Apr / May 10

Tax Time

Special points of interest:

- A change in GST rate - friend or foe?
- New Double Tax Agreement with Australia
- Managing Tax Debt
- Time Bar Waiver
- Tax Treatment of Certain Payments to Employees
- What does the future hold for QCS/LAQCS?
- An update on associated persons
- Quick Bits

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A change in GST rate – friend or foe?

With the advent of change comes both opportunity and risk. The proposed increase of GST to 15% is likely to be no different.

The opportunities that will arise are few and include the ability to register for GST and claim back 15% of the purchase price, assuming of course the purchase is part of your taxable activity and a taxable supply. The real opportunity is clearly with second hand goods. The market value or purchase price is not likely to be affected by the increase in GST, but the amount of the GST claim will be greater. In other cases, although the claim will be greater, the purchase price will have increased correspondingly. Some "marginal" businesses or those just below the compulsory GST registration thresholds may also see the increase in the GST rate as an opportunity to register and claim GST on assets that will be applied for a taxable purpose.

The risks are many. First, we would expect that the Inland Revenue Department will be policing GST more diligently.

Secondly, although you make a claim for GST on a purchase, GST is going to have to be returned on the sale of that asset, or when your taxable activity ceases. If you claim GST at 12.5% on the purchase price, you may need to return GST at the rate of 15% later. Thirdly, if your taxable activity has ceased, but you have not yet deregistered for GST and returned the GST on the market value of any assets still held, you may be creating a greater tax cost because you will have to return GST at 15% if you do not deal with this before the change in rate. We note for completeness that it is not appropriate to cease GST registration in direct contemplation of sale, as the Inland Revenue Department may invoke the avoidance rules. Fourthly, if private assets (usually vehicles) are introduced into a business to claim GST, they are put at risk..

How it affects you

If you think you will take advantage of the opportunities that an increase in GST may offer, make sure you consider, and where appropriate obtain specialist advice on, the risks.

If you register for GST to claim the GST on items purchased, but it is likely that you will cease trading in the near future, the GST to pay back may be the same or more than the claim you have made. If you are winding down your business, but are delaying the final wind up and GST de-registration to delay the tax cost, you may have a GST liability of 15% rather than 12.5%.

As always, it pays to look at the bigger picture and not just focus on the short-term gain that may arise.

- From WHK Sharp-As Tax

New Double Tax Agreement with Australia

The new Double Tax Agreement with Australia (the "2009 DTA") signed in June 2009 is now in force and generally applies for income years beginning on or after 1 April 2010. The 2009 DTA contains a number of material changes to the previous DTA entered into in 1995 (the "1995 DTA"). Some of the more significant changes are outlined below.

The 2009 DTA retains the existing 15% dividend withholding tax rate, but introduces a new 5% rate where a dividend is derived by a company that holds at least 10% of the voting power of the dividend paying company. A complete exemption from withholding tax is available in limited circumstances. The royalty withholding tax rate is reduced to 5%. There is an exemption from interest withholding tax for certain financial institutions. The new withholding tax rules will apply from 1 May 2010...

(Continued on Page 2)

New Double Tax Agreement with Australia (Continued from Page 1)

There have been some amendments to the definition of a Permanent Establishment ("PE") which may have a significant impact for some. For example, the dependent agent (e.g. overseas sales representatives) test has been widened to include agents who have exercised, and who habitually exercise, an authority to "substantially negotiate or conclude" contracts on behalf of the enterprise. The 1995 DTA only referred to the authority to conclude contracts. In the past, dependent agents who were given negotiated agreements in Australia to conclude them were not deemed to create a New Zealand PE. That is likely to no longer be the case. Generally, the existence of a PE means that an enterprise is subject to tax in that jurisdiction. The new rules could capture activities that were not previously subject to taxation in that jurisdiction.

A PE will also now arise where services are performed by an enterprise through an individual who is present in the other State for periods exceeding 183 days in any 12-month period and where more than 50 per cent of the enterprise's income is derived from those services; or the services are performed in relation to the same project, or connected projects.

How it affects you

The 2009 DTA contains significant changes to the taxation consequences of activities between Australia and New Zealand.

We recommend that you review all of your existing and future transactions with Australia with this in mind. In particular, it would be prudent to review whether activities undertaken in either jurisdiction now result in a PE and to consider possible tax consequences that may arise.

- From WHK Sharp-As Tax

Managing Tax Debt

We all know that we must pay tax and that failure to do so by due date means we will incur penalties of all sorts. However, it seems that in difficult times there is a tendency for business owners to push tax payments down the list of priorities. Inland Revenue Department (IRD) has payment options available and is willing to help businesses to keep their taxation commitments.

If you are having difficulties meeting your tax obligations then it pays to contact the IRD before the due date. They will discuss the issues with you and if appropriate set up an instalment arrangement whereby you pay an agreed amount over a period of time. As long as you meet all your obligations under the arrangement you will only be charged one late payment penalty of 1%. No further penalties will be charged.

In some cases you can apply to have part of the debt written off if it is determined that full payment would cause you serious hardship. You will need to apply in writing setting out what your current financial position is, and reasons to support your request. If you are granted relief and you have a loss or excess imputation credits carried forward, these balances will be reduced in proportion to the amount written off.

Always be sure to contact the IRD immediately if you receive a statement of account or letter requesting payment and you disagree with the amount owing.

For more information, contact your accountant who will help you when dealing with these tax issues.

Time Bar Waiver

There is a time bar of 4 years for an income tax audit by the Inland Revenue Department (IRD). The 4 years run from the income year in which the tax return is lodged with the IRD - for example if a 2005 tax return (with a standard balance date) was filed before 31 March 2006 then the IRD has until 31 March 2010 to audit or investigate the 2005 income tax. The IRD can re-assess the 2005 year after 31 March 2010 if the taxpayer waives the time bar before 31 March 2010.

There have been instances in the past where the IRD investigators have sent letters close to 31 March along with a Time Bar Waiver form (IR775) requesting the taxpayer to sign and fax it to them before 31 March without explaining what the consequences of signing or not signing the form will be. Even the IR775 form itself does not explain anywhere that the taxpayer does not have to sign.

This effectively leaves the IRD to dispute a tax return that is no longer time barred.

In actual fact, the taxpayer is not obliged to sign the Time Bar Waiver and there is no prejudice to him in not signing. However, once it is signed, the taxpayer may not be able to escape out of it because legally he was not forced to sign.

It is always prudent to seek professional advice before signing any IRD forms received directly from the IRD.

Tax Treatment of Certain Payments to Employees

Recent amendments to the Income Tax Acts ensured that certain payments and allowances made by employers to their employees are tax-free in the hands of the employees, provided certain conditions are met. These are listed below and are effective from the 2002-03 income year.

Relocation payments

Work-related relocation payments made by an employer are tax-free to the employees provided all of the following conditions are met:

1. The employee's relocation is required as the result of: taking up new employment with a new employer, or taking up new duties at a new location, or continuing in their current position but at a new location.
2. The employee's existing home is not within reasonable travelling distance of their new workplace (unless accommodation is provided as part of the job).
3. The expense is on the list of eligible relocation expenses.
4. The payment is no more than the actual expenditure incurred.

The expenditure is incurred before the end of the tax year in which the employee relocates following the tax year in which the relocation occurs.

Overtime meal allowances

For these payments to be tax-free all of the following conditions must be met:

1. Either the employee's employment contract specifies they're eligible for a payment for overtime hours worked, or the employer must have a policy or practice of paying an overtime meal allowance.
2. The amount paid must be the actual cost incurred by the employee, with receipts/invoices for amounts over $20 per meal, or a reasonable estimate of the expenditure likely to be incurred.
3. The employee is required to have worked at least two hours overtime on the day of the meal.

Sustenance allowances

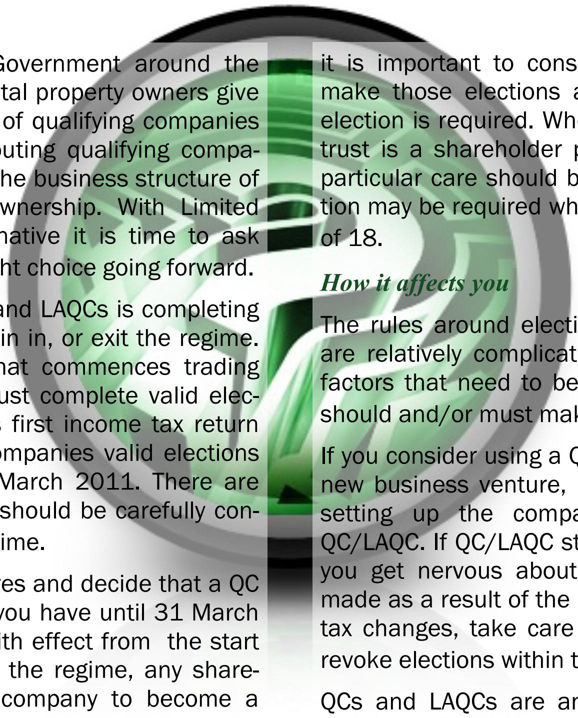
For sustenance allowances to be exempt income of the employee, all of the following criteria must be met:

1. The employer must have an established policy or practice of paying sustenance allowance.
2. The employee must work a minimum of seven hours on the day.
3. Their employment must require them to:
   - work outdoors and away from their employment base for most of the day; and
   - undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle.
4. It's not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors.
5. The allowance recognises:
   - the demanding physical nature of the employee's work; and
   - that the employer would normally provide tea, coffee, water, or similar refreshments at their place of employment.

Where employees have paid PAYE on relocation payments, overtime meal allowances or sustenance allowances which meet all of the above requirements, they will be entitled to a credit for overpaid PAYE from 1 April 2002 since these rules apply from the 2002-2003 income year. Similarly, if the employer has claimed these payments as a business expense for income tax purposes, an adjustment may be required in the corresponding income tax returns.

The PAYE credits can be claimed by completing an Employer monthly schedule amendments (IR344) form for the return periods affected and advise the IRD in writing about any adjustments required for the PAYE expense claimed in the income tax returns.

What does the future hold for QCS/LAQCS?



Recent announcements by the Government around the introduction of tax changes for rental property owners give rise to the need to revisit the use of qualifying companies (QCs) and in particular loss attributing qualifying companies (LAQCs), as these have been the business structure of choice for residential property ownership. With Limited Partnerships being a viable alternative it is time to ask whether QCs and LAQCs are the right choice going forward.

One key area of difficulty for QCs and LAQCs is completing appropriate elections to join, remain in, or exit the regime. A company incorporated in, or that commences trading during, the 2011 income year, must complete valid elections prior to filing the company's first income tax return (31 March 2012). For all other companies valid elections must be made on or before 31 March 2011. There are consequences of entry and these should be carefully considered before electing into the regime.

If you revisit your business structures and decide that a QC or LAQC is no longer appropriate, you have until 31 March 2011 to elect out of the regime with effect from the start of the 2012 income year. To exit the regime, any shareholder that has elected for the company to become a QC/LAQC and the board of directors, can revoke the election. When looking at elections in to and out of the regime, it is important to consider who must, or who should, make those elections and within what time frame an election is required. Who should make elections when a trust is a shareholder presents the most difficulty and particular care should be taken, because a further election may be required when a beneficiary reaches the age of 18.

How it affects you

The rules around elections in to the QC/ LAQC regime are relatively complicated, and there are a number of factors that need to be considered when deciding who should and/or must make those elections.

If you consider using a QC/LAQC is a valid structure for a new business venture, make sure that care is taken in setting up the company and establishing it as a QC/LAQC. If QC/LAQC status is no longer appropriate, or you get nervous about exactly what changes may be made as a result of the Government's proposed property tax changes, take care to ensure that the right people revoke elections within the required time frames.

QCs and LAQCs are anything but simple. We strongly urge you to seek specialist taxation advice on the use and status of QCs and LAQCs.

- From WHK Sharp-As Tax

An update on associated persons

The associated persons rules have been reformed and are effective from the 2010-2011 income year (except those applying to the land provisions).

The changes can impact on the provision of fringe benefits to employees or associates. For example, where an entity, particularly a trust that had been placed between the employee and employer, was previously considered not to be an associated person, under the new rules the entity will probably be an associated person.

The new rules apply to land acquired on or after 6 October 2009, and for persons involved in a building business, when improvements are commenced from that date.

There are a number of other changes to the associated persons definitions. For more information refer to your tax advisor.

Quick Bits

- The usual time bar limits that apply for the IRD for reassessing tax returns do not apply when the taxpayer has been fraudulent or has failed to include income of a particular nature or from a particular source in their tax return.
- ACC earners' levy increased on the 1st April 2010 from $1.70 to $2.00 (including GST) per $100 of liable earnings.
- The IRD are no longer sending out annual PAYE tax tables to employers and payroll intermediaries. Instead, an easy way to calculate your PAYE is to use the IRD's PAYE calculator. Go to www.ird.govt.nz "Work it out", "PAYE/KiwiSaver Calculator". If you want to view or print the most up-to-date PAYE tables (the IR 340 and IR 341) go to www.ird.govt.nz (keywords: ir340, ir341).

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