However, employers also risk overpaying employees by unnecessarily including other amounts, such as bonuses, in the calculation.

Variability of pay also introduces complexity. For salaried workers, the calculation process is often more straightforward as their ordinary and average pay is likely to be the same. However, for waged employees working variable hours, the average pay may vary over different periods of time. It is therefore crucial for employers to understand their full workforce and apply the rules accordingly.

As payroll functions become increasingly automated, many employers rely on payroll systems to perform holiday pay calculations. Here the flexibility and sophistication of the system becomes important. If the system is able to process multiple types of calculations and comparisons then errors are less likely to occur. However, less sophisticated systems risk calculating underpayments for employees working irregular hours. Most systems are unable to tackle all the various scenarios described under the legislation, running the risk of non-compliance.

To avoid non-compliance and resulting action by employees or regulators, it is vital that employers understand the provisions of the Holiday Pay Act and apply them correctly. Employees can legally request remediation for non-compliant payments up to six years after the payment, and in cases of serious non-compliance, employers may be taken to the Employment Relations Authority. The potential scale of non-compliance varies from organisation to organisation, depending on the mix of employees and the total wage bill, so it is vital that all employers consider their individual circumstances and take advice as appropriate to ensure compliance with the legislation.

Foreign shares

The global economy is seeing New Zealand (NZ) taxpayers invest in overseas companies. However, many people acquire foreign investments without understanding how they will be taxed. Taxpayers that purchase shares in a foreign company should ensure they are familiar with the Foreign Investment Fund (FIF) rules.

The FIF regime was introduced to prevent NZ taxpayers using offshore entities to avoid or defer their NZ tax obligations. The rules apply when less than 10% of the shares in a foreign company are held, or units of less than 10% in an overseas unit trust. Dividends/income received from such investments are not directly taxable. Instead, taxable FIF income is attributed to the taxpayer based on a number of calculation methods. This means that taxable FIF income can arise even if the investment does not generate a real cash return, and this is where uninformed taxpayers can be caught out.

The default calculation method is the fair dividend rate (FDR) method, which deems taxable income to arise based on 5% of the market value of an investment at the start of the financial year. Dividends received during the year are ignored. A quirk of this method means that no taxable income is derived during the tax year an investment is acquired, due to the nil value at the start of the year. Conversely, income is deemed to arise during the year an investment is sold. Complex adjustments apply when an investment is purchased and sold within the same year.

The FDR method provides certainty, and where returns on an investment exceed 5%, the excess return is effectively tax free. However, for a taxpayer with an underperforming investment, which may have fallen in value and paid no dividends, deemed income at 5% adds salt to the wound.

To deal with this scenario an alternative calculation method, the comparative value (CV) method, determines taxable FIF income based on the change in value of the investment during each tax year, with an adjustment for realised dividends and capital gains. This can result in lower taxable income than the FDR method when the return on an investment is below 5%.

In addition to FDR and CV there are other calculation methods available. Furthermore, whilst individuals and some trusts can freely switch between FDR and CV each income year to gain the best tax outcome, there is no such option for companies who are generally required to continue using the FDR method once it has been selected.

Australian listed shares are generally exempt from the FIF rules and are taxed in the same way as NZ investments, such that dividends are taxable when received and capital gains are tax free. However, the devil is in the detail and this exemption does not apply to all Australian shares, hence each investment must be considered separately.

Given the complexity of the regime, if you are evaluating an overseas investment, please do so with full knowledge of the appropriate tax rules, to avoid unexpected tax costs.

Snippets

Anti-Money laundering regulations

Since 2013, financial institutions, such as banks, have had to comply with Anti-Money Laundering regulations. These rules have now been extended to other businesses providing financial services, such as real estate agents, accountants and lawyers.

The regulations are designed to prevent criminals laundering money through legitimate New Zealand businesses and apply in a number of circumstances, predominantly where financial transactions are involved.

The rules require affected businesses to formally identify their customers and understand the true source of funds for every individual they interact with, before they can undertake certain work. This is likely to incur additional costs for affected businesses, but there is no way around it, and the fines for non-compliance outweigh the cost.

The extension of these regulations seek to ensure New Zealand continues to protect and enhance its reputation as a good place to do business and is meeting international standards. However, they may slow down the time it takes to get professional assistance.