



Tax Tonic May 2020

Carl Brandt & Julie Segedin

Covid-19 subsidy and tax changes

HELPFUL COMMENT FROM PARTICIPANT ON UOMI WAIVER

"I have applied for probably over a dozen instalment arrangements for P3 and for GST and each one has been handled by a different IRD staff member. In every single case they have suppressed interest and penalties upon request without question and only applied the core tax to the instalment calculation. So long as the payments are made on time the client has known right off the bat that they will not have to pay any interest.... . I have applied for probably over a dozen instalment arrangements for P3 and for GST's and and each on has been handled by a different IRD staff member. In every single case they have suppressed interest and penalties upon request without question and only applied the core tax to the instalment calculation. So long as the payments are made on time the client has known right off the bat that they will not have to pay any interest."

Clint your contribution is really appreciated!

Q: So it appears we need to meet the 7 May 2020 anyway - this won't solve cashflow issues at all "now" - rather it would be largely a smoothing exercise - not sure how affective it will be overall - we are still going to have to use tax traders to meet 7 May payments

A: *Unless you are very certain there will be a loss in 2021 to carry back to 2020 or the client's ability to pay P3 is a due mainly to Covid and they will be able to pay the tax under an instalment then a tax pooling arrangement might be a better option. It's a balance between certainty with some interest and the potential for a write off of all of it. I noticed Tax Traders had a comment on their website about a guarantee of refunding a finance cost if IRD do remit interest due to Covid. On the face of it seems like a way to hedge your bets but you would need to look at the detail or discuss with one of the tax pooling providers. One person has commented that as a loyal customer of tax traders they were given a special rate of 3.55% for tax finance.*

Q: If no shareholder salary journalled as at 31 March 2020 - company pays tax at 28%? and then no loss in 2021?

A: *Answered together with question below.*

Q: I guess we shouldn't file these returns for 2020 with shareholder salary issues until 2021 is reasonably estimated

A: Yes, I think in cases you think there could be a potential loss carry back that would be wise. If there is no loss, paying tax at 28% while the shareholders were on lower rates would be tragic. You should probably look at the state of the current account too ie if it is overdrawn you need to factor the FBT cost in particularly if the shareholder is not tipping funds in to fund the future losses.

Q: Companies that pass out full earnings via shareholder salaries often report a 0 profit, e.g. for 2019 and 2020. So how can the same company making a loss in 2021 carry this back?

A: Unfortunately, in those circumstances no losses can be carried back. For small businesses this measure is, in my view, a bit of a lemon.

Q: Can a 31 March 2020 loss be off set against March 2019 profit

A: Yes, it can.

Q: Loss carry back example shareholder salaries clearing out profit, 2019 with 2020 loss, you mention reversal, what about applying for an IRD reassessment for the 2019 year to bring in the 2020 loss?

A: Without some legislative change the IRD would have to exercise their discretion under sec 113 of the Tax Administration Act to adjust the salary. They have a standard practice statement on this that states they will not alter a tax position where they have to use resources 'thinking' about it. In other words, it has to be a black and white type issue. Given they already have a statement on adjusting salaries retrospectively (which wouldn't allow this without amendment) and also given the comments I relayed that I received back from Policy I think it unlikely.

Q: With regards to the depreciation allowed again on buildings. Even if depreciation was claimed before the rules changed can we choose not to depreciate now? I presume yes?

A: Answered together with two question below.

Q: Is the Depn on buildings Optional? Ie if using 15% concession can we continue that? Or is it deemed depreciation anyway?

A: Answered together with question above and below.

Q: Do you have to start depreciating Commercial Rental buildings? Or can you just continue to depreciate only the fit-out if the client feels more comfortable with that and doesn't want to face potentially large depreciation recovered at a later date?

A: The 2% deduction on the 15% fitout breakout is no longer going to be available. You do not have to start depreciating a building purchased after 1 April 2011 but you should make an election not to. For buildings that were acquired and depreciated before 1 April 11 you should recommence depreciation. Under the rules as they stand an election not to depreciate can be made retrospectively if depreciation has never been claimed and would then apply from the date of acquisition.

There is nothing in the rules to prevent a change of method from year to year. This means you are not bound by what method was used historically. In the case of a change from the

diminishing value (DV) method to the straight-line method, the depreciation loss would be calculated on the basis of the adjusted tax value of the property at the time of change so if the DV method was used originally a change now to SL would mean starting with the adjusted tax value not the cost .

Q: Along with Loss Continuity - will Imputation continuity change also?

A: Good point raised here. There has been no comment on this at this stage which suggests there won't be any changes. A bit limiting as even though companies have current year losses, they could still have ICs from prior year profits that have not be distributed.

Q: Regarding the asset write-off I am coding these to assets and then have a separate depreciation expense code and depreciate them at 100%. This way the asset is still recorded on the asset schedule.

A: That is a good way of tracking them as in the event of the business closing or selling the disposal of these assets may result in a clawback of their market value as taxable income. Remembering the onus of proof for tax positions is on the taxpayer and by doing this you have a record of what happened to the assets written off eg if they were scrapped.

Q: Employees get paid weekly. Can you spread the subsidy starting for the very next payday for the employee, then every subsequent week? E.g. Subsidy received 23/3, payday is 25/3, so apportion weekly from 25/3 for 12 weeks.

A: Given the IRD seem to think the subsidy is actually connected to a particular wage payment (as opposed to my view of spreading on a daily basis - the same as self-employed - along with actually passing it along as 'wages' over the 12 weeks) I don't think they would have a problem with this. Also, unless there are a quite a few employees (say > 30), the amount would be relatively small and it is only timing.

Q: Whether businesses have to pay back a portion of the wage subsidy if they have started operating again prior to the end of the 12 weeks.

A: Answered with question below.

Q: With regards to the Covid-19 Wage Subsidy, what if the full 12 weeks subsidy is not used, I presume the part not used needs paying back? Turnover down for the period that the employee is in self-isolation and lockdown but returns to work after 5 or 6 weeks and turnover rises again at that point. Turnover could be down again in 2 or 3 months' time.

A: The subsidy that is not used for a particular staff member can be used for another staff member but it does cover a 12 week period. It must be spent on wages. If the business does return to normal after 6 weeks then the subsidy won't have to be paid back so long as all the criteria are met as follows from workandincome.govt.nz website as follows

“...meet the eligibility criteria for the subsidy:

- your business is registered and operating in New Zealand; and
- the employees named in your application are legally employed in New Zealand; and
- your business has experienced a minimum 30% decline in actual or predicted revenue:
 - over the period of any month from January 2020 through to the end of this scheme when compared to the same month last year, or a reasonably equivalent month for any business operating less than a year; and
 - that loss is attributable to the COVID-19 outbreak; and
- **your business has taken active steps to mitigate the impact of COVID-19 on their business activities** (such as engaged with your bank, Chamber of Commerce, industry association or the Regional Business Partner programme); and
- you agree you will, using best endeavours, retain the employees named in your application in employment on at least 80 percent of their regular income for the period of the subsidy.

Tony & Karen thanks for your contributions, really appreciated!

Q: For shareholder employees receiving the wage subsidy, does a paye salary need to be processed for the amount of the subsidy?

A: No, it can be a shareholder salary at year end.

Q: To clarify re the wages subsidy received by a company for a sole shareholder employee where only annual non- PAYE salary is paid. The income to the Company is non-taxable and the “salary” paid to the Shareholder is non-deductible in the company but taxable in the hands of the shareholder. Is it best then to show the subsidy in the P & L as non-taxable income and the “salary” as non-deductible exps. Then in the Shareholder Current account and individual tax returns show two separate credits as Salaries, one as the Subsidy amount and the other as the normal annual salary?

A: There are no instructions from IRD on this currently. In my view it is better to have the wages expense matching the IRD figure but this is because I am ‘old school’ when IRD audits focused on matching the IR 68 total with wages expense. This will be more of an issue for 2021. We will report back if there are any further IRD instructions on how they want this disclosed.

Q: I have worked from home for several years and run my business from home - can I pay myself the \$20 tax free allowance?

A: I think you are referring to the \$5 a week de minimis for use of telecommunication devices and \$15 de minimis for other working from home costs reimbursed by the employer specifically for Covid lockdown covered in new determination EE 002. Below is the link for the statement on this. Note there is also provision for a tax-free reimbursement relating to furniture costs that are exclusively for business incurred by employees encompassing a safe harbour option in addition to an actual reimbursement.

<https://www.classic.ird.govt.nz/resources/e/6/e6484c74-13bc-4c43-a98b-9f0019926563/det-ee002-working-from-home-allowances.pdf>

In your case I would have thought you were already claiming a portion of power, use of internet etc as reimbursement. This would not apply to you as it is specifically a Covid initiative.

Q: Re the employee reimbursement for internet up to 75%, does that mean you could technically claim more for Use of Home for shareholders if they usually have an office outside the home normally? Just for this period (COVID) obviously.

A: Yes, as I would argue that if a person is working full time from home the principal use of the internet etc is work related. (Exception – children who are gamers!)

Q: Partners in partnership just enter wages subsidy in other income in their personal tax returns?

A: Yes, and it won't be subject to ACC premium or count as income for cover on a future claim.

COVID-19 income equalisation assistance for the primary sector, 30 April 2020

On 29 April 2020, Inland Revenue announced that measures are being taken to assist farmers, fishers and growers whose current or future income will be significantly affected by the impacts of COVID-19. Inland Revenue is aware that the primary sector is now feeling the impacts of COVID-19. In particular, it has caused financial issues for farmers, fishers and growers.

Deposits

Inland Revenue is able to accept late deposits to the income equalisation scheme. For farmers, fishers and growers, whose current or future income will be significantly affected by the impacts of COVID-19, Inland Revenue will allow a class of late deposit cases for the 2019 tax year up to 30 June 2020, regardless of when the 2019 return is filed or what the due date is for filing the return. The quantum of the deposit is limited to the net income from agricultural activities for the 2018/19 income tax year.

An affected farmer, fisher or grower must first register for the income equalisation scheme. This can be done in myIR. Once this is done, the late deposit to the Income Equalisation account may be made via myIR. The deposit should be received by Inland Revenue by 30 June 2020.

Refunds

Farmers, fishers or growers materially affected by COVID-19 will be permitted to make early refunds.

In this case, materially affected means that the farmer, fisher or grower is in financial difficulty by the incurring of significant additional expenditure or through a significant decrease in revenue as a result of the impacts of COVID-19. All applications for an early refund can be made via myIR and will take approximately 20 days to process.

Generally, the refund will be income in the year that the application is made. However, there is an exception where the application for refund is made in either the specified period, or where, in a case or a class of cases, a longer period is allowed by the Commissioner.

A person can choose in the application that the refund is to be income in the income tax year to which the specified period of the longer period relates. More information is available in Inland Revenue's Standard Practice Statement [19/03](#): "Income equalisation deposits and refunds".

Trust distributions & debt forgiveness

Q: With inter Trust loans as discussed. Where one trust which is the income generating trust lends money to another trust to purchase the homes for the beneficiaries (no income earning). How to you eliminate those loans? Is it better to make capital distributions from the 1st Trust to the beneficiaries/settlers and then they on lend the funds to the 2nd Trust? It just seems otherwise those and will always sit there until such time the Trusts are wound up.

A: *Yes, that is an option but it would be case by case depending on what else is in the trusts etc.*

Q: How do you know what method was used in the past...beyond 7 years there is a lack of records.

A: *You have raised a very good point. Firstly, in some cases debts were not forgiven they were paid in 'cash' and then that amount gifted to the trust. The clawback does not apply to this situation as this is not a "forgiveness of debt". In terms of records whenever a debt has been forgiven to a trust for natural love and affection records of this must kept for the duration of the trust in accordance with sec 22B of the Tax Administration Act 1994 as follows:*

22B FURTHER RECORDS REQUIRED

22B(1) [Retention of records by trustee]

A trustee to whom either section [EW 44](#) or [EZ 39](#) of the Income Tax Act 2007 [applies](#) must keep, in English or te reo [Maori](#), [records](#) of—

- (a) the amounts of debt forgiven by creditors; and
- (b) amounts distributed to the trust's [beneficiaries](#).

22B(2) [Safe custody]

A trustee required to retain [records](#) must—

- (a) take all reasonable precautions for the safe custody of those [records](#); and
- (b) retain those [records](#) for as long as the trust exists.

Holding costs on private land now taxed

Q: Holding costs on private land - I would have thought painting could be deducted as it contributed to the capital gain.

Q: The repainting of \$9000 would have also resulted in the gain on sale of asset? she was only there for 25 days

A: There is a possible argument, although not as strong as the Pacific Rendezvous argument we promoted for the interest. The opposing argument is that the painting was done solely for her private enjoyment as a holiday home, regardless of the days she spent there. It wasn't done for any other purpose or use, and because it was not a capital improvement it doesn't add to the cost of land and building. And it is doubtful that the repainting contributes to an increased capital gain.

So, while there is "an" argument, I tend to rate it less than 50/50 !!

Q: Who is going to keep 110% accurate records of the use of a holiday home (say) when one doesn't know in advance that the bright-line test will need to be applied?

A: Yes, good point. Especially for improvements like a new deck where the invoices may not be kept. I agree 5 years can be a long time to keep things for private assets where there is no expectation of having a bright-line profit.

Even if there were no invoices or records kept (say for the new deck) I would still argue that a deduction should be claimed for a reasonable estimate of the cost to build.

FBT exemption on cars during Covid-19

Q: Why would you include Saturday and Sunday in the calculations if they don't work weekends?

A: The concept of "availability" includes weekends unless there is an express prohibition on the use of the vehicle (in writing) made by the employer to employee. And also provided the employee has another car for their private use.

Trust-owned property and rental

Q: Can beneficiary be reimbursed for expenses by journal?

A: Most definitely and that would be the norm ie debit expense credit beneficiary account. So very unlikely it will not be reimbursed which is further evidence that while these statements are a good reminder to make sure "l's" are dotted and "t's" crossed they are a little on the 'alarmist' side!

Leaky homes and R&M claims

Q: With leaky home issues, can the IRD re-open the time bar for that too if they decided something should be audited?

A: In my view an emphatic “no”. After the 4 year time bar has passed there is no way IRD can reopen, and we should resist any attempts to do so. Claiming the R&M was not wilfully incorrect nor fraudulent. There has always been an acceptable tax position to claim it.

Julie Segedin (07) 282 0723 julie@jstax.co.nz

Carl Brandt (07) 282 0722 carl@carlbrandttax.co.nz

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