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TAX AND BUSINESS ACCOUNTANTS

TAXTIME

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KiwiSaver - Getting Your Money in Times of Need

KiwiSaver encourages New Zealanders to save for their own retirement, but changes following the Budget 2011 made the cost of saving that much harder for some. KiwiSaver funds are locked in to the fund for the long haul, except in cases of financial hardship, where members can apply to the Trustees of their fund to access some of their fund.

Those affected by the Canterbury earthquakes also have grounds to apply for relief (a category of financial hardship that has been specifically added to those previously available). This criteria is added to the existing list including:

- inability to meet minimum living expenses; or
- inability to meet mortgage repayments on the principal family residence resulting in the mortgagee seeking to enforce the mortgage; or
- the cost of modifying a residence to meet special needs arising from a disability of a member or a member's dependant; or
- the cost of medical treatment for an illness or injury of a member or a member's dependant; or
- the cost of palliative care for a member or a member's dependant; or
- the cost of a funeral for a member's dependant.

How it affects you

If you are experiencing hardship and have been contributing to a KiwiSaver scheme you may be able to withdraw all or some of your contributions from the scheme. We are advised by Damian Foster of Forsyth Barr in Dunedin that an industry-wide standardised form has been developed.

"This process is rather invasive and the Scheme Trustee requires quite a bit of supporting information in order to approve an application. It's the KiwiSaver Scheme's independent Trustee who analyses applications and makes the final decision.".

Do not be put off making an application. If you need help, contact your business advisor or scheme provider for assistance.

- From WHK's Sharp-As Tax

Asset Sales between Associated Parties

Time and again, taxpayers get caught under the associated party rules even when there is a genuine business transaction between the two. For example, where a company is expanding and restructures to house different business streams in different companies which will entail selling assets to the newly formed company; or more commonly, where farming parents are retiring and sell their farm assets to their son/daughter's new entity. In such situations, the parties will be 'associated persons'.

Issue with GST

Where a transaction is between associated parties, the purchaser can claim GST input tax on the lesser of:

- The GST component (if any) on the original cost to the supplier;
- 3/23 of the purchase price; or
- 3/23 of the open market value.

So in our first example, if the market values of the assets sold to a related entity are less than the purchase price, the purchasing company will be able to claim GST input tax on the lesser amount while the selling company will have to return GST output tax on the higher sale price. The net result for this group of companies is that it will be out of pocket while still owning the same assets. The situation could be worse if say in the second example for instance, the parents inherited the farm assets or purchased them before the introduction of GST legislation in New Zealand. The GST component on the original cost to the vendor will be zero which is the lesser of the three values above and, therefore, the purchasing entity will not be able to claim any GST!

Other Tax issues

The ITA 2007 (section EE 40) limits the depreciation base for the purchaser as well. The purchaser can depreciate the assets on the lesser of:

- The purchase price of the assets to the purchaser; or
- The (original) cost of the assets to the vendor.

Taking the farming situation above, if the farm assets are sold at (higher) market values the purchasing entity will not be able to depreciate them at the market values but instead at the original cost of the assets. In addition, the vendor will have depreciation recovery which will be taxable. To illustrate this, let's say the original cost to the parents of a shed was $10,000 which has a depreciated book value of $5,000 but the market value on date of sale to their son's entity is $20,000. The parents will be taxed on depreciation recovery of $5,000 while the son's entity will be able to depreciate the asset only on $10,000 (although $20,000 purchase price is paid). Section EE 40 is an anti-avoidance section designed to stop an associated party from selling at an inflated price to make a huge (tax free) capital gain and to stop the purchaser from using an inflated price to depreciate an asset. Unfortunately, the section also catches unintended genuine transactions, as can be seen from above. This problem can be overcome if the taxpayer makes an application to the IRD requesting it apply its discretion to allow the taxpayer to use the actual purchase cost as the depreciation base. The IRD will look at certain factors on a case-by-case basis before it exercises its discretion. If you believe you are in such a situation, you are better to contact your advisor.

KiwiSaver Changes

The three key changes that have been legislated are:

- The Government's contribution has reduced from $1042 to $521 maximum per annum beginning 1 July 2011 year. However, in order to get the $521 contribution one still has to save $1042.
- The minimum level of employee and employer compulsory contribution rates has increased from 2% to 3% from 1 April 2013.
- The employer contributions will be taxable from 1 April 2012. Up until this point the compulsory employer contributions of 2% were tax free, but from 1 April 2012 anybody on the top tax rate of 33 cents in the dollar will actually get only 67% of their employer's contributions paid into KiwiSaver.

Employer Contributions

Compulsory employer contributions to KiwiSaver schemes and complying funds are currently exempt from employer superannuation contribution tax (ESCT). A complying fund is a section within a registered superannuation scheme that has incorporated certain KiwiSaver rules – in particular portability and lock-in. Any voluntary employer contributions to KiwiSaver schemes are subject to ESCT. Voluntary employer contributions include contributions you make:

- Over and above the compulsory employer contribution rate;
- To employees aged under 18 or over 65 years (and who have been a member for more than five years);
- To employees on a contribution holiday; or
- To employees who are on leave without pay.

Holidays and other Entitlements

Many employers shut their doors over the Christmas period enabling employees to take their annual leave. The responsibility for ensuring the employees' entitlement for leave under the Holidays Act 2003 falls on the employers. The following briefly lists the holidays and other leave entitlements.

Public Holidays

Employees are entitled to a paid day off on a public holiday if it would otherwise be a working day for them.

If an employee works on a public holiday and it is their normal working day, they are entitled to another paid day off in lieu as well as whatever pay has been agreed to in their contract for working on a public holiday. The minimum requirement is payment of time and a half for the time actually worked on that day.

An employee who does not normally work on the day the public holiday falls, and does not work on that day, is not entitled to a payment for that day e.g. a part-time employee is not entitled to a payment for Good Friday if they do not work on Fridays.

Annual Holidays

All employees are entitled to a minimum of four weeks' paid annual leave per year after the first year of employment.

Employees must be allowed to take two weeks continuous leave if the employee so requests.

The employee and employer can agree in writing to pay out a portion (for maximum of one week) of the employee's entitlement to annual holidays.

Annual leave must be calculated at the greater of the ordinary weekly pay or the employee's average weekly earnings over a 12-month period before the annual holiday is taken.

Sick Leave

Both full-time and part-time employees are entitled to a minimum of five days' paid sick leave after the first six months of continuous employment. Unused sick leave is retained and can be accumulated up to 20 days.

If the sickness lasts for a period of three calendar days, the employer has the right to request proof of the employee's illness or injury.

Bereavement Leave

Employees are entitled to two forms of bereavement leave after six months of employment.

up to three days' paid leave on the death of an immediate family member; and

up to one day's paid leave on the death of a person outside the immediate family that causes the employee to suffer a bereavement.

Both types of bereavement leave can be taken at any time i.e. not necessarily immediately after death or on consecutive days.

'Immediate family members' are defined as an employee's spouse, parent, child, sibling, grandparent, grandchild or the spouse's parent. If there has been a multiple fatality, the employee is entitled to three days' bereavement leave for each death.

question time >>

Q: Do I need a marketing plan?

A: Yes, you do!

Every business needs a marketing plan. Every business needs to have a clear vision of who it's target market is, how you are going to attract your potential customers to buy from you, how much you are going to spend on advertising, how many sales you need to achieve to make a profit. Marketing is a specialised field and don't be afraid to ask for help in preparing your marketing plan. This is not something many business owners are good at and so they need to be prepared to ask for help.

The Importance of Cash Flow Forecasts

Cash flow forecasts are used to predict your business's future financial position for the period ahead, from three months to a year in advance. Your forecast allows you to see what money you expect to be paid into the business and the amount you'll need to pay out – and is a useful tool to help you manage your business more effectively.

If you owned a typical New Zealand retail store with high sales over Christmas and a traditional slump in the quieter New Year period, your cash flow forecasts would show high income in December and much lower income over the following two months. Your forecasts would also show that stock purchased on a 60-day term ahead of the festive Christmas rush in November and December would need to be paid at the end of January and February.

If you racked up record Christmas sales, there might be a strong temptation to splash out and buy that big-ticket item you've been hankering after – but can you really afford it? A quick look at your cash flow forecast will probably tell you that you need to park the thought of a new SUV or fishing boat and reduce your drawings by downgrading your request to Santa for an iPad. Otherwise, you'll have no money left to pay for the stock you sold in December.

If you're more pragmatic and less inclined to impulse spending, your forecast will also be able to tell you if you'll generate enough profit to cover the costs of new refurbishments or opening a new store.

If your forecast sales figures for March and April will be down on previous years as a result of continued low national economic growth, the global financial turmoil or the arrival of a new competitor in your market, you might need to arrange short-term finance to tide you over or find ways to increase sales to cover your monthly overheads and operating costs.

In summary, your cash flow forecast gives you a future view into your business finances. It helps you identify cash flow problems before they materialise and allows you to make informed business decisions

Quick Quote

The safe way to double your money is to fold it over once and put it in your pocket. ~ Frank Hubbard

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