FLUKER DENTON LIMITED
Chartered Accountants

NEWSLETTER

Nov 2020 – Jan 2021

INSIDE THIS EDITION

Season's Greetings

From all the team to all our clients, we wish you the very best for a safe, Happy Christmas and New Year.

Thank you for your support during 2020 and we look forward to seeing you again through 2021.

Please note our Office closes on Wednesday, 23 December 2020 and reopens on Tuesday, 5 January 2021

Election outcome and tax policies

After Labour's victory in the 2020 General Election, their proposed tax policy changes are now likely to be implemented.

The government has ruled out a capital gains tax and an increase in fuel taxes but is prepared to introduce a Digital Services Tax to target multinational digital businesses who have taken advantage of tax structuring options. The government's historical coalition partner, the Green Party, have notably been campaigning for a wealth tax, which has won enough seats to govern alone, the possibility of a wealth tax seems unlikely.

Labour's election campaign promised no income tax changes for 98% of New Zealanders, however a new top marginal income tax rate of 39% for individuals earning over $180,000 will be implemented – expecting to raise $550 million of revenue a year.

For some of us this provides a sense of déjà vu, as we remember when we previously had a 39% tax rate from the 2001 to 2009 financial years. We saw disputes in the courts regarding the requirement to pay fair market salaries, legislation requiring income to be attributed to individuals and various policy statements from Inland Revenue.

As differences in tax rates widen, it impacts behaviour by incentivising tax planning to minimise application of top tax rates. Currently, there is little difference between the top income tax rates, 33% for trusts and individuals and 28% for companies.

It also leads to further inequity within the tax system because it is typically employees who are unable to alter how they are taxed, whilst business owners have greater flexibility to alter how their income is taxed.

For example, a distribution of accumulated income from a trust that has already been taxed at 33% may be distributed tax-free to a beneficiary who has a marginal tax rate of 39%. Individuals with investment income may also be further incentivised to invest in Portfolio Investment Entities instead of shares, where the top tax rate is capped at 28%. Conversations are likely occurring right now regarding whether shares in companies should be moved from personal ownership into trusts – and whether this is tax avoidance?

Companies may also face further costs with a 39% tax rate. Companies that currently pay fully imputed dividends at 28% are also required to withhold tax at 5% in order to reach the 33% marginal income tax rate. This withholding tax liability is likely to increase to 11%, which may place constraints on company cash flow or prevent dividends from being paid altogether. This will place further pressure on tax administration to keep accurate, up-to-date records as individuals on lower marginal tax rates may be entitled to tax refunds comprising the additional tax withheld.

Ultimately, this policy provides an opportunity for individuals to explore their different options to ensure efficient tax planning. However, utmost care should be taken when restructuring one's affairs, in order to avoid undesirable consequences such as the breach of shareholder continuity resulting in the loss of imputation credits or tax losses, or potentially undertaking a tax avoidance arrangement. Unfortunately for salary and wage earners and professionals receiving personal services, income restructuring will be difficult to achieve due to these considerations

New trustee disclosure obligations

In 2013 the law commission was asked to review the Trustees Act 1956 and NZ Trust law generally. Following this initial review, nearly eight years later, the long-awaited "Trusts Act 2019" will finally come into effect on 31 January 2021, replacing the entire 1956 Act.

One of the most significant changes in the new Act that is generating interest from trustees and practitioners alike is the introduction of beneficiary disclosure requirements on trustees. This becomes sensitive if it means disclosing a trust's financial information, or to what extent some beneficiaries have benefitted more than others. However, the problem is what level of information should be disclosed and to whom?

Under the new Act, there are two layers to the disclosure obligations:

A "presumption" exists that Trustees will make available "basic trust information" to every beneficiary.

A beneficiary may request additional "trust information".

Basic trust information comprises:

- the fact the person is a beneficiary of the trust,
- the name and contact details of the trustees,
- any changes to the trustees as they occur,
- their right to request a copy of the trust deed, and
- their right to request trust information.

"Trust information" has a wide definition and includes information regarding trust property. Although, it specifically excludes "reasons for trustees' decisions". It is reasonable to assume 'trust information' includes financial information, but how detailed that information has to be is unclear, e.g. does it include amounts distributed to other beneficiaries? Given the new rules are intended to ensure beneficiaries have sufficient information to enforce the terms of the trust deed, it is presumed the answer is yes.

Before making "basic trust information" or "trust information" available to beneficiaries the trustees have to consider numerous factors, including:

- the personal or commercial confidentiality of the information,
- the age and circumstances of the beneficiary,
- the practicality of giving the information, and
- the effect on the beneficiary and family relationships of providing the information.

After taking all factors into consideration, the trustees can decide to withhold information from beneficiaries if they "reasonably" consider the information should not be provided.

The wording of the new Act is causing uncertainty and unease with existing Trustees as to what exactly their new obligations are and the risk of acting unreasonably. At one end of the scale, risk averse trustees are considering trust resettlements to establish new Trusts with a reduced number of beneficiaries, to preserve confidentiality or reduce the risk of litigation by beneficiaries. At the other end of the scale, trustees are awaiting case law to set the precedent on how to "reasonably consider" the factors above.

Although the legislation needs to be applied correctly (which, in itself, is uncertain), each situation is different based on the nature of family and beneficiary relationships, which makes it difficult to determine the best course of action.

Employee benefits for millennials

Say what you want about millennials, there is no denying their presence in the workforce. According to Statistics New Zealand, millennials currently represent the largest age group in the workforce. Millennials are also attributed with having become problematic to attract, develop and retain - perhaps in part due to their unique preferences when it comes to employment benefits.

Generally, a work / life balance has always been among the top priorities for millennials, and while this remains true, the desire for work-life integration has emerged. Instead of disconnecting from work completely, millennials welcome the idea of mixing work and play, viewing social activities with co-workers as a resounding perk of employment. This is likely connected to millennials preferred work style, where they are less likely to work longer hours than other generations and embrace flexible ways of working. It is evident that millennials want flexibility and reject the premise that working long hours and being visible is the primary way to demonstrate value. Millennials are known to work well with clear instructions and targets, hence believe the where and how a job gets completed becomes less relevant.

Nevertheless, they are a generation that is committed to their personal learning and development. Research conducted by PwC revealed that 35% of respondents were attracted to employers who offered first class training and development programmes, with the most valued training opportunity being the ability to work with strong coaches and mentors. The study further revealed that millennials crave feedback, with only 1% of respondents saying feedback was not important. Millennials tend to favour frequent feedback sessions and value immediate on the job coaching. Whilst it may be difficult for older managers to navigate this expectation, millennials view the feedback cycle as integral to understanding how their role fits into the wider organisational strategy.

Millennials also lead the way in their desire to work for a company that reflects their own values. The Deloitte Global Millennial Survey 2020 revealed that 56% of respondents had previously ruled out working for an organisation because of its values, and 82% agreed that they were more likely to stay in a job if their personal values aligned. But what exactly do millennials value in an organisation? Putting employees first, having a strong foundation of trust and integrity, practicing customer care, and being environmentally and socially responsible are among the top ranking.

In order to motivate millennials, it is important that businesses understand what they can do to attract and retain them. Whether that be allowing them to work more autonomously, or encouraging learning and development, the reality is the turnover rate among millennials is still likely to be higher than other generations, in large part due to their willingness to quickly move on from organisations that do not meet their ever-changing expectations.

Airbnb, Bookabach, and Short Stay Accommodation – Beware of GST

With the increasing trend in offering short stay rental accommodation through websites such as Airbnb it is important that clients be away of potential GST impacts.

Noting there are different tax rules again for Mixed Use Assets (typically holiday homes used both privately and by third parties), where a dwelling (say “house”), is let out for short term rental it is treated as short stay accommodation in a similar manner to motels and is therefore potentially subject to GST.

If the short-term rental activity generates gross rental of greater than $60,000 per annum, then the owner will need to register for GST.

This 60k threshold can be complicated by letting the property to associated persons as this may cause deemed income for the purpose of calculating whether the owner has exceeded the GST threshold and needs to register i.e. you may need to calculate extra deemed income additional to the actual rent received.

The impact of GST registration apart from the “day to day” matters of having to return GST on rent, claiming GST on expenses and filing of returns; is the complications that will come eventually on sale of the property.

With the house now included in the owner’s taxable (GST) activity, GST will likely be required to be paid on the eventual sale of the house. Whilst a change in use adjustment deduction can be claimed when changing from residential exempt use to taxable GST use, ***typically the owner will later be up for paying GST back to Inland Revenue on the full market value of the property when sold***. Effectively they owner will end up paying GST on the change in value of the house – under present market conditions this could be significant.

We advise care in this GST area particularly, where you may be getting close to a level requiring GST registration as there may be consequences unintended and better avoided.

Snippets

Is the grass greener over the ditch?

Australia has recently released its 2020-21 Federal Budget where they plan to combat the effect of Covid-19 by investing in infrastructure, job creation, asset write offs and personal tax cuts. Meanwhile in New Zealand, the government continues their plan to keep New Zealand moving by investing in people, jobs, small businesses, infrastructure and global trade.

Australia's approach of increasing the low-middle tax bracket thresholds is similar to what National proposed, with eligible Australians receiving tax relief of up to $2,745. These tax cuts are provided to encourage spending and stimulate the economy. Conversely, in New Zealand there will be a new top tax rate effecting 2% of New Zealanders and generating $550 million of annual revenue.

Australia has extended its $150,000 asset write-off deduction until 30 June 2022 for businesses with a turnover of up to $5 billion. In New Zealand our threshold has been increased to $5,000 until 17 March 2021, then $1,000 thereafter.

Both countries have implemented tax loss carry back changes. In Australia small businesses can carry back tax losses from the 2020-2022 tax years to offset previously taxed profits in 2019 or later tax years. All New Zealand businesses expecting to make a loss in the 2020 or 2021 year can use that loss to offset profits they made the year before. The key difference is that in New Zealand tax losses can be carried back one year, while in Australia they can be carried back to any year from 2019.

Additional Australian policies to boost job creation include a job hiring incentive credit where businesses will receive either $100 or $200 per week for each employee hired depending on their age, and businesses taking on new apprentices or trainees will be eligible for a 50% wage subsidy.

COVID outcomes

COVID-19 has changed the way we work, travel, communicate and live. From overseas travel being only a memory to having to learn to cook during lockdown there are some interesting by-products of Covid-19.

PPE has become a fashion accessory with many large fashion companies entering the facemask industry to provide luxury facemasks due to the increase in demand, as well as many people channelling their inner fashion designer and taking the DIY route and making their own. The hottest accessory of 2020.

Enforcing social distancing has become creative. From a German café making people wear swimming noodles as hats to a restaurant in the United States designing 'bumper tables' which use a large inner tube to keep diners apart.

Artificial intelligence algorithms that look after inventory management, fraud detection and marketing became confused by the sudden and drastic change in behaviour.

And the changes continue with ANZ (and KiwiBank) now not buying or selling foreign currency due to a decrease in demand arising from border restrictions.

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