trialbalance
The official newsletter of NZ CA Limited
nz ca
AN ASSOCIATION OF INDEPENDENT CHARTERED ACCOUNTANTS
June 2021 Issue 75

NZ Taxes on Worldwide Income

Plan ahead before returning to NZ

Returning New Zealanders bring valuable experience and skills home with them, however, there are a number of matters to consider in advance.

Transitional residency rules were brought in to encourage migrants with assets overseas. Under the rules, if you haven't been a New Zealand tax resident for 10 years, you're considered a transitional resident. That means you won't be taxed on your overseas income from assets such as rental properties, pensions or shares for the first four years after you return to live in New Zealand.

This would give individuals time to plan their move to New Zealand and transfer their investments.

Transitional residency rules only apply to individuals which means income from companies or trusts isn't covered and will be taxed by the IRD from day one.

Salaries and payments for services performed in New Zealand aren't covered either. New Zealanders and family members still working for overseas employers will also be taxed in New Zealand from the time of arrival, and tax credits they may have earned overseas don't apply. (New Zealand taxes on "worldwide income".)

New Zealand has double tax agreements with many countries to help people avoid paying income tax twice. However, with corporate tax or trusts set up overseas, people often have to pay in both countries. When it comes to the US, expats also need to continue filing US tax returns for as long as they retain citizenship (FATCA Rules). Planning in advance is essential, as it takes time to sort and it's better to resolve to avoid future issues.

When is a gift really a gift?

A gift is not really a gift if you get a benefit as a result of it.

Payment must be voluntary and there must be no "identifiable direct value benefit" arising or may arise as a result of the payment.

If a non-profit body receives a true gift then they don't pay GST. On the other hand, if it is not a true gift because there is a benefit, GST has to be paid on the money received.

If you are involved with any organisations that are GST registered, which receive "gifts" of money, make sure there isn't anything given in return for the "gift" or you will be liable for GST.

IN THIS ISSUE

Tax calendar

30 June 2021
Last day to apply for annual FBT returns

28 July 2021
3rd instalment 2021 Provisional Tax (June balance date)

RSM

Tax rate increase

What you need to know

The new top tax rate is applicable to all taxable income earned by an individual over $180,000 from the 2021/2022 and later income years. For the majority of individuals, the 2021/2022 income year starts on 1 April 2021.

The new rate will obviously apply to all "employment income" derived by employees. This includes extra pay earned in the course of employment, such as bonuses, back pay, redundancy, and retirement payments. It will also apply to any employee share scheme benefits derived by an employee and accommodation benefits. Although the latter are "non-cash benefits", they do fall within the definition of employment income.

In support of the tax rate increase, the following consequential changes have also been introduced:

● **Fringe Benefit Tax**
The FBT top rate will increase to 63.93% for fringe benefits provided to employees earning an all-inclusive pay of more than $129,681. This threshold takes into account PAYE that would otherwise have been paid, i.e. it is on a net of tax basis.

● **Residential Land Withholding Tax**
RLWT will increase to 39%, except where the vendor is a company. If the vendor is a company, the RLWT rate would remain at the company tax rate of 28%.

● **Resident Withholding Tax (RWT)**
The RWT rate for dividends paid from 1 April 2021 will remain the same. Interest paid will be subject to the new RWT rate 6 months later, from 1 October 2021, to allow interest payers such as the banks time to make system changes. The non-declaration rate would remain at 45%. This applies if an individual does not give their IRD number to the interest payer.

Trust Disclosure Requirements

As noted above, the increased rate will only apply to individuals. The trustee tax rate remains at 33%. However, to assess compliance with the new 39% rate, there are new disclosure requirements for trusts that will apply from 1 April 2021. The following information is now required to be provided by trustees when filing their tax return:

- profit and loss statements;
- balance sheet items;
- other information to be specified by the Commissioner e.g. any transfers to the trust by associated persons such as loans to or by related parties; and
- Information on distributions and settlements made during the income year.
- Where you hold shares in your individual name, consider distributing a fully imputed dividend on or before 31 March 2021 if in the latter year the 39% increase will apply to that individual. We would also recommend a review of your structure to determine whether a shareholding change would be beneficial, e.g. sale of shares to a family trust, or part sale to a spouse.
- The new higher tax rate is only applicable to individuals. Self-employed persons or partnerships may wish to evaluate whether any taxable income is better operated out under a non-individual entity such as a company or a trust. We note that any restructuring should be done for genuine commercial reasons and not solely for tax purposes otherwise there is the risk of being subject to the tax avoidance rules.
- It is also important to consider market-based salaries for shareholder-employees in light of the tax avoidance case: *Penny & Hooper v Commissioner of Inland Revenue* [2011] NZSC 95, where surgeons restructured their affairs to operate via family trusts and companies and paid themselves what the Commissioner considered to be an artificially low salary.
- We also note that the personal services attribution rules may apply. The attribution rule applies when a taxpayer who earns income from personal services ("the personal services provider") inserts an associated entity between him or herself and the party purchasing those services. The purchaser of the services deals with the interposed entity, which derives the income arising, but it is the taxpayer who actually provides the services. If prescribed criteria are satisfied, the interposed entity must attribute an amount to the personal services provider. Consequently a "one man band" operation contracting to one customer cannot insert a company and pay tax at the 28% tax rate. Instead the income will be attributed to the individual and taxed at their marginal tax rates up to the 39% rate.

RSM NZ

Interest deductions on rental property

The Government is phasing out interest deductions for residential (but not commercial or industrial) rental property. It is being reduced progressively so that at 1 April 2025, there will no longer be a claim. Those who buy after 26 March 2021 get a deduction for interest paid only up to 1 October 2021.

We don't have all the details but the Government have indicated "new builds" will be exempt from these rules but at this stage we have no definition of what constitutes a "new build".

Know the bright line test

The last National Government introduced a so-called "bright line test" for people who sold residential property after owning it for only a short time.

They said the property had to be owned for two years or the profit would be taxable. The last Labour Government increased this to five years, and increased it again – to 10 years – for properties bought on or after 27 March 2021.

The first thing to note is the period of ownership is not strictly two years, five years or 10 years because for a sale which is not off the plan, it is measured from the date of transfer of title to the buyer as a starting point, and the date a sale and purchase agreement is signed at the time of selling. If it's a purchase off the plan, it is from the date of signing the sale contract.

If you acquired a property before 27 March 2021 and settle after that date, you are subject to the five-year rule. Acquired means a written binding agreement for purchase.

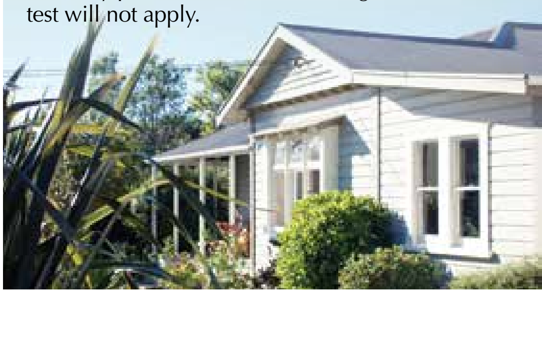
Some people will have put in tenders before this magical date and have no right to withdraw them. If the tender is successful the five-year rule applies.

What if you rent your home?

Two lots of rules apply. If the five-year bright line test applies, you look at the percentage of the time the house was used as a main home. If it's more than 50 percent, no problem. If the new 10-year bright line test applies, you get caught under the bright line test only if you have not lived in your house for more than 12 months, continuously. So if you decide to have an extended period overseas and rent your home, you might need to consider the tax implications.

The new rule is not an "all or nothing" like the old rule. Under the new rule if there is a 12 month period when the home isn't used by the owner an apportionment is required.

However, provided you own the house for more than the 10-year period, you don't have any problems because the bright line test will not apply.



Business continuity test

The new business continuity test only applies to losses from the 2014 tax year onwards. Thus, assuming 31 March balance date, if there has been a change in shareholding of more than 51% on say 17 August 2013, the company may still be able to carry forward its losses. There must not be a major change in the business within five years following a change of ownership. However, certain changes are acceptable. Inland Revenue lists the following acceptable changes:

- increase efficiency
- respond to advances in technology
- the scale of the business, including accessing different markets
- product or service range (excluding land), as long as the new products or services both:
  – use existing assets to produce
  – are related to the products and services already being produced.

The IRD also states: "Finance companies with losses mainly from writing off bad debts are excluded from the five year limit. The requirement to not undergo a major change is therefore ongoing beyond the five year limit." Mineral mining companies cannot use the business continuity test. To carry losses forward, they must meet the shareholder continuity test. Anti-avoidance rules have also been prepared.

Sick leave increase

Parliament has officially passed the Holidays (Increasing Sick Leave) Amendment Bill to increase employee sick leave entitlements from 5 to 10 days per year. The new legislation comes into force on 24 July 2021.

Employees only become eligible for the extra 5 days when they reach their next entitlement date (either 6 months' employment, or on their sick leave entitlement anniversary which is every 12 months). The maximum amount of unused sick leave and employee can accrue is 20 days.

Factor sick leave into pricing

Unfortunately, some staff will abuse sick leave. If you have a large number of staff your costs are going to increase as a result of the doubling of the sick leave entitlement to 10 days.

You might wish to calculate how much this is going to cost you and try to factor it into price negotiations, otherwise it will come straight out of your profit. Those involved in labour-intensive industries will need to consider the implications of the 10 days sick leave.

You will have to start granting the extra five days two months after the legislation is enacted, which is expected to be about mid-year. Each time an employee gets to their anniversary of sick leave entitlement, it will go up to 10 days.

> "The way to get started is to quit talking and begin doing."
> – Walt Disney

6 things your business needs to do **now**

It has been fifteen months like no other time in recent history. As the world enters a phase of reactivation and re-imagination from the impact of the pandemic, it is time to take a deep breath and assess the situation. To use a sporting analogy, we are in the tunnel ahead of what could be the biggest game of our lives. With the right strategy in place, there are great victories to be won. Without it, defeat is inevitable.

As the business world heads towards what can be described as the next stage of a transformation journey, here are six steps that organisations can take now in planning for a positive outcome in the future.

1 Plan well
Planning is key. It is important to look at the numbers and consider where you are going to be in six, twelve or eighteen months' time and plan a way forward.

2 Forecast your future
Build forecasts and projections within this plan. Businesses should involve their advisors to make the best forecast possible which can be adapted as necessary.

3 Engage with the right stakeholders
Engage with all significant financial stakeholders, banks, investors and funders to ensure there is transparency and support for the plan of action.

4 Think Differently
Industries are changing rapidly. Beyond adapting to the current environment, organisations should think ahead to be prepared for different scenarios.

5 Adapt and be flexible
Be prepared to adapt and be flexible. Put financial modelling at the centre of your plans. Actively monitor these models and be open to adapting the approach as required.

6 Be prepared for the unexpected
This is about creating headroom in your facilities to enable you to cope with the unexpected, whether good or bad.

RSM NZ

Protect your online privacy

Privacy has become a huge issue in recent years, as more and more is being revealed about how big companies analyse our behaviour.

Knowing what we do and what we spend creates vast sums of money for them. If they know from our browsing that we're interested in photography or travel, for example, the data is sold on to other companies who want to sell us cameras or holidays. We're then targeted with ads and promotions.

Can we do anything? Yes, we can, and it's more than just turning on the browser privacy mode or using Incognito on our smartphone. These just stop others who use your device from seeing our internet history. It doesn't block internet spies.

Some web browsers, such as Duckduckgo, do offer privacy because they don't store your data, or track your search habits and history. Third parties don't get data from your browsing.

It's worth noting that these browsers offer privacy, but they don't protect you from other online threats. Individual websites and social media platforms can still track you and collect your data.

That's where a good VPN (virtual private network) adds another level of safety. Good VPN providers offer encryption on all your online traffic, and your IP is hidden so no one can find your location. Most VPN providers charge, so look online for one that suits you.

Bright line – important points to remember

IRD are checking residential land transactions that occur within the bright-line period. A few important points to remember around bright-line dates:

- A company owning residential property becoming an LTC or exiting the LTC regime is considered to be a brightline disposal and repurchase. This could mean a bright-line profit arising and definitely a new start date.
- Changing shares in an LTC that owns residential property will be a partial transfer for bright-line purposes so the same issues above will apply. The $50,000 de minimis would apply if the deemed bright-line profit along with any other deemed income for the shareholder exiting or reducing their holding is less than $50,000.
- The subdivision of land does not restart the bright-line acquisition date for the new title. It is still the original acquisition date for the land.
- Changing the use of the land from private to arms-length rental does not restart the bright-line acquisition date.
- There are special rollover relief provisions for the transfer of residential property via a relationship property agreement and for transfer from a deceased to their estate, to the estate to the beneficiary and for a transfer by the beneficiary.

There are no concessions for property sold within the bright-line period unless one of the specific exclusions apply no matter what the client's circumstances are.

Creating a POSITIVE WORKPLACE

Whether you're a team member or team leader or even a team of one, creating a positive workplace is one of the best ways to build a constructive and productive environment so that you and your business can succeed!

While there is a huge range of contributing factors, here are some top tips to begin to create this positive environment for your workplace:

1 Create a strong onboarding programme

It can be daunting for new employees or team members joining a work environment/culture they're unfamiliar with and catching up on all the values and procedures of the business. By having a concrete onboarding programme, it can help new employees get up to speed faster and help avoid any awkward stages of a new job. This can be done by organising shadowing of co-workers, sitting in on meetings, going out for coffee with different people and having comprehensive onboarding documents detailing all procedures / processes and policies on hand.

2 Regular check ins

This can be applied to both new and old employees, but having regular check ins can help create the environment for people to speak up about issues and ask for help. Gone are the days of annual check ins - regular is best. This can also help create a more cohesive team by strengthening relationships between everyone.

3 Encouraging collaboration and communication

Collaboration and communication are the foundations of any strong relationship or team. Encouraging everyone to help each other out and having strong communication channels can ease the loads of individuals and support weaker areas across the board. Remember that you're all there working towards the same goal of success.

4 Facilitate learning opportunities

Facilitating learning opportunities, be it professionally or personally, can be a fantastic way to make each employee stronger team members and help foster a better relationship between them and the business. Giving them opportunities like this can help show that they ARE a valued part of the business and not just an employee. In addition, they'll be improving their skills along the way!

5 Supporting mental and physical wellbeing

So many people may be unaware that they are suffering and often don't have the tools and support to help them overcome it. Given that work is such a big factor in people's lives and can be a larger contributor to things like stress, ensuring that there is support / education / resources for mental and physical wellbeing can be a huge benefit to both the employee and the employer. Helping anyone in the business be happier, healthier and energised can lead to a much better work culture and increased productivity.

6 Promote diversity

Business research has shown that good workplace diversity is one of the more important factors for many people when looking at where they want to work. Within the workplace, ensuring that there are no feelings of marginalization, or discrimination can lead to a much healthier and positive work culture.

7 Build a physical space people want to work in

With the average person is likely to be working for about 40 hours of their week, why not ensure that their workplace is somewhere they want to be? Making sure the lighting is not tiring, there is space for breaks and privacy, plants, good colours, enough space to work, decorations and a sense of belonging. All can help make the office somewhere people want to work and want to be productive, not counting down until they can run out the door! This also applies for anyone in this post-Covid era working from home: make sure you want to be at your desk! Separate the work space from the living home space can help. Having a window nearby can be huge too.

Use these tips, be it for yourself, your team, or business as a whole, to begin your journey to build a positive work environment and bring a wealth of benefits along with it. So be part of the movement to create good vibes in your workplace!

Sue Kohn-Taylor
www.TheMentalFitnessCompany.com

Members of NZ CA Limited

Accountants Hawkes Bay	- Napier	(06) 843-4868
Accounting HQ	- Rotorua	(07) 348-7066
BM Accounting Limited	- Havelock North	(06) 876-7159
	- Waipukurau	(06) 857-8901
Bavage Chapman Ltd	- Warkworth	(09) 425-9835
Brophy Knight Limited	- Ashburton	(03) 308-5104
Brown Glassford and Co Ltd	- Christchurch	(03) 365-0881
BW Miller Dean	- Wellington	(04) 910-3340
Candy Gillespie	- Matamata	(07) 888-7089
Flannery Tait	- Alexandra	(03) 448-8060
Focus Chartered Accountants	- Whakatane	(07) 307-1141
GCOL Chartered Accountants	- Lower Hutt	(04) 939-1975
gfa Chartered Accountants	- Te Awamutu	(07) 872-6444
GS McLauchlan	- Dunedin	(03) 477-8192
	- Queenstown	(03) 477-8192
Harris Taylor	- Hawera	(06) 278-5058
Marshall & Heaphy Limited	- Greymouth	(03) 768-7186
Martin Wakefield	- Timaru	(03) 687-7122
	- Christchurch	(03) 343-4012
McDonald Vague	- Auckland	(09) 303-0506
McIntyre Dick & Partners	- Invercargill	(03) 211-0801
Naylor Lawrence & Associates	- Palmerston North	(06) 357-0640
	- Dannevirke	(06) 374-5730
nsaTax Limited	- Auckland	(09) 309-6505
RSM New Zealand	- Auckland	(09) 271-4527
	- Auckland North	(09) 414-6262
	- Auckland Central	(09) 367-1656
Southey Sayer	- Masterton	(06) 370-0811
Strettons	- Taupo	(07) 376-1700
Sudburys Limited	- Whangarei	(09) 430-4888
Vazey Child Limited	- Hamilton	(07) 838-2169
Wallace Diack	- Blenheim	(03) 578-7389
Whitelaw Weber Limited	- Kerikeri	(09) 407-7117
	- Kaikohe	(09) 401-0991
	- Kaitaia	(09) 408-1220
YRW Limited	- Tauranga	(07) 578-0069

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.