NEWSLETTER

Issue 3
Aug – Oct 2017

INSIDE THIS EDITION

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The business of immigration

New Zealand's immigration system is currently undergoing a significant overhaul, which is sure to impact many local businesses. Following the changes to Investor Category visas announced in December 2016, further changes are also proposed to the Skilled Migrant Category (SMC) visa, for implementation in August. The proposed amendments are set to ensure better outcomes for both New Zealand citizens and those who are seeking to immigrate here.

Investor visas were first introduced in 2009, resulting in over $2.9 billion invested into NZ. Generally, investors may be granted resident status if they make qualifying investments in NZ for 3 or 4 years. There are two categories – Investor 1 applicants must invest at least $10m and Investor 2 applicants must invest at least $1.5m (plus have other funds available to live on).

Currently, around two thirds of these investments are in bonds. The proposed changes, effective from May 2017, seek to change this by encouraging investment in 'growth-oriented' industries. The 'growth-oriented' list includes industries associated with equities, commercial property, new residential builds or managed funds, with the potential for others to be added in the future, decided by Government need.

If Investor 1 applicants invest upwards of 25% in New Zealand growth-oriented investments they will have more flexibility on how they can meet the minimum 'days in NZ' requirement for this visa type. Furthermore, Investor 2 applicants will receive a reduction in the total amount they need to invest if they are willing to invest in growth investments – a $0.5m discount to be exact. To attain this discount, investors will be required to allocate more than 50% of their total investment to growth-oriented business. They will also enjoy less restriction on how they spend their required days in New Zealand over the four year period of application, much like the Investor 1 category. The additional funding is expected to provide a boost to the economy, providing an alternative funding option for businesses that may have been restricted by lack of investment into growth-oriented ventures.

Alongside this, changes to the SMC visas are also making a splash in the business environment. Residence can be granted for skilled workers under a 'points' system, with points granted for various criteria including qualifications and job offers. From August, the points system is supplemented by the introduction of remuneration thresholds: jobs will need a minimum salary of $41,538 to be considered 'mid-skilled' – being 85% of NZ's medium income. More points will also be available for skilled work experience and for some post-graduate qualifications. It is hoped that this will help limit the net inflow of immigrants, whilst targeting this visa type to individuals that are skilled in their industries, allowing businesses to bring in the people and skills that are beneficial to NZ as a whole.

The Government is seeking to balance the economic growth that immigration brings along with the additional strain it places on public services and current infrastructure. Getting the right balance is a challenge, but solace can be taken from the fact that it is a sign of a strong economy. It is important that the Government continually reviews immigration policies to ensure they are attaining the correct outcomes for a prosperous New Zealand.

Proof of intention

The sale and purchase of residential property is an area of focus for IRD Investigators as a result of the ongoing investment in the Property Compliance Programme. A Taxation Review Authority ('TRA') case heard in May 2017, serves as a timely reminder for all property owners to remain aware of the tax implications that can arise from residential property sales. The case involved the purchase and eventual sale of a family home by a son who had previously been involved with other property investments.

A key criterion for determining the tax status of a property transaction rests on whether the property was purchased with the purpose or intention of resale. The intention of the taxpayer is determined subjectively at the date the property is acquired.

There are instances where taxpayers have tried to satisfy this subjective test by embellishing their future intentions to support a more desirable tax outcome. Hence, it is common to place some weight on any documentation that might also refer to a taxpayer's future plans for a property.

In this particular case, a substantial amount of weight was placed on a diary note recorded by the taxpayer's bank officer, accompanying the loan approval request for the property. The note recorded that the taxpayer had committed to the purchase of the property because his parents were no longer financially able to complete renovations themselves, and that he would sell the property once the renovations were completed, in order to release funds needed for his other property developments.

Due to the diary note and the taxpayer's history of buying and selling property, the IRD sought to tax the sale of the property. But the taxpayer argued that the file note was not a true account of his intentions. He told the TRA that the bank officer was a close friend of his, a friendship that had been built over years of loan applications and property investments. This had resulted in the bank officer recording a note not of a conversation, but of a mistaken assumption about the taxpayer's intention to resell his parent's home.

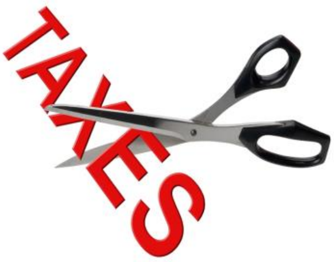
The taxpayer asserted his true intention was to assist his parents while they were experiencing a period of financial difficulty, safeguarding the family home for the long term. This alternate set of facts was further aided by the form of the bank officer's note – it did not refer to a specific conversation, but was written as part of the loan approval request, containing information determined relevant by the bank officer.

The process for a case to reach the TRA is lengthy and involves a significant number of steps for both IRD and the taxpayer, so IRD often only reach this point if they consider themselves to have a high chance of success. With this in mind, it must have come with considerable relief to the taxpayer when the TRA ruled in his favour, concluding that the evidence showed he did not purchase the property with the intention of resale.

The case is interesting because the taxpayer went through what would have been a difficult and stressful Investigation and then 'Disputes Process', due to a statement that he didn't make and likely didn't know existed. The lesson here is that if a property is not being purchased with a purpose or intention of resale, it could be a good idea to state that on the record through the acquisition process, rather than simply relying on that being implicit.

Budget 2017

Budget 2017 presented a broad range of small yet smart changes that target working families and low income earners. From a tax perspective, the key changes are predominantly to the income tax thresholds, working for families' package and the independent earner tax credit.



All taxpayers will benefit from the tax cuts, and it is hoped that as consumers spending capacity increases, we will see a boost in the consumer economy as a direct consequence of the tax cuts.

Income tax thresholds

The income tax thresholds are set to change from April 2018 for the first time since 2010, with the lowest 10.5% bracket increasing from $14,000 to $22,000, and the next bracket of 17.5% moving from $48,000 to $52,000.

Over time inflation has pushed wages and salaries into higher tax brackets, resulting in the Government benefiting from a higher proportion of income being taxed. These new income tax thresholds seek to rectify this bracket creep and in that sense, simply reverses effective increases in the tax rates arising as a result of inflation.

Taxpayers can expect savings of $11 a week on income earned over $22,000 a year, and up to $20 a week for anyone earning more than $52,000 a year.

Independent Earners Tax Credit

The Independent Earner Tax Credit (IETC) is to be cancelled at the end of the 2017 income year. However, the loss of the IETC for those earning $24,000 to $44,000 is being incorporated into the increase to the income tax thresholds. With only a third of IETC eligible individuals actually claiming the credit, it is an overall positive change for those in that income range.

Working for Families

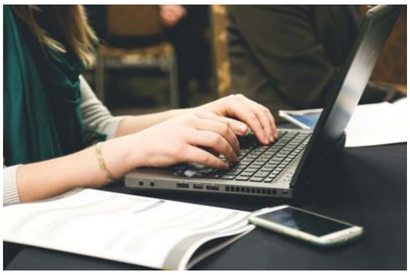
There has been a multitude of small changes to Working for Families. The Family Tax Credit rates will change, such that families with a first child under 16 will receive an additional $9 a week, and there will be an increase of between $18 and $27 per week for each subsequent child under 16.

The maximum amounts payable to households entitled to the Accommodation Supplement are also set to rise, as are the weekly payments for the Accommodation Benefit for eligible Student Allowance recipients.

The combined effect of these changes will hopefully provide families with greater disposable income to spend on goods and services. The aim is that the flow-on of income into consumer spending will strongly support economic growth over the coming years. The challenge for businesses then becomes how to make the most of growing consumer spending if they also want to benefit from this year's budget.

FBT (Fringe Benefit Tax) on Motor Vehicles

Anecdotally we are aware of increased activity by Inland Revenue in the FBT area, particularly in relation to Motor Vehicles. Motor vehicles that are available for use by an employee, including shareholder employees, whether they be work vehicles or not are prima facie subject to FBT. This potentially affects many closely held Companies where vehicles are owned by the Company and made available for use to employees and or yourselves as shareholder/employees.



The key point is whether the vehicle is available for private use regardless of whether the vehicle was actually used for private purposes.

Where the vehicle is mainly a work vehicle and you do not wish to be paying FBT then you should ensure that there are effective private use restrictions in place. The onus is on the employer to show that the vehicle is unavailable for private use. The restrictions should take the form of:-.

- a letter from the directors of the Company to employees including yourself as a shareholder employee as appropriate, prohibiting private use of the vehicle; stipulating requirements it be garaged at home;
- a record of periodic checks that the vehicle is not being privately used e.g. logbooks; and
- where the vehicle is allowed to be privately used on some pre-approved occasions, records must be kept to record the days the vehicle was privately available; and
- evidence that the employee / shareholder-employee has access to an alternate vehicle for private use.

Any employer relying on an exemption from FBT on vehicles should discuss the above issues with us and put in place appropriate documentation / processes to ensure that an FBT liability is minimized.

A final thought about vehicle FBT generally; there is often still benefit for the Company in respect of tax deductions re modestly priced vehicles say to $40,000 which are substantially used for private running. The cost of FBT, painful as it may seem, can be more than offset by full tax deductibility on private use running with GST, depreciation, insurance, registration and other running costs claimed.

Snippets

YouTube receipts

With over 400 hours of content uploaded every minute, YouTube comprises a massive entertainment platform. The site has over 1 billion monthly users, with a continual demand for quality online content across a diverse range of subjects.

Armies of users produce and upload videos, aiming to earn the most views, leading to opportunities to make money. Income can be generated from various sources, such as:

- Advertising revenue (e.g. Google's AdSense campaigns);
- Affiliate and sponsorship income (paid for promotion of products or companies); and
- Paid content (where a fee is required in order to see the content).

The IRD has recently provided guidance regarding the taxable nature of such income, which is based on ordinary tax concepts. The key considerations are whether the individual is intending to make a profit, or is engaged in a 'scheme or undertaking to make a profit'.

So, if you receive YouTube income you may need to include this in your income tax return, even if you did not intend to profit. If you are receiving amounts regularly or are relying on the amounts as a form of income, the income is likely to be taxable.

Think ahead to IRD requesting a list of NZ members that have received payments from YouTube over $XXXX ….

Tax innovation

With the persistent need for additional Government revenue it could be time to look to history for answers.

In 1535, King Henry VIII of England introduced the first 'Beard Tax' on males growing facial hair. The effectiveness of the tax in England was questionable, with records at the time being somewhat 'short' on detail.

The second iteration of the beard tax was implemented by the Russians in 1698. Their policy was a little more extensive and enabled the police to forcibly shave anyone refusing to pay the tax. Men were required to pay between 60-100 rubles (a small fortune at the time) depending on their position in society, with 'wealthy merchants' charged the full 100 rubles upon entering a city. They were then issued a 'beard token' to evidence payment.

A few hundred years later in 1944 the Russians had another great initiative - Tax on Trees. The tax imposed on fruit trees alone became so expensive for farmers that it led to a mass felling of fruit trees, causing a fruit shortage throughout the country. The tax was eventually repealed 10 years later.

If you have any questions about the newsletter items, please contact us, we are here to help.