

health adviser

Grant Thornton 

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May 2005 Taxation Bill - tax changes on their way

Although New Zealand businesses have done well over the last few years, surveys continue to show that Government red tape remains one of the biggest drags on performance. Tax compliance is usually cited as one of the worst offenders. The May 2005 Taxation Bill (the Bill) introduces many changes to current taxation law. For the purpose of this article, we have focused on two areas that may be of interest to our readers as small and medium sized business owners.

FBT changes (intended to apply from 1 April 2006) - To the relief of many, the Government has decided not to proceed with the proposal to extend the FBT rules to include all car parks provided by employers in the CBDs of major cities.

However the Bill introduces several changes to the FBT treatment of motor vehicles, including the following:

- owners will have the extra option of calculating the motor vehicle fringe benefit based on a vehicle's tax book value as an alternative to using the vehicle's cost price;
- the fringe benefit valuation rate applying to the tax book value of a motor vehicle will be 36 per cent. The equivalent rate for the cost valuation basis will be reduced from 24 per cent to 20 per cent of the cost;
- the treatment of leased vehicles will be aligned with that of owned vehicles, meaning that the fringe benefit from a leased vehicle will be based on its cost or tax book value - rather than its market value as at present;
- the treatment of "9-to-5" or "flip-flop" leases where the lease is "suspended" if private use occurs will be legislatively overridden, and any private use during the lease period will be treated as a fringe benefit irrespective of the suspension terms.

We note that the proposed alignment of the FBT treatment of leased vehicles to that of owned vehicles will potentially diminish the existing advantage of the annual market value basis that currently applies to vehicles structured under 1x1x1 leases.

Employees, including shareholder employees, commonly lease vehicles to their employers during business hours under "9-to-5" or "flip-flop" leases. The changes set out in the Bill mean that if any private use occurs during the lease period an FBT cost will arise irrespective of "suspension terms".

Employees who take vehicles home may be caught by these changes if any travel between home and work occurs during the lease period. In most cases employee travel between home and work will be treated as private travel. Adjusting usage to stay outside the FBT net may be inconvenient. However, where the employee's home... (continued pg 2)

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... is a secondary place of work then the travel between home and work during the lease period may not be private in nature. In general terms the following elements would need to be present:

- a reasonable portion of the home is used for business purposes;
- significant business activity actually occurs at home;
- the work carried on at home is an integral part of the employer's business;
- the employee is formally prohibited from using the vehicle privately during the lease period and does not in fact do so.

Once the legislative outcome is finalised, we will be working with our clients who currently have "9-to-5" or "flip-flop" leases in place to determine whether anything will need to be done with their existing lease agreements.

On a better note, the minimum value thresholds applying to unclassified fringe benefits will be raised. The employee minimum value threshold will go up from \$75 to \$200 per quarter, and significantly, the employer threshold will rise from \$450 a quarter to \$15,000 a year. This will reduce compliance costs for businesses by reducing the need to measure and account for FBT for minor benefits. For some it will mean that FBT returns will no longer need to be filed.

The private use of employer-owned or leased business tools such as cell phones and laptop computers will be exempted from FBT when they are provided to employees primarily for business purposes, as long as they cost no more than \$5,000. This proposal recognises the current cost and difficulty faced by employers in monitoring and valuing these types of benefits.

Depreciation - Changes will also be made in relation to the depreciation rules. One key change is the reduction of depreciation rates that apply to buildings acquired on or from 19 May 2005. This change reflects the view that current depreciation on buildings is too rapid.

This change will be of interest to rental property owners including taxpayers who invest in rental properties via loss attributing qualifying companies. Under current rules most rental buildings qualify for the 4% diminishing value rate or the 3% straight line rate. By reducing these rates a rental property will be more "profitable" in earlier years.

Some taxpayers elect not to depreciate buildings to avoid having to account for "recovered depreciation" which may arise at the time the property is sold or at the time a deemed disposal is triggered following termination of the rental activity. For people in this category the changes will not be of concern.

However, taxpayers who wish to minimise upfront tax costs and taxpayers with loss generating rental properties who offset rental losses against other taxable income will not welcome these changes.

On a positive note the low value asset threshold will be increased from \$200 to \$500 for assets acquired after 19 May 2005. The depreciation rates for shorter-life plant and equipment will also increase thereby allowing taxpayers to take bigger depreciation allowance deductions earlier. In addition the rules relating to asset disposal costs will be clarified to ensure that all disposal costs are deductible in full.

IBOS update

The annual Grant Thornton International Business Owners Survey, which researches over 6300 medium sized businesses in 24 countries, has highlighted some key findings for New Zealand businesses.

Business expectations - For the second year running, New Zealand businesses remain slightly more optimistic about turnover (revenue) growth in the year ahead compared to businesses globally.

Employment - In line with the global average, New Zealand businesses expect employment growth to be at a higher level than that expected in 2004.

Constraints - The greatest constraint on expansion for New Zealand businesses is lack of availability of a skilled workforce.

Stress levels - 59% of business owners in New Zealand report that their business contributes significantly to their stress levels. This is well above the global average of 44%.

Change in ownership - 51% of New Zealand businesses are anticipating a change in ownership in the next 10 years. This is significantly higher than the global average of 28%.

If you would like to obtain a copy of the full report, please contact your local Grant Thornton office. You can also complete the questionnaire online and benchmark your answers against those of businesses around the world by accessing:
www.grantthorntonibos.com

Which accounting software is best for you?

There are more accounting software companies vying for your business than ever before. Purchasing the wrong type of accounting software could end up costing you a lot of time and money.

For small / medium businesses there are generally three options:

- Excel spreadsheet: great for very small operations (like a simple rental property). Only requires basic knowledge of Excel once it's set up correctly.
- Cashbook software: aimed at low accountancy knowledge users, as it has basic language and simple reconciliations. Most can offer basic reports to compliment their primary focus of recording cheques and deposits.
- Small / Medium Accounting Packages: aimed at the more computer and accounting literate users. Offers all features of cashbook software above, plus general ledger, debtors, creditors, payroll and full financial reporting.

For a small and affordable outlay, a software package can save your business money. When the package is set up and operated correctly, monthly management reports act as an important tool to track year to date profit. They give you a clear indication of your profitability and cashflow which can assist in estimating your tax obligations more accurately. Voluntary tax payments may reduce your terminal tax and interest charge at year end.

If you would like to discuss which accounting software package is best suited to your needs, please contact your Partner or Manager.

Duties of a Trustee

There has been discussion recently about trusts that may, in the future, be deemed to be a "sham". Certainly in the case of relationship breakdowns the lawyers will, in the first instance, look at the trust and see if they can unwind it. It is also envisaged in the future that beneficiaries may be more willing to 'attack' the trust if they are not satisfied with the management of the trust's assets.

It is important that all trustees are aware of their duties under the Trustee Amendments Act 1988. If a trustee breaches these duties, it not only puts the authenticity of the trust at risk, but it can expose the trustees to legal action.

These duties include:

A duty to manage the trust efficiently.

This includes:

- being fully aware of the terms of the trust deed
- obeying the terms of the trust deed
- preparing annual financial statements and resolutions in a timely manner.

A duty of loyalty:

- all trustees must act in the best interests of both present and future beneficiaries.

A duty to act impartially:

- all trustees must act in an even-handed manner between both present and future beneficiaries.

A duty to invest prudently:

- the Trustee Amendments Act 1988 sets out a list of tests that must be met
- it is important that these are considered when investing or realising investments and that decisions are documented by way of resolutions
- regularly (at least annually) review trust investments
- the Prudent Person Test applies to all trustees, but consideration should be given to opting out of the Prudent Person Test where appropriate. This clause should be considered when drafting new trust deeds
- all Trustees must be involved in the decision making process and, once again, this should be documented.
 - if independent trustees are not seen to be involved in the decision making process, the trust could be attacked in future and deemed a "sham trust" or just someone's "alter ego"
 - ensure that your independent Trustees are not seen as puppets

In summary, it is vital that all trustees are fully aware of the terms of the trust. All trustees must ensure that they are actively involved in the decision making process of the trust and ensure that proper records and resolutions are maintained.

Quick roundup of recent employment law changes

In late 2004, the Employment Relations Amendment Act (No. 2) 2004 was introduced and some other employment statutes were amended, resulting in important changes in employers obligations towards their employees. For your information, noted below is a snapshot of the more significant changes.

Employment Protection Provision clause

An Employment Protection Provision (EPP) clause detailing an employee's entitlements in the event of a sale, transfer, or contracting out of a business must be included in employment agreements for all employees hired from 1 December 2004. For existing employees, the EPP clause must be included in their agreement at the earlier of 1 December 2005 or when the business is next restructured. Note that the EPP is different to existing technical redundancy clauses.

Working on a public holiday

In accordance with the Holidays Act 2003, all employment agreements (including those for casual employees, fixed term employees, salaried employees etc) must, by 1 April 2005, be updated to contain a provision advising employees of their entitlement to higher rates of pay (time and a half) for working on a public holiday. There are provisions to also receive a paid day off in lieu.

Parental leave

From 1 December 2004, employees now qualify for 13 weeks (previously 12 weeks) of Government paid parental leave after 6 months continuous service (previously 12 months service).

Clean Slate Act

On 29 November 2004, the Criminal Records (Clean Slate) Act 2004 came into force. The Act allows individuals with less serious convictions to put their past behind them provided they have been conviction free for at least seven years. You will need to be aware of the limitations, when interviewing a prospective employee, on questions relating to prior criminal convictions.

If you require further information on any of these topics or would like details on any other accounting matters, contact your local Grant Thornton office:

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