MRC Marsden Robinson Chow LTD

CHARTERED ACCOUNTANTS AUSTRALIA + NEW ZEALAND

Ground Floor, 3 City Road
Auckland 1010, New Zealand
P.O. Box 5247, Wellesley Street
Auckland 1141, New Zealand
Phone +64 9 309 4395
Email admin@mrchow.co.nz

REPORT - JUNE 2019

DIRECTORS: Sam Chow Shee Chow
TELEPHONE: 09 309 4395 **FAX:** 09 309 4358 **EMAIL:** *first&lastname@mrchow.co.nz*

The information contained in this report is not advice. We recommend that before readers decide to proceed with any of the matters raised below, that they contact their professional advisors.

TAX WORKING GROUP

The Tax Working Group (TWG) released its long awaited Final Report ('the Report') on 21 February 2019, following a 13 month review during which the Group received over 7,000 public submissions. The report contained 99 recommendations for the Government's consideration; including the introduction of a broad Capital Gains Tax ('CGT').

Two months later the coalition Government ruled out the introduction of a CGT for the foreseeable future. The current Government is a coalition and without consensus it could not move forward.

Where does this leave us? What about the remaining 97 recommendations? The government has provided a written response to each of the TWG's recommendations. However, the overall theme is that there will be no significant change or major evolution. A number of the recommendations by the TWG were to make no change. For example, the TWG recommended the corporate tax rate should remain at 28% and no progressive corporate tax rate system should be introduced. The government has endorsed maintaining the current business and personal income tax regimes as they are.

The government has agreed to investigate taxing land banking, as this may trigger land development. This 'power' could be passed to local government. This has been referred to Inland Revenue to be added to its (IRD) tax policy work programme (TPWP) for consideration.

The Government is to continue its focus on the taxation of multi-national corporations (MNCs). The government is working closely with the OECD to achieve equity regarding income tax received by all jurisdictions in which MNCs operate. A draft discussion document is due to Cabinet by May 2019 regarding the taxation of the digital services economy, informally labelled the 'Google Tax' or 'Facebook Tax'.

Part of the TWG's final report covered what the revenue from a CGT should be used for, and therefore proposed a number of 'spending packages'. The packages included bringing back depreciation on buildings, reducing taxes on income from savings, and increasing the income threshold for the 10.5% personal tax rate from $14,000 a year to at least $20,000 a year. However, without the additional revenue that would come from a CGT, the Government has ruled out such changes as no longer attainable.

Most of the TWG's recommendations have been referred to IRD for 'potential' inclusion on the TPWP. What action the TPWP drives remains to be seen. Some of these recommendations will be addressed as a by-product of the IRD's ongoing transformation project. Through its improved systems there will be an enhanced focus on data and closer interaction with businesses and individuals using the online platforms, therefore work on enhancing the integrity of the tax system has already been under way for some time.

Ultimately, the outcome of the TWG process is mirrored by NZ's MMP system. Action (as opposed to inaction) by a coalition government requires consensus from the members of that government. That consensus did not exist.

HEALTHY HOME STANDARDS

The Government passed the Healthy Homes Guarantee Act 2017 in December 2017, setting out 5 standards to make rental homes warmer and drier.

1. **INSULATION STANDARD:** Ceiling and underfloor insulation standards must meet the 2008 Building Code requirement of 120mm thickness and in reasonable condition. **Landlords will need to comply with this standard by 1 July 2019.**
2. **HEATING STANDARD:** Fixed heating devices must be capable of achieving a minimum temperature of 18°C in the main living room. The heating device will be in the form of a heat pump or wood burner and would exclude inefficient, unaffordable or unhealthy devices such as unflued gas heaters, open fires and electric heaters, other than heat pumps.
3. **VENTILATION STANDARD:** Ventilation to remove dampness and mould is to include windows or doors in the living room, dining room, kitchen and bathrooms., and , extractor fan in the bathroom and over cooktops.
4. **MOISTURE INGRESS AND DRAINAGE STANDARD:** Homes must have efficient drainage and guttering, downpipes and drains, and, the property must have a ground moisture barrier where it has an enclosed subfloor space.
5. **DRAUGHT STOPPING STANDARD:** Draughts from gaps or holes in walls, ceilings, windows, floors and doors must be blocked. Unused open fireplaces and chimneys also needs to be blocked.

The timeframes to comply with these standards are:

- **1 July 2021** – From this date, private landlords must ensure that their rental properties comply with healthy homes standards within 90 days of any new tenancy.
- **1 July 2021** – All boarding houses must comply with the healthy homes standards.
- **1 July 2023** – All Housing New Zealand houses and registered Community Housing Providers houses must comply with the healthy homes standards.
- **1 July 2024 -** All rental homes must comply with the healthy homes standards.

PAYMENTS TO SHAREHOLDERS

Broadly speaking, a payment from a company to a shareholder is likely to be a salary / wage or a dividend, and therefore taxable income. However, loans from a shareholder to a company and therefore loan repayments are also commonplace. Whilst interest on such loans is taxable to the recipient, loan repayments should not be.

A recent Taxation Review Authority case (2018, NZTRA 9) serves as a reminder to clearly document any payments made to shareholders or associated companies, to ensure wages / dividends are distinguished from loan repayments so that the correct tax treatment is applied.

The taxpayer in the case was shareholder of a number of companies. He had filed 'nil' personal tax returns over a period of four years, on the basis that various payments received from the companies were non-taxable loan repayments. However, Inland Revenue (IRD) reassessed the taxpayer to treat the payments as taxable income, on the basis that they were wages, dividends, and/or income under ordinary concepts. A shortfall penalty for gross carelessness was also imposed.

IRD had considerable evidence supporting its position. For example, company bank statements described some of the payments as 'wages'. The regularity of the payments, alongside the taxpayer's own evidence that they personally carried out work for the companies, further suggested the amounts were wages. The bank statements also showed that the company had directly funded some of the taxpayer's personal expenditure.

In challenging the IRD's position, the taxpayer argued that the various payments by the companies were not wages or dividends but were in fact loan repayments, such that there is no tax liability. However, the onus of proof lies with the taxpayer to prove his position and the taxpayer had no documentary evidence that there was a loan between him and the companies. He was unable to prove that the amounts initially advanced to the companies were loan advances as opposed to share capital. There was no evidence in relation to the terms of the loans or the amounts outstanding during the tax years in dispute, and no corroborative documentary evidence to show that the amounts received from the companies were loan repayments. Hence, the TRA found in IRD's favour and upheld the shortfall penalty for gross carelessness.

The case highlights the importance of maintaining good records, particularly in relation to transactions between companies and shareholders. If a tax position is being adopted, the onus lies on the taxpayer to provide documentary evidence to support that position. Being unable to corroborate a subjective position can amount to gross carelessness and give rise to significant shortfall penalties.

We always recommend that funds advanced by a taxpayer to their company must be evidenced by a Deed of Acknowledgement of Debt that usually sets out the terms and conditions of the advance. The interest rate could well be on a 'payable if demanded' basis, and the debt be repaid upon demand. This is also helpful where there are other shareholders and directors involved, to avoid disputes later.

We go as far as recommending that there shouldn't be regular amounts of fixed drawings from the company, unless it is clearly documented as a repayment of loan, as the frequency of this may trigger an argument that it is taxable income.

TAX POOLING

Inland Revenue (IRD) charges a high rate of interest on late tax payments (currently 8.22%), and in some circumstances the complexity of the provisional tax regime makes interest charges hard to avoid. Add on late payment penalties, and the cost of meeting your tax obligations starts to feel punitive. Tax pooling was introduced in 2003 to address these concerns.

Although it has been around a long time, the use of tax pooling services is not yet commonplace for all taxpayers, perhaps due to a lack of understanding regarding how the system works.

To illustrate, imagine you have had an amazing year and your income has significantly increased compared to prior years. The problem you now have is that you have underpaid your provisional tax. You receive a statement from IRD and it shows your liability has gone up due to interest charged from your third provisional tax date of 7 May 2018. Meanwhile, your neighbour has had a poor year and her income has dropped. She has received a statement from IRD showing that she is due a refund because she overpaid her 7 May 2018 provisional tax payment. In this situation, a tax pooling intermediary, such as Tax Pooling Solutions (TPS), Tax Management New Zealand (TMNZ), and several others, can connect people that have overpaid their tax with people that have underpaid their tax. Taxpayers deposit tax payments with a tax pooling intermediary to be held as part of the 'pool'. Funds held in the pool can be used to meet a person's own liability or 'sold' to another taxpayer.

Tax pooling basically allows you to purchase your neighbour's "tax" and transfer it into your account with IRD, with an effective date of 7 May 2018. From IRD's perspective, there is no shortfall at 7 May 2018 and therefore no use of money interest (UOMI) is charged.

As another example, if IRD reassess a past tax return resulting in an increased tax obligation for a prior year, historic funds held in the pool year can be 'purchased' and used to offset the increased obligation. This is advantageous to the taxpayer, as the intermediary charges less to purchase the historic tax credits than what IRD charges if paid directly. Conversely, for those taxpayers that have paid excess tax into the pool, the intermediary provides a higher interest return than IRD. Hence, tax pooling provides an advantage to taxpayers that have both underpaid and overpaid their tax.

Tax pooling provides taxpayers with a degree of flexibility regarding how they go about meeting their tax obligations. The days of being hit with excessive IRD interest and penalties if you get your provisional tax wrong are effectively over. Instead, there is a fall-back mechanism available at commercially acceptable rates in the event that things go wrong.

Inland Revenue
Te Tari Taake

PLASTIC SHOPPING BAGS

Single-use plastic bags (under 70 microns in thickness), typically found in supermarkets, fruit shops and general retailers will be banned from 1 July 2019. Most shops have made the change already, some charging as much as 50 cents for plastic bags to bring shoppers into line by 1 July.

The Waste Minimisation (Plastic Shopping Bags) Regulations 2018 states:

Retailers must not sell plastic shopping bags

(1) A retailer must not sell plastic shopping bags for the purpose of distributing goods sold by the retailer in New Zealand.

(2) For the purpose of this regulation, plastic shopping bags are **sold for the purpose of distributing goods** only if—

(a) sold to enable the goods to be taken away from the point of sale in 1 or more plastic shopping bags; or

(b) sold to enable the goods to be delivered in 1 or more plastic shopping bags by the retailer or the retailer's agent.

(3) For the purpose of this regulation, plastic shopping bags and goods are **sold** to a person if sold to the person for monetary consideration or given to the person free of charge.

SHORT-STAY ACCOMMODATION

Inland Revenue (IRD) is currently consulting on tax obligations that arise on various forms of residential rental, such as renting out a room within your home, or letting property using a peer-to-peer platform, such as Airbnb or Bookabach.

One of the proposed changes relates to the 'standard cost' rules for boarders or home-stay students. Currently, income earned below the threshold of $270 a week for the first two boarders and $222 per week for each subsequent boarder, is tax free and doesn't need to be included in a tax return. IRD propose to reduce this weekly threshold to $183 per boarder (subject to annual CPI adjustments). Or, taxpayers can elect to return all income and expenses relating to boarders in their tax return, which may be favourable if they incur considerable costs.

A similar rule is also proposed for taxpayers providing short-stay accommodation in their own home (e.g. Airbnb), by setting standard nightly costs for deductions, with income above the standard cost needing to be declared. The suggested thresholds are $50 a night for homeowners, and $45 where the host is renting their home. However, there will be various criteria to use this concession, for example a rental limit of 100 nights per year.

Renting out a property that is also used privately is currently a complex tax area, so changes to simplify the regime are welcome.

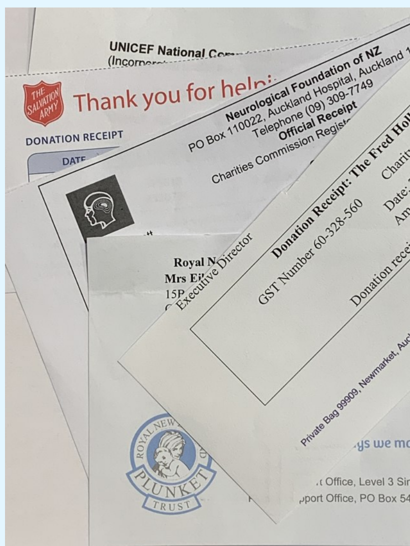
If you are currently GST registered for your commercial properties but you also occasionally rent out your residence or holiday home for short term stays, please contact your MRC advisor immediately. By the same token, if your short-term rentals via organisations such as Airbnb or Bookabach exceeds $60,000 per annum, contact us immediately.

WHEN IS A GIFT NOT A DONATION

If an individual pays "…a monetary gift of $5 or more…" to a charity they are able to claim 1/3rd of it back from the IRD. In 2008, the Government increased the donation threshold to the amount of taxable income, to incentivise individuals to give charitably.

For the average New Zealander, limiting donation claims to the amount of a person's taxable income is of no consequence. However, some high net worth individuals make donations that exceed the amount of their taxable income, thereby entitling them to large refunds.

For example, a large donation could be made to help fund an important capital project of a charity, such as the construction of a new building for the homeless. The question then becomes how to structure a large donation, to ensure a donation rebate can be claimed. The problem lies in the legislation itself. Although the regime is to incentivise charitable giving, the legislation can be narrow in scope. The donation claim is restricted to monetary gifts made in an income year, whilst assets, such as "food" donated to the homeless, does not qualify for the tax credit.



The High Court decision in Roberts v Commissioner of IR examined a donation rebate that was in the form of a loan forgiveness. Mrs Roberts had made a cash loan to a charity of $1.7m. The loan was subsequently being forgiven across multiple years and claimed as a donation rebate. IRD considered that a 'debt forgiveness' was not a charitable gift within the meaning of the current legislation because it was not a 'cash' gift. Judge Coleman decided in favour of Mrs Roberts and confirmed that a monetary gift did not require cash payment, provided that it was a gift of a specific sum and was not a chattel or property item. Judgement was upheld for Mrs Roberts.

The forgiveness approach is no different, for example, to Mrs Roberts making the loan and then making cash donations in future years that are used by the charity to repay her loan. In substance, cash has been paid by a private individual to a charity – being the purpose of the regime.

In a surprise move, when the Taxation (Annual rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill was reported back from the Finance and Expenditure committee (FEC) on 18 January, IRD had included a recommendation that the current legislation be amended to prescribe that donations need to comprise a "gift of money", thereby legislating against the decision in Roberts. By recommending the change at such a late stage of the enactment process, it skips the public consultation phase. IRD have justified the change by asserting that the 2007 re-write of the Income Tax Act changed the meaning, and they are merely changing it back.

Rather than accepting IRD's view, it would been nice if the FEC had looked at the issue more 'charitably'.

DOMESTIC VIOLENCE LEAVE

The Domestic Violence—Victims' Protection Act 2018 provides for domestic violence leave from 1 April 2019. Effective from this date, any employee who is a victim of domestic violence can request paid leave, up to 10 days per annum, from their employer. This is on top of their entitlements for annual, sick and bereavement leave.

The Act aims to keep the victims employed, as a means of offering them support, as well as improving their legal protection from being disadvantaged due to their circumstances, at their work place. This provides safe and supportive work environments to promote productivity and employee morale.

TRIAL PERIODS

The Employment Relations Act has been amended to remove Trial Periods for employers with 20 or more employees.

The trial period, up to 90 days, must be agreed in writing by both parties. As with all Employment Contracts, this has to be signed before employment begins or else there will be no legal grounds if it is contested.

Existing employees cannot be put on a trial period as this is only available for new recruits who are signing a contract for the first time and before starting work.

If the new recruit doesn't measure up and the employer decide to terminate their employment, they cannot raise a personal grievance against the employer on the grounds of unfair dismissal; a personal grievance can still be raised against the employer if they feel they have been discriminated or harassed,; and their notice period still applies.

Trial Periods must not be confused with Probation Periods that is still available to all employers.

HOUSEKEEPING & IT

For the last 6 or 7 months, our new billing system has been successfully sending out our invoices and our statements are sent in a separate email. Unfortunately, the system cannot attach the two in one email. If you receive an invoice for the month, you will also receive a statement, subsequently. If you receive a statement only and no invoice for that month, it means the balance is for a prior month and your account is overdue. The overdue balance should be settled immediately.

We successfully delivered our February Newsletter via email so these will no longer be posted by snail mail. We are still working through the scanning of historical files into our new Document Management system where all our documents are now stored digitally rather than the burdensome and costly off-site storage.

IMPORTANT TAX DATES

20 June - PAYE, RWT, NRWT Returns are due

28 June - GST due for period-end May

30 June - Final day for entitlement to $521 Tax Credit

5 July - PAYE due for large employers

20 July - PAYE , RWT, NRWT Returns are due

28 July - GST due for period-end June

5 August - PAYE due for large employers

20 August - PAYE, RWT, NRWT Returns are due

28 August - GST due for period-end July