trialbalance
The official newsletter of NZ CA Limited
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AN ASSOCIATION OF INDEPENDENT CHARTERED ACCOUNTANTS
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Declaring worldwide income

Tax authorities around the world have worked together in the fight against tax evasion and protecting the integrity of tax systems. A key aspect of the co-operation is the exchange of information. The automatic exchange of information has now been in place for several years where "bulk" taxpayer information concerning various categories of income are shared by the source country to the residence country. Furthermore, Inland Revenue's recent compliance focus launch had indicated ongoing monitoring in this area.

New Zealand tax residents have to declare all income they receive from anywhere in the world. But what is included in the meaning of "income"? Income now has a very strange meaning. For example If you hold shares in a United States company which does not generate any dividends, you may have income under the foreign investment funds ("FIF") rules, because FIF rules calculates income based on the value of those shares instead of the actual receipt of income.

FIF rules also include interests in foreign superannuation schemes and foreign life insurance policies. Although you might not have received any money from them. Be sure to tell us if you have one of these. If a policy is taken out in New Zealand with an overseas insurance company, there's no tax problem as it's excluded from the FIF rules.

Some people think they only need to declare income if they bring the money back into New Zealand. This is incorrect, even if they had paid tax overseas. New Zealand tax residents are taxed on their worldwide income. Generally, there is a credit for some or all of the foreign tax paid to be used to offset against the New Zealand tax liability as a result of the overseas income. There can also be special tax rules, in regard to declaring overseas income, for people coming to live here from overseas. If eligible, the special one-off exemption can last for four years. If you think you may qualify, contact us to discuss further.

Examples of overseas income include:

- Salaries from overseas companies,
- interest from overseas bank accounts,
- shareholding in foreign companies/unit trusts,
- rentals from overseas properties,
- share trading income from overseas,
- distributions (capital or beneficiary income) from overseas trusts,
- superannuation funds interest held and whether they are employment related or not,
- life insurance policies owned,
- business income from outside New Zealand,
- royalty/know how income.
- crypto currencies
- gold bullion

"A big business starts small.." – Richard Branson

This list is summarised and is not exhaustive, and the calculation of taxable overseas income can be complicated. With the increasing co-operation between tax authorities and digitalisation of transactions, taxpayers' income or assets held overseas have now become more transparent to tax authorities.

As everyone has a unique background, we recommend that you discuss with your accountant to ensure that you have accounted for all income.

Source: www.rsmnz.co.nz

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Overseas shareholders and dividends

Supplementary dividend tax credit rules

The supplementary dividend tax credit rule (also known as foreign investor tax credit (FITC) rule) is put in place to level the playing field between New Zealand and foreign shareholders in a New Zealand company. For foreign shareholders holding 10% or more voting interest in a New Zealand company, non-resident withholding tax (NRWT) rates are reduced to nil on fully imputed dividends. Accordingly, the supplementary dividend tax credit rules apply only to fully imputed dividends paid to foreign shareholders who hold a less than 10% voting interest in the New Zealand Company or where the rate of non-resident withholding tax (NRWT) applicable to the dividend post-treaty is 15% or more.

If available, the objective of the regime is to recoup the NRWT on a dividend to the foreign shareholder to the extent that the dividend is fully imputed.

This is achieved by paying an additional "supplementary dividend" to foreign shareholders which equates to the NRWT imposed on the dividend. A tax credit, based on the dividend imputation credit and equal to the supplementary dividend, is then allowed to a New Zealand resident company that pays a fully imputed dividend and a supplementary dividend to the same foreign shareholder. While NRWT remains payable, its cost to the foreign shareholder is effectively removed by the payment of the supplementary dividend.

A supplementary dividend is essentially an additional dividend paid in respect to an earlier dividend in the same income year and equates to the amount of the tax credit calculated with respect to that earlier dividend. Only one supplementary dividend can be paid with each dividend and unlike the earlier dividend paid, imputation credits are not attached to a supplementary dividend.

Source: www.rsmnz.co.nz

Does the way my overseas benefit or pension is treated change if I leave New Zealand

If you have an overseas benefit or pension deducted from your New Zealand payment and you leave New Zealand temporarily, your overseas benefit or pension will continue to be deducted. If the rate of overseas pension you are paid changes while you are away, please let us know.

New Zealand Superannuation or Veteran's Pension

If you leave New Zealand for more than 26 weeks, whether your overseas pension continues to be deducted depends on where you are going. If you are travelling through one or more countries, your overseas pension may not be deducted. If you move to one of the social security agreement countries, how your overseas pension is treated will depend on which country you move to. In some cases it may continue to be deducted, in others, it may be disregarded. If you are moving to a country covered by the Special Portability Arrangement with Specified Pacific Countries, your overseas pension will continue to be deducted.

If you are leaving New Zealand for longer than 26 weeks and you're overseas pension is paid via the Special Banking Option you will need to make arrangements with the overseas agency that pays your pension to make payments direct to you. This is because we cannot continue to receive payments into your special bank account while you are not in New Zealand so that account will be closed.

If you are going to Australia to live permanently special conditions apply and you need to contact your accountant.

www.workandincome.govt.nz

"Your most unhappy customers are your greatest source of learning." – Bill Gates

Relationship property agreements and use thereof

Tax concessions are available for property transferred under a Relationship Property Agreement (RPA).

Subpart FB of the Income Tax Act takes the approach that the recipient steps into the shoes of the transferor, so that no tax implications arise with the transfer.

However, the parties and their advisers should take into account any deferred tax liability that may arise with a disposal in the future, in their negotiation of the relationship property split.

Examples of the tax concessions on a settlement of relationship property include:

Where an investment property which has accumulated depreciation is transferred, the property is deemed to be transferred for tax purposes at tax book value and no depreciation recovery arises.

Properties which would otherwise be subject to the 5-year bright line test are not affected if transferred under a PRA.

Property on revenue account (property taxable on disposal) transferred under a PRA will not trigger an income tax liability as the property is deemed to be transferred at cost.

Where shares are transferred, there is no effect on shareholder continuity that may affect imputation credits or tax losses. Shares in a look through company can be transferred under a PRA without a disposal of an interest in the LTC such that no income tax liability arises.

To be valid, PRA's must to be signed and witnessed by solicitors for each party, who certify they have explained the implications to their client. You can expect the lawyers to spend some time to understand all of the assets and division to be able to properly advise.

A significant tax change occurred in 2016 when the concessions were widened to apply to property transferred to or from persons associated to the parties to the agreement. This change covers resettlements of trusts where each trust is associated with a party to the PRA, and transfers of property to and from companies that are associated with one of the parties.

For example, a joint trust could transfer an investment property to a new trust for one of the parties, and the tax concessions in subpart FB apply.

This gives rise to potential tax planning opportunities:

As you are probably aware, PRA's can be undertaken as 'prenups', on dissolution of the relationship, or during the relationship to rearrange property ownership.

Parliament has recognised that modern relationships hold assets in a variety of ownership structures, and that transfers to and from entities associated with the parties to a RPA should be able to use the tax concessions. When a restructuring is recommended to a family structure, advisers should consider whether a RPA can be incorporated to mitigate adverse tax implications that might otherwise arise. Of course, advice should include an assessment of the potential application of the anti-avoidance rules in the particular circumstances.

Source: www.turnerlegal.co.nz

TRUST DISCLOSURE RULES

Hot on the heels of the Trusts Act 2019 that came into force on 30 January 2021, the government introduced and enacted under urgency new disclosure requirements for domestic trusts applicable from the 2021/22 income years onwards.

What is it all about?

The new trust disclosure rules were introduced to assist Inland Revenue assess the compliance of the new 39% personal income tax rate for individuals that is also effective from the same 2021/22 income year.

How does this impact you?

Prior to the new rules, domestic trusts were only required to include in their tax returns taxable income including distributions to beneficiaries that are subject to tax in New Zealand and were not required to file financial statements.

This changes with trusts now required to prepare Inland Revenue minimum standard financial statements and make significant other disclosures including details of transactions that are not subject to tax e.g. use of trust property for less than market value.

What do we need from

As we get underway with the 2021/22 accounts preparation, we will request more information from you about your trust to assist us with preparation of the additional disclosures under the new rules.

What new additional information is required?

From the 2021/22 tax year onwards, more information will be required about a trust's

- Financial information,
- Settlements and settlor details,
- Beneficiaries and distribution details, and
- Persons with power of appointment.

Please refer to the rest of the article for details of the additional information required for each category.

Are there any trusts that are exempted?

- Non-active trust,
- Charitable trust,
- Foreign trust (subject to their own disclosure rules if there are NZ Trustees)

Financial information

Financial summaries are now required to be disclosed in the tax return with a Statement of Profit or Loss and a Statement of Financial Position prepared in support. These must be readily available if requested by Inland Revenue.

The statement of profit or loss must include the following information

- Net profit or loss before tax,
- Any tax adjustments, and
- Any untaxed realised gains and receipts.

The statement of financial position, must include the following information

- Assets* – including associated persons financial arrangements, land, buildings, shares/ownership interests and total assets,
- Liabilities – including associated persons financial arrangements and total liabilities,
- Equity - owners' equity, drawings, current account year-end balances, and movements in beneficiary accounts.

*For Land, Buildings and Shares/Ownership interests assets, you will also need to disclose the valuation methodology applied i.e. historical cost, tax book value or market value.

Person with power of appointment

You will need to disclose details of persons with the power of appointment including:

- Their full name,
- Their date of birth or commencement date (for non-individuals),
- Jurisdiction of their tax residency, and
- IRD number or Tax Identification Number (for non-NZ residents).

Settlements and settlor details

- A disclosure is now also required for all settlors including:
- The full name for all settlors,
- Their date of birth or commencement date (for non-individuals),
- Jurisdiction of their tax residency, and
- IRD number or Tax Identification Number (for non-NZ residents).

You will also need to provide details of:

- All settlements made during the year categorised into cash, financial arrangements, land, buildings, shares/ownership interests, services, settlements that have been valued at zero and others (with a description).

Beneficiaries and distribution details

You will need to provide the following beneficiaries'

- Full name,
- Date of birth or commencement date (for non-individuals),
- Jurisdiction of tax residency, and
- IRD number or Tax Identification Number (for non-NZ residents).

You will also need to provide details of any movements in the beneficiary accounts including:

- Opening balance,
- Distributions (categorised by accounting income, corpus, capital, use of trust property for less than market value, distribution of trust assets and forgiveness of debt),
- Amounts withdrawn or enjoyed, and
- Closing balance as at balance date.

Source: www.rsmnz.co.nz

Non-taxable allowance for transport costs

Some employers provide a non-taxable allowance for their employees who incur additional transport costs.

Inland Revenue is planning to clarify its existing rules for providing a tax-exempt allowance for these costs.

To ensure you pay an allowance, which would be acceptable to Inland Revenue, you need to follow their rules.

This is what Inland Revenue says at the moment:

"You can pay a cash allowance to an employee for travel between home and work. This is tax free if it reimburses their additional transport costs and they:

- are working outside their normal hours of work, such as overtime, shift or weekend work
- need to carry work related tools or equipment, for example, they might usually take the bus but on a particular day they need to carry a large toolbox
- are travelling to fulfil a statutory obligation
- have a temporary change in workplace
- have some other condition of their job
- cannot access adequate public transport."

The tax free amount is the actual cost of travelling between home and work, less the employee's usual travel costs. "This applies to all circumstances except the lack of adequate public transport."

You will notice the allowance is the actual extra cost, which means the allowance would change depending on where the employee lived.

Among the proposed rule refinements to the rules are:

- the additional cost has to be for the benefit of the employer not the employee
- if it is difficult to get to the employer's premises because the nearest public transport is too far away then an allowance could apply
- if it is difficult for the employee to get to public transport from their home because the nearest transport is too far away, that's their bad luck and no allowance can be paid
- the maximum distance an employee can be paid for is 70km (35km each way).

Employees vs contractors

Are they an employee, or an independent contractor?

Whether or not a worker is an employee or an independent contractor may not always be apparent. Yet the above question is an important one, as the answer dictates your rights, obligations and duties towards your workers. If your worker is an employee, they are afforded many protections and entitlements not available to contractors. Your employees' relationship with your business is governed by New Zealand employment law and their employment agreement. This grants them minimum entitlements in areas such as wages and salaries, holidays, sick and bereavement leave and parental leave.

On the other hand, New Zealand employment law doesn't apply to an independent contractor. Therefore, it is important to get the classification correct. It is not relevant whether you or the other party class the relationship as that of an employee or independent contractor. It is the real nature of the relationship between the parties that matter.

When determining whether a worker is an employee or contractor, the below are some frequently asked questions (this is not an exhaustive list):

Look at how the relationship has operated in practice. For example, does the worker take annual leave?

Does your business have the right to control the work performed. For example, when, where and what hours are worked, or how much is paid and how?

Is the type of work or the way it is done the same as work performed by other staff who are employees?

What was the relationship intended to be? For example, Industry practice. For example, does a written contract exist and what is the nature of that contract?

How is the worker treated for tax purposes?

Is the worker genuinely in business on his or her own account? For example, could he/she sell the business?

It is important to keep in mind that worker relationships may change over time. Just because a worker is a contractor today, doesn't necessarily mean that the law wouldn't view them as an employee down the track, if aspects of that relationship were to change. Therefore, you need to monitor your relationships with your workers to ensure you don't expose your business to further liabilities. We recommend that you regularly review worker relationships and classifications and obtain advice when in doubt.

Source: www.rsmnz.co.nz

"There are no secrets to Success. It is the result of preparation, HARD WORK, and learning from failure."
– Colin Powell

History shows meddling with savings

History shows promises can easily be broken, especially in regard to retirement savings.

When Social Security was first introduced, everyone had to pay an extra 7.5 percent tax. In return, the Government promised Universal Superannuation as of right. There would be no means testing, we were told.

In 1985 a 20 percent tax surcharge was introduced on any extra income of superannuitants. The extra tax was limited to the amount of National Superannuation. This meant about 10 percent of superannuitants had to pay all their superannuation back. Others had to repay part of it. The surcharge was later increased to 25 percent, and finally abolished in 1998.

Will KiwiSaver remain as it is now?

Tax calendar

28 September 2022
Second instalment of 2023 Provisional Tax (December balance dates).

28 October 2022
First instalment of 2023 Provisional Tax for those with March balance dates, who pay GST twice a year.

28 November 2022
First instalment of 2023 Provisional Tax for those with June balance dates

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Changes in Particulars

Please remember to let us know of any changes in:
• Physical address • E-mail address • Phone and/or fax numbers
• Shareholdings • Directorships • Trustees
Or anything else that may be relevant.

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