Harvie Green Wyatt
CHARTERED ACCOUNTANTS

Newsletter

SUMMER 2021

Inland Revenue makes a meal of expenses

Inland Revenue has produced their interpretation of the tax law IS 21/06 on the subject of meal expenses.

The interpretation is based on case law.

The general principle is the self-employed can't claim meal expenses, but shareholder employees of companies can. Why?

A company is a separate legal entity. It's allowed to reimburse its staff, including the owner of the business, when they are away from work, for refreshments they could have received at work.

If an employee has to have a meal, due to having to work at a long-distance from the company base, the cost can also be tax deductible to the company. For example, a company employee has to work so remotely from the company base that it's not until 9pm they get home. It would be reasonable for an employer to pay for dinner. This would be tax deductible and it would not be income for the staff member.

A private individual running a business is treated differently. The legal starting point is that any food or drink is a personal cost because it's necessary to maintain life.

Taking the example of getting home at 9pm, if the self-employed person bought a meal before travelling home, this would still be considered a personal expense.

There can be extreme examples. For example, a self employed person has to go to the Chatham Islands and stay the night. The only accommodation he can get into is the Waitangi Hotel. Although there is a super market, there is no self-catering at the hotel so he has to buy his dinner. The excess cost of the meal over what he would normally pay, is tax deductible.

Note: If this person was a shareholder-employee of the company the entire cost of dinner would be tax deductible to the company.

What if the self-employed person has a couple of employees? Because they are away from their business base, the employer buys coffee and doughnuts for all three for morning tea. The expenditure on the employees is a tax-deductible cost. The expenditure for the employer is a personal cost and not tax deductible.

Instead of reimbursing, can an employer just pay a fixed allowance for morning and afternoon teas when the employee is working in a place away from their work place? Yes.

One of the illustrations has an employee living in Upper Hutt and working all day in Wellington, about 30km away. Inland Revenue has used a reimbursement figure of $15 per meal.

BRIEFLY

Charities – be selective

Do you donate to charities expecting them to spend it wisely on a good cause? How do you know if it's being used as you would wish? To help you choose which charities you support, visit the Charities Register online. In the left-hand panel of the Home page is "Annual Returns". Click on this to find a list of the major expenses, plus how much money is kept in savings accounts rather than applied to the charity. Some savings for a rainy day is reasonable, but it shouldn't be excessive. How much is spent on running expenses, for example for wages and promotion, and what is the money being used for?

Clean car discounts

No prizes for guessing the discount you get for buying an electric car includes GST. It works the other way, too. When petrol cars are charged fees in the new year, those fees also contain GST, which can with be claimed back.

Harvie Green Wyatt Tax Notices

We wish to advise that we will from now on be sending your tax payment advice notices by email.

Please note that the email will be coming from the following email address mail@apps.myob.com
This has been generated from our system and looks slightly different to a normal Harvie Green Wyatt email. Please be assured that emails from this email address are safe to open.

Merry Christmas

The Team at Harvie Green Wyatt would like to wish all our clients a Merry Christmas & a Happy & Safe New Year!

New sale rule splits business components

A new rule from 1 July 2021 states that when you sell your business, you're expected to split the price into its component parts.

For example, you're selling a shop. It has stock, shelves, some equipment and you want to be paid some goodwill. You're expected to put figures on all of these.

As a consequence, the buyers split the price in the same way when they do their accounting.

Before this rule came in, it was not uncommon for a seller to split the figures one way and the buyer to split the figures another way – both of them for best tax advantage.

What if you overlooked doing this?

As seller, you have three months in which to notify the buyer of the split. Since the split could favour the seller and disadvantage the buyer, buyers should beware.

After the three months, it's the buyers turn.

How to retain company losses when selling a business

Until recently, if more than 51 percent of the shares in a company changed hands, any company losses were no longer available to be set off against future years' profits.

The law is being changed. Effective for the 2021 year (for most people 31 March 2021) you need only to make sure there is no major change in the company business when the new shareholders take over.

Permitted changes include:

- to achieve increased efficiency
- to respond to advances in technology
- the scale of the business
- using existing assets to produce new products or services related to the existing ones.

Losses incurred before the 2014 year will still need to be written off. There are several complications and special cases, so if this affects you, get advice.

Reimbursement for use of telcos

Telecommunications usage plans is Inland Revenue speak for your telephone and internet connections.

The department has created rules for reimbursing employees. This would also include shareholder employees.

If an employee is using the telecommunications less than half the time then an employer can reimburse the employee for 25 percent of the costs. If it is more than half the time the maximum reimbursement increases to 75 percent.

You are not allowed to make an arrangement with an employee to take a smaller salary and then top them back up with the allowance.

If the purchase of an asset is involved, the reimbursement by the employer has to be related to the depreciation rate each year.

These rules don't apply to the self-employed.

Generally the maximum claim for a self-employed person for reimbursement of telecomm-unications costs is 50 percent, however it must be related to the actual usage.

BRIEFLY

Fringe benefits

At present, an employer can provide up to $1200 of miscellaneous benefits per year to each employee, subject to certain limitations. This could be done from two companies, thus doubling the amount of non-taxable benefits. Shareholders who work for their own company are treated as employees so, as you can see, it would be possible to get $2400 worth of benefits per year not taxable. If there were three or more companies, the figure could get even bigger. The law is to be changed so this practice can't continue.

Covid subsidies and GST

The Covid subsidies paid by the Government contain GST, except the wages subsidy. Therefore, output tax is payable on the subsidies received, except for the wages subsidy.

Bye-bye tax invoices

Tax invoices are to disappear. Instead, you're going to need to retain "taxable supply information". This can be in any format, but will have to include:

- "Prescribed information" - identifying the supplier and the recipient
- name of entity receiving the supply and information about the supply
- how much was paid
- the date of supply
- description of the goods or services supplied
- amount of GST charged (which can be on an inclusive basis).

As you can see, you're going to have to hold much the same information, but it could be held on your computer in any form, such as a quote.

Copy invoices will no longer need to state "copy only".

Loyalty card app

Did you know you can get rid of your physical loyalty cards with an app? These apps store cards on your cellphone.

Clarity for property investors

In March 2021 the Government announced changes to the bright-line test and interest deductibility for residential properties.
Following the release of a discussion document in June, there has still been significant uncertainty regarding the specific details of how the new rules will apply.
However, the government has now provided clarity through the release of draft legislation on 28 September 2021.
For the purposes of the legislation, a new term has been coined - "disallowed residential property" (DRP), which refers to those properties for which interest deductibility will be affected.
DRP's purchased before 27 March 2021 will have their interest deductibility phased out between 1 October 2021 and 31 March 2025, while those purchased on or after 27 March 2021 will be wholly denied the deduction from 1 October 2021.
However, if a property has had a code compliance certificate (CCC) issued on or after 27 March 2020 it will qualify as a 'new build', in which case interest will remain deductible.
The date of 27 March 2020 is one year earlier than expected. Properties that qualify as social, emergency, transitional or council housing will be excluded from the interest limitation rules, regardless of their new build status.
It is also proposed that if interest is treated as non-deductible, but the property is sold and the sale is taxable under the bright-line test, then the previously denied interest deductions are able to be claimed as a cost thereby reducing the taxable profit on sale.
A key question in recent months has been how long interest deductions will last for new builds.
As per the draft legislation, interest on new builds will remain deductible for 20 years from the issue date of the CCC. Furthermore, interest will remain deductible for subsequent owners throughout the 20-year period, abandoning the potential requirement of being an 'early owner' outlined in the June discussion document.
A previous amendment extended the bright-line period to 10 years for residential property acquired on or after 27 March 2021. However, new builds purchased on or after 27 March 2021 (one year later than the relevant date above for interest deductibility) remain subject to a 5-year bright-line period.
Unlike the interest exemption for new builds, the new build bright-line period of 5 years does not apply to owners that purchase the new build more than 12 months after the CCC has been issued.
Therefore, in general, subsequent owners will not get the benefit of the shorter 5 year period.
In a welcome and unexpected development, limited rollover relief for certain transfers to trusts, LTC's, partnerships and individuals will be introduced.
This will allow property transfers to take place without triggering the bright-line test where there is no economic change of ownership.
The above is a summary of the key features of the legislation.
However, the legislation itself is a lot more complicated due to the large number of varied situations and permutations that must be catered for in practice.
Despite the answers the draft legislation has brought us, it is apparent that navigating the rules (both new and old) will prove complicated and fraught with risk.

Challenges and opportunities in a turbulent job market

In the middle of a pandemic, it can seem at times that the grass is greener elsewhere. Almost two years into a global health crisis that many could not have imagined in their lifetimes, the concept of lockdowns, working from home, a fading connection to the workplace, and the overwhelming feeling of burn-out is driving a surge in resignations in many countries.
With a record number of employees resigning during 2021 in the United States, recent media coverage suggests New Zealand may be heading down a similar path with an uplift in job vacancies being reported.
Several factors are at play in this turbulent job market.
Firstly, as the economy grows out of the pandemic and labour shortages impact many industries, employees are now in the drivers' seat when negotiating their working conditions. Memories of how some employers treated their employees at the height of the pandemic are still fresh. These experiences have reinforced to individuals the importance of family and financial security.
Hence, with the roles now reversed, employees are driving negotiations for better pay and perks to achieve financial security, while also seeking a better work life balance to prioritise family. Workplaces that fail to identify the changing landscape of employee needs risk facing high employee turnover.
Secondly, while thousands of Kiwis rushed home as the pandemic surged in 2020, with border re-openings now in sight, a wave of young professionals ready to embark on the infamous Kiwi OE is expected to leave behind a list of vacancies.
The accounting profession does not need to look far. Pre-covid, the 'Big four' accounting firms were accustomed to the trend of newly qualified Chartered Accountants (CA) leaving for the bright lights of Europe and the United Kingdom. With the pandemic impacting these plans, hundreds of recently qualified CAs are likely planning a European summer in 2022.
Resignations and higher turnover have a direct impact on business productivity. Having survived a pandemic, businesses now need to adapt to retain employees to thrive. Retaining staff is about offering opportunities of growth, training, and flexibility between work and personal life.
If employees can see a business adapting to their needs and recognising their contribution, they might realise that greener pastures are still at home.

New tax legislation

On 9 September 2021, the Government introduced the Taxation (Annual Rates for 2021-22, GST and Remedial Matters) Bill ("the Bill") into Parliament, containing over 100 tax amendments. Changes of note are summarised as follows.

GST—Purchases from Associated Persons

Under current law, if a GST registered person ('the purchaser') acquires second-hand goods from an associated person who has not used them to make taxable supplies, and that associate originally purchased the goods from a non-GST registered person, the purchaser's second-hand goods deduction is zero. This has been a frustrating and illogical rule that has caught out numerous taxpayers over the years – they will know who they are. In what is an arguably overdue amendment, it is proposed that the purchaser (in the above situation) will be allowed to claim an input tax deduction equal to the tax fraction of the original purchase price of the associated person.

FBT—Rate Increase

When the top marginal tax rate increased to 39%, there was a flow on increase to the default FBT rate from 49.25% to 63.93%, which has meant employers applying one of the default or short form options are arguably overpaying FBT in the first three quarters. Under the proposed new pooled alternate option, employers would only pay FBT at the increased rate for employees with all-inclusive pay of $129,681 or more, which generally equates to employees that are subject to the top marginal income tax rate (i.e. for employees that earn over $180,000). On the other hand, FBT would be payable at the 49.25% rate in relation to employees with all-inclusive pay of under $129,681 (i.e. employees that earn less than $180,000). Consequently, this should prevent employers from overpaying FBT during the year.

Bright-Line Refinements

Reflecting how complex the residential bright-line provisions are becoming, the Bill also contains further refinements to these rules. For example, one amendment proposes that where a main home takes longer than 12 months to construct, the construction period will continue to be treated as "main home days" for bright-line purposes.

Sales Suppression Software

The average person may not realise that sales suppression software exists. However, this is a key point of contention for Inland Revenue, as this software alters point-of-sale data to manipulate revenue – facilitating tax evasion. While not necessarily commonly used, Inland Revenue considers the spread of such software to be a major risk to the integrity of the tax system. Thus, criminal and civil penalties of up to $250,000 are being introduced for the supply or possession of such software.

Finally, in what seems to be the end of an era for 'baby boomers' and late adopters of technology, fax as an approved method of communication with Inland Revenue is being removed.

Direct Debits

We are now able to take Direct Debits for invoice payments. If you would like to use this option for payments please email Rebecca McLennan on rmclennan@hgw.co.nz and she will send out an authority form to you.

GST warranty

Near the top of the first page of the Auckland District Law Society "Agreement for Sale and Purchase of Real Estate" sits the following question:

The vendor is registered under the GST Act in respect of the transaction evidenced by this Agreement and/or will be registered at settlement: Yes / No.

The answer to the question comprises a warranty by the vendor regarding their GST registration status.

A recent Court of Appeal decision, Marr v Mills, reinforced the need for the question to be answered correctly. The vendor, Ms Marr, declared herself to be not registered for GST. Relying on this GST declaration, the Mills commenced plans to start a business from part of the property with the expectation that a GST second-hand goods deduction would help fund the set-up of the business.

After undertaking extensive planning, seeking accounting advice and getting a valuer to determine an apportionment of the property value, the purchasers became aware that Ms Marr was GST registered. Unable to claim any GST, the Mills opted not to commence business.

Subsequently, proceedings were issued against Ms Marr for a breach of warranty, with the District Court identifying a clear loss and awarding damages amounting to the expected GST refund plus interest and other costs incurred. Ms Marr appealed to the High Court, which was dismissed, and more recently the Court of Appeal declined an application for leave to appeal, upholding the lower Courts decision.

Care needs to be taken when completing a land sale. With the surge in property valuations and property development activity, an incorrect GST declaration could prove to be a costly mistake.

Where is this going?

On 2nd December 2020, legislation was introduced by the Government that increased the top personal marginal tax rate to 39% on income over $180,000 from the start of the 2021/22 income year.

Three other changes were included in that legislation. It introduced:

- new information gathering powers for the purpose of tax policy development,
- a new requirement for most trusts that derive assessable income to prepare financial statements, and
- increases the information that trusts must disclose as part of the income tax return filing process.

This legislation was enacted under urgency and did not go through the usual consultation process. At the time, David Parker signalled that if trusts are being used for the sole purpose of paying a lower tax rate "we will move on it".

Fast forward one year and three things have happened.

Firstly, Inland Revenue has initiated a research project in which it is examining the lives of 400 New Zealand taxpayers worth in excess of $20m to estimate their effective tax rate on economic income (which is broader than taxable income).

A range of information will be demanded for the 2016-2021 income years including details of partners and dependants, significant personal assets (how much they cost and the date acquired), real estate interests, details of companies and trusts, and other financial flows.

This information is being demanded under the new legislation referred to above, with requests separated into three tranches due in November 2021, January 2022 and May 2022, each delving further into the lives of these taxpayers to enable Inland Revenue to measure the 'households' total income. The results of Inland Revenue's research project will be released in an anonymised form in mid 2023.

Secondly, on 15th October 2021 Inland Revenue released an Officials Issues Paper seeking feedback on what level of detail should be required within a trust's financial statements pursuant to a future Order in Council. A draft operational statement was also released by Inland Revenue on the same day which proposes how the new information gathering powers will apply to trusts.

Based on the draft statement the following types of information will need to be submitted each year:

- a statement of profit or loss and a statement of financial position,
- details of taxable and non-taxable distributions and who they have been paid to,
- the nature and value of any settlements onto a trust, and who a settlement has been made by.

The third element to factor into this picture is that the increase in information to be provided is occurring at a time when Inland Revenue has implemented a new IT system that provides them with an unprecedented ability to analyse and manipulate data.

During the build up to the general election in 2020 Jacinda Ardern ruled out Labour bringing in a capital gains tax under her leadership. However, as the new information that is being gathered is analysed, it might reveal a segment of income being used for the necessities and luxuries of life that have not been taxed; which could open the door for a generational change to the basis on which income tax is levied.

TAX CALENDAR

January 17 2022

Second instalment of 2022 Provisional Tax (March balance date except for those who pay Provisional Tax twice a year)

Pay GST for period ended 29 November 2021.

April 7, 2022

Terminal tax for 2021 (March, April, May and June balance dates). For all clients except those who have lost their extension of time privilege.

Building your business

Recently we heard about an employer who built up a successful business by focusing on his staff.

He shared with us how he did it.

Every three months he would meet each one of them and discuss their personal and business ambitions. He would talk about what they liked and what they didn't like at work.

Knowing their aspirations he could learn how to motivate them. If they wanted to create a business like his, he would tell them they would need to learn how to manage people and he would guide them into positions of responsibility. In due course, some would leave to set up their own businesses.

Initially, they might contract to him but eventually they would no longer need to do this, at which time he would wish them well for the future.