NEWSLETTER

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The employees' market

In today's workplace environment, expectations around employee benefits are changing, with the norm shifting in the employee's favour. For many, the days of a 9-5 workday and mandatory workplace attendance are a distant memory, to the point where flexible hours and working environments are considered a bare minimum.

As the war for talent has evolved, so to have employee expectations and what employers are willing to provide to not only meet, but also exceed those expectations. It is also being acknowledged as not only a means to attract talent, but also as a way to increase productivity in the workplace.

Take Google for example, whose ethos is to cater to their employees' wellbeing as much as possible. Their sites include wellness centres, access to second medical opinions, as well as Employee Assistance Programs for mental health. Employees adopt a hybrid work model, working from home two days each week, and have four 'work from anywhere' weeks per year. In addition, they offer a range of insurance and health programs, while offering on-site meals and snacks.

While the benefits at Google are vast and appealing, they come across as relatively ordinary when compared to benefits offered by other employers. Some of the more extreme ones include:

- "Pawternity" leave – paid time off to care for a new pet
- Fertility treatments – contributing towards treatments or paying to freeze eggs
- Nap rooms – places in the office to take a quick 20-minute nap
- Massages – regular massages for those sitting at a desk all day
- Unlimited vacation leave – you can take as much time off, provided your work gets done

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Despite how attractive some of these benefits may seem, is there a more cynical side to them? We all aim to achieve 'work-life balance', but it appears as though work is seeping into every aspect of our life.

A free work dinner sounds fantastic, but it requires an employee being in the office at dinner time in order to benefit. When the employer gets an extra couple of hours of productivity in exchange for a cheap meal, the lines between who the real beneficiary is starts to blur. It's also great that an employer may be willing to pay for egg freezing or IVF treatments, but a pessimist may suggest that the long hours their employees spend at work are what necessitates it in the first place.

Regardless, the benefits an employer offers are now becoming a vital part of the employee offering. Employees have a renewed sense of what they consider should be standard practice, and are more willing to jump ship if an employer fails to meet their expectations.

Update - GST on farmhouses and holiday homes

In 2017 Inland Revenue released an Interpretation Statement, IS 17/02, which formalised the long-standing practice of allowing a farmer to claim a portion of their farmhouse expenditure on the basis it is the "headquarters" of the farm.

But then in 2020 Interpretation Statement IS 20/05 was released by Inland Revenue which overthrew the common practice of treating the farmhouse as not subject to GST. It concluded that, where a person has claimed a portion of house expenditure for income tax purposes, this demonstrates that the house has been used to make taxable supplies, and therefore a sale of that house would be subject to GST. Because the farmhouse is technically deemed to be a separate supply from the farmland meant that most farmhouses do not qualify for zero-rating, and hence GST becomes payable at 15%. This outcome has given rise to uncertainty and confusion.

The Taxation (Annual Rates for 2022-23, Platform Economy, and Remedial Matters) Bill ("the Bill") first introduced on 30 August 2022 includes a welcome proposal to resolve the issue. The legislation is to be amended to enable registered persons to elect to treat the sale or disposal of goods (including land) as an exempt supply where the goods have a minor amount of use in making taxable supplies. The exemption is limited to tangible assets (e.g. land, dwellings, vehicles).

From a practical perspective, the amendment will also enable assets such as a high-value Air BnB, or a residential house with a home office or workshop to be excluded from the GST net.

To qualify as an exempt supply under the proposed rule, the asset would have to satisfy the following requirements:

- No previous GST deductions have been claimed on the asset by the person.
- The asset was not acquired or used for the principal purpose of making taxable supplies.
- The asset was not acquired as a zero-rated supply under the compulsory zero-rating of land rules.

These requirements are all quite reasonable in a farmhouse, home office and bach scenario. The proposal would generally apply retrospectively, from 1 April 2011, and the commentary to the Bill confirms that:

- If a registered person had previously taken a tax position consistent with the requirements of the proposed new section, this tax position would become correct once the Bill is enacted.
- In cases where an assessment has already been made for a taxable supply before the date of introduction of the Bill, that is, the registered person has returned output tax on goods they sold or disposed of before that date, the supply of those goods would remain a taxable supply.

Hence, there is no relief for taxpayers who have followed the conclusions in IS 20/05 and returned GST on their mainly private assets.

FBT updates

On 29 August 2022 Inland Revenue released a 49-page report: "Fringe benefit tax: regulatory stewardship review", which reports the summary, findings and recommendations of a review of New Zealand's current Fringe Benefit Tax (FBT) regime – a regime whose design and operation has not been subject to a full review for nearly 20 years.

The report found that although FBT is performing its task of taxing non-cash benefits and hence supports the tax system as a whole, it was inconclusive as to whether FBT functions well. Consistent feedback received from interviewees was that the tax is complex and imposes a high administrative and compliance burden on taxpayers relative to the amount of tax that is payable.

Further, inequity concerns were also raised around

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inconsistency with compliance of the regime by all businesses, and the lack of enforcement of non-compliance by Inland Revenue. The report recommended FBT should be included in a future policy work programme to enable a full consultation process to occur which could be approached in one of three ways:

1. A fundamental reform that considers whether what is subject to FBT versus PAYE should be re-aligned and / or re-establishing the scope of FBT to better target benefits that relate to remuneration of employees.
2. A targeted review of specific items, such as motor vehicles, business tools and the "on premises" exemption (in light of the growth of flexible and agile working practices).
3. A remedial project focussed on updating thresholds and de minimis amounts.

On the same topic of FBT, in line with a recommendation made by the 2017 Tax Working Group, the recent tax bill first released on 30 August 2022 includes a proposal to exempt from FBT certain public transport fares that an employer subsidises mainly for the purpose of an employee travelling between their home and place of work.

Under current legislation, contributions an employer makes to an employee's public transport costs for travel between home and the workplace (e.g. by way of voucher or use of business credit card) are classified as unclassified fringe benefits, and as such, FBT is payable on such contributions unless the amounts are less than certain quarterly and annual thresholds.

In contrast, employer-owned carparks which are provided to employees are generally exempt from FBT due to the application of the "on-premise" exemption. Given the cost of CBD carparks can be significant, this differentiating treatment could result in businesses being incentivised to encourage the use of one transport mode over another.

The proposal in its current form lists specific public transport modes where the exemption would be available, namely: bus, train, ferry, tram or cable car. The bill commentary specifically states that other transport modes such as air transport, taxis, shuttles and other services (such as bike-sharing, ridesharing and e-scooter hire) would not be covered by the exemption.

The alignment in this proposal is intended to produce a more neutral FBT outcome between the options of travelling to and from work by car and travelling by more environmentally friendly modes of public transport, hence should generally be positively received by employers. However, for the FBT cynics out there, the prescriptive list of eligible public transport modes in the draft legislation may result in further administrative headaches. A review of the entire system cannot come soon enough.

GST 101

New Zealand's Goods and Services Tax (GST) system is often praised for being a simple broad-based tax. But this doesn't mean mistakes don't happen. Going back to basics, if you carry out a taxable activity in New Zealand and your turnover is more than $60,000 in a 12-month period, you are required to register for GST. 'Taxable activity' is generally defined as an activity which is carried on continuously or regularly by any person, and involves the supply of goods and services to another person for consideration.

In general, GST should be charged on most taxable supplies. However, some goods and services are either zero-rated or exempt. Common exempt supplies include renting a residential dwelling and providing financial services, while exported goods/services and land transactions between GST registered persons are examples of zero-rated supplies. For most other goods and services, GST should be charged on the sale.

GST can be claimed on goods and services that are purchased for use in your taxable activity. This means there must be a connection between the taxable supply produced and the good/service a claim is being made on.

A GST claim can only be made to the extent that the goods and services are used to make a taxable supply, i.e. a supply to which GST applies, including a supply that is zero-rated. As a result, GST-registered taxpayers should be mindful as to whether the good/service they are producing or purchasing is an "exempt" supply or a taxable supply. Furthermore, no GST claim can be made for personal expenditure, as personal expenditure is not connected to a taxable supply.

Take for example a company that has both a commercial investment property and a residential investment property. The supply of residential rental accommodation comprises an exempt supply. Because the company is simultaneously carrying on both a taxable and exempt activity, care needs to be taken to ensure GST is not claimed on expenses

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relating to the exempt activity, such as GST on the rates and insurance relating to the residential rental.

Where there is an element of both business and exempt use of an asset, the GST claimed on purchase should be apportioned based on the estimated business use. For example, where a phone is purchased in the business, an estimation should be made as how much it will be used privately, and the GST claim should be adjusted accordingly.

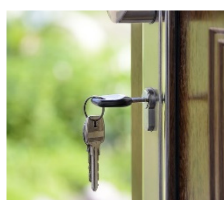
Examples of instances where GST is incorrectly claimed include payments for loan/mortgage principal, interest, personal drawings, construction of residential dwellings that will be held long-term as rentals, and wages.

On the other hand, a common missed opportunity is where a GST-registered person purchases a second-hand good from a non-GST-registered person for use in their taxable activity. In this scenario, a GST credit is claimable by the purchaser, even though GST was not charged by the vendor – e.g. the purchase of a business motor vehicle off TradeMe.

Even though it is called simple and broad based, having your GST returns periodically independently reviewed is a good idea.

Snippets

IRD and close relationship transfers



Inland Revenue recently issued a draft interpretation statement regarding bright-line and its application to certain family and close relationship transactions. The publication relates to the 5-year bright line test for residential land purchased between 29 March 2018 and 26 March 2021, with a subsequent publication to be issued for the 10-year test applying from 27 March 2021. However, the expectation is that the conclusions reached will remain unchanged.

In essence, the publication confirms that no additional roll-over relief will be provided for close relationship transfers. Where there is a legal change in ownership taking place within the bright-line period, the sale will be taxable to the person disposing of it. Furthermore, all family and close relationship transactions that occur at below market value are deemed to have been transferred at market value. This may give rise to situations where tax is payable on an amount of income that was not actually received by the recipient.

For example, where parents dispose of residential land to their child within the bright-line period, the sale will be taxable to the parents based on the market value of the land, regardless of how much the child paid for it. Similarly, where a person wholly-owns land and wishes to become co-owners with their partner, a sale within the bright-line period is taxable but only to the extent that the land that is changing ownership i.e. no tax is payable on the share held by the original owner.

As a result, parents wishing to assist their children with buying residential property should carefully consider the ownership structure and alternate options before settlement – for example, could a loan be provided instead, or should nominee/bare trustee legal documentation be executed prior the original purchase to reflect the nature of the arrangement?

Is it confectionary or ingredient?

Here in New Zealand, we value simplicity and we call things as we see them. A spade's a spade and a marshmallow is confectionary. However, over in the UK, things are a bit more complicated. Value Added Tax (VAT) is charged on goods and services (like GST is in NZ) but is subject to a number of fiddly and somewhat subjective exemptions. For example, supplies of food used for cooking are zero-rated, meaning no VAT is charged on these products. On the other hand, confectionary is subject to VAT at the standard rate, except for cakes and non-chocolate covered biscuits, which remain zero-rated. Clear as mud so far, right?

Innovative Bites Limited (IBL) is a UK supplier, distributor and wholesaler of candy. One of their products is called a 'Mega Marshmallow', a large marshmallow measuring 5cm x 4.5cm. According to the wholesaler, the product is supposed to be roasted over a fire, or put between two biscuits to make a s'more. Between 2015 and 2019 IBL sold these marshmallows with no VAT, on the assumption that their intended use fell within the "food used for cooking" exemption.

After being told they owed £470,000 in VAT, IBL appealed to the tax tribunal, asserting that their marshmallows were not confectionary as they were supposed to be consumed with other foods, or cooked before eating. When taking into account the packaging, the size of the product and where it was positioned in the supermarket aisle, the tribunal eventually agreed that the marshmallows were in fact not confectionary. In his conclusion, the judge stated that if a consumer wanted to eat marshmallows as a snack, they would likely eat smaller, regular ones.

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

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