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NEWSLETTER

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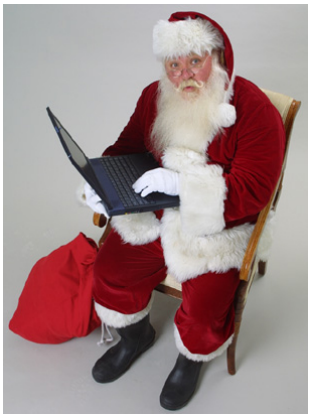
Bonuses – the Good and Bad Points

"Pay for performance" is a topic that can create heated debates amongst employers as well as employees.

People who do not support bonuses argue that staff should get a cost of living adjustment each year and should be treated the same, unless there is an identified problem with their performance. They argue that the salary should be appropriate for all the expectations of the job and that staff are intrinsically motivated to do a good job.



Those in support of bonuses argue that individuals who excel should receive financial recognition and if employees are given financial incentives they will be motivated to achieve more. They contend that the base salary is for an adequate job, but more could be achieved if a greater reward is on offer.

If bonus payments are seen as the essential form of recognition, it is not surprising that they become a point of contention when they are not as high as anticipated. The method of calculation and amount of bonuses are often featured in personal grievance cases.

Last year, with their financial institutions crumbling around them, some of the senior executives of those institutions still received huge bonuses. The companies had designed the bonuses as rewards for completing tasks and for putting in the extra effort. The rewards were not defined by the companies' profitability or cash liquidity.

Furthermore, when an employment agreement states the basis for the calculation of the bonus, the employer is obliged to pay it if the criteria have been met. Failure to pay if the criteria are met provides grounds for a personal grievance.

Although the numbers here in New Zealand are not large, in comparison with the American corporate bonuses, there are lessons that can be learnt from them by our humble Kiwi businesses.

What are those lessons?

- Make sure that the bonus is only payable if the company is profitable and there are no liquidity issues.
- Make sure the bonuses reward team work and the team members who back up the stars and let them shine.
- Make sure that if an extraordinary effort is expected, the reward given as a result is not a trifling amount.
- Make sure expectations are managed – if employees expect $50 and get $500, they will be thrilled. If they expect $5,000 and get $500 instead, they will be terribly disappointed and it could put the working relationship in jeopardy.

Bonuses can be effective in the right place but they can be incredibly difficult to design to get the desired result.

Mileage Rate for Business Use of Motor Vehicles

The IRD mileage rate used to calculate motor vehicle expenditure for both self-employed persons and employee reimbursements has increased to 70 cents/km. The previous mileage rates were 62 cents/km for the first 3,000km, then 19 cents for each kilometre thereafter. Even though the new rate was only published in May 2009, it is effective from the 2008/2009 income year, i.e, from 1 April 2008 for taxpayers with a March balance date.

The IRD mileage rate is based on information collected from a survey on the running costs of a range of vehicles with petrol and diesel engines of various sizes. It includes the cost of repairs and maintenance, fuel and other running costs. The IRD has said that changes to petrol prices only have a marginal effect on the overall mileage rate. The rate applies regardless of the size of the engine or whether the vehicle uses petrol or diesel.

Mileage rates are used by employers to calculate reimbursements for employees who use their own vehicle for a business purpose, and by self-employed people to calculate deductible motor vehicle expenditure when a vehicle is used for both business and private purposes.

There are three methods for a self-employed person to calculate the expenditure on a motor vehicle that is deductible for business use of the motor vehicle:

- actual records
- a detailed log book
- mileage rate

Self-employed people can use the mileage rate to calculate their deduction up to a maximum of 5,000km of work related travel each year. If their business travel exceeds 5,000kms then they must use one of the other two methods.

Where an employee incurs expenditure for the benefit of their employer, the expenditure can be reimbursed to the employee without being subject to PAYE. The employer may base the reimbursement on a reasonable estimate. Employers can use the mileage rate to calculate a reasonable estimate of the cost of using a private vehicle. However, if reimbursement of high mileage business travel occurs, the amount of the reimbursement may result in a monetary benefit being provided to the employee, on the basis that the reimbursement could be more than a reasonable estimate. If that is the case, the portion which represents a monetary benefit would be subject to PAYE. Shareholder-employees are not subject to the 5,000km limit if they receive income that is subject to PAYE, from a company in which they hold shares. However, care must be taken to ensure that the reimbursement is reasonable and to avoid a taxable monetary benefit arising.

Legal Expenditure: Capital v. Revenue

There is no specific provision which governs the deductibility of legal fees. The question of whether legal fees are deductible relies on the general deductibility provisions and limitations on deductibility. Broadly, the deductibility provisions require an expense to be incurred in running a business or deriving gross income and not be capital in nature. A general rule of thumb that is

often followed is to determine the purpose for which legal fees were incurred and follow the treatment of that underlying purpose.

For example, if a person acquires a rental property and that rental property represents a capital asset, the legal fees incurred to acquire the property will be capital in nature and non-deductible (although a portion may be depreciable).

A recent Taxation Review Authority ('TRA') case demonstrates how the distinction between capital and revenue can become very fine. The case involved a group of farmers who incurred legal expenses when they sued the dairy co-operative that they supplied, when it merged with another dairy co-operative.

Dairy farmers supply milk solids to dairy co-operatives in proportion to their shareholding in the co-operative. Farmers who supplied to one of the co-ops ('co-op A') were dissatisfied with a clause in the merger agreement that stipulated that they would receive a lower payout for their milk solids compared to the farmers in the other co-operative ('co-op B') for a period of 4 years after the merger. The reduced payout by the merged co-op to the former shareholders of co-op A was to reflect the fact that co-op B had a higher share value and its suppliers had historically received higher payouts.

The farmers challenged the differential payment through the High Court and the Court of Appeal. The farmers did not succeed in either Court. The farmers claimed a deduction for the legal fees incurred, which the IRD disputed. The farmers argued that as they were attempting to recover a dairy payout that would have been assessable on receipt, the expense was incurred to derive income and therefore should be deductible. The IRD argued that the reduced payout was a cost incurred by the farmers to acquire shares in the merged co-operative. As the legal fees related to disputing the cost of a capital asset, the legal expenses incurred were non-deductible.

The TRA held that the legal expenses were capital in nature. The Judge noted that the farmers did not couch their submissions to the High Court and the Court of Appeal in terms of 'loss of profit' but rather, focussed on considerations of capital structure and capital cost, i.e. the difference between what they paid and what they received. The fact that the capital asset (the shares) were paid for by way of reduced income made no difference to the fact that the asset acquired was a capital asset. The legal action taken against the co-operative was not designed to increase income but to reduce the amount they paid for the shares.

This case highlights the uncertainty that surrounds the deductibility of legal expenses. Notwithstanding that the farmers lost their case at the TRA, the view adopted by the TRA was reasonable. Recognising that the deductibility of legal fees can be a complex issue, legislation has recently been enacted, providing that where a taxpayer incurs legal fees of less than $10,000, the legal fees will be deductible irrespective of whether they are capital in nature.

Tax Working Group

Due to concerns about falling government revenue, an independent 'Tax Working Group' has been established to consider New Zealand's current tax system and identify the key issues that the Government should address in the medium-term. The aim of the group is to provide a forum for informed discussion on medium-term policy options for New Zealand. The group includes experts from both the academic and private sectors.

The group had its first session on 5 June 2009, and this session centred on New Zealand's fiscal framework. The group looked at the current tax system and attempted to identify medium-term issues and objectives. The group reported that the current system places a heavy reliance on personal and corporate taxes. Further, a comparatively high corporate tax rate is affecting New Zealand's ability to compete internationally when it comes to attracting skilled workers and corporate investment. The group identified that what is required is tax policy that supports growth through the labour market and investment. To that end, lower effective marginal tax rates and a broader tax base are needed.

The group's second session focused on GST and personal taxes. The group suggested that increasing GST could be an effective way of increasing tax revenue as GST is arguably New Zealand's more efficient tax. While it was recognised that GST is an efficient tax, the group noted that any increase in GST should not be

used to fund additional spending, but rather could be used to shift away from income taxes, thus creating a more revenue neutral position for people over their lifetime.

Part of the second session centred on the Working for Families ('WFF') credits, and considered several scenarios designed to make the WFF credits more efficient and equitable. Currently, there may be a disincentive for families receiving WFF credits to increase their income, because their WFF credits abate in such a way that there is little benefit overall from earning more income for the family. The group suggested that officials need to consider options that involve a flat-rate tax with a universal allowance, or a targeted allowance to replace or amend WFF.

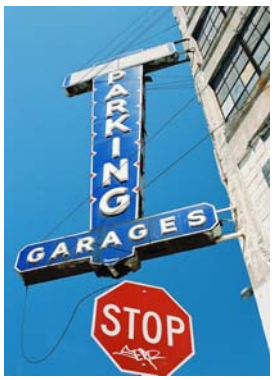
The third session covered base broadening options, with a focus, most notably, on Capital Gains Tax ('CGT'). Capital gains is an area that is currently largely untaxed in New Zealand, creating inequity as people with equal wealth and income can face different taxes, depending on how their income is received. Tax exempt assets are held disproportionately by wealthier taxpayers, which means that the wealthy will tend to pay less tax on their total income than the less well-off. The group generally agreed that if a CGT were to be introduced, the capital gains should be taxed at personal income tax rates.

Current estimates suggest the introduction of a CGT, after exempting the primary residence, would raise about $1.5 billion in tax revenue per year.

Snippets

FBT on Car Parks

The IRD has updated previously released Rulings on the application of FBT to car parks provided to employees by employers, to reflect changes in legislation due to the enactment of the Income Tax Act 2007. The rulings have been issued in draft to enable public consultation.



This latest draft ruling reaches the same conclusions as the previous ruling. Car parks provided by an employer, or a company within the same group as the employer, will be exempt from FBT only if the park is on land owned or leased by the employer or group company. If the car park is on land that is subject to a licence agreement, then FBT will apply. A licence agreement is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession of the premises.

Tax Pooling Changes

"Tax pooling" is a mechanism that taxpayers can use to minimise their liability to "use of money interest" and in some cases eliminate late payment penalties charged by the IRD. By using a Tax Pooling intermediary a taxpayer who has paid insufficient tax to the IRD and is incurring interest and penalties, can "purchase" tax (and have it credited to their tax account) through a tax pooling intermediary, from other taxpayers who have overpaid their tax. Depending on the matching of underpayment and overpayment transaction dates, the IRD charges can either be eliminated or reduced. A cost is still incurred when tax credits are purchased, i.e., the tax pooling intermediary will charge interest on the tax purchased; however, that cost is less than what would have otherwise been payable to the IRD.

Since its introduction in 2003, there has been some confusion in relation to the tax purchases as the legislation was originally unclear and tax purchases were completed for other tax types, such as GST. After some time the IRD stopped allowing transfers to other taxes.

Legislation passed recently has expanded the use of tax pooling beyond income tax to other tax types. However, transfers to other tax types can only occur if requested within 60 days of an IRD reassessment (for example, due to an IRD audit), and only for the amount of the increased assessment. This means that if a taxpayer faces a reassessment of GST, RWT, PAYE or other tax types, they can utilise tax pooling. This should lower the cost of IRD audits and voluntary disclosures for taxpayers.

If you have any questions about the newsletter items, please contact us, we are here to help