Chartered Accountants

John Nobilo, B.Com.,CA (PP)
Member of NZICA

NEWSLETTER

Issue 4
Nov 2023 – Jan 2024

INSIDE THIS EDITION

Business Payment Practices Act 1

Tax pooling & provisional tax 2

Australia's tax system compared 3

Research and development regimes 3

Snippets 4

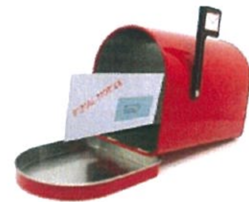
National's tax policies - property 4

Covid fraud 4

All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.

Business Payment Practices Act

The Business Payment Practices Act 2023 ('the Act') was enacted on 26 July 2023. It will require certain entities ('reporting entities') to publicly disclose specific information about their payment practices.



Making up over 97% of all businesses in New Zealand, small businesses often do not have the financial resources or market influence to cope with late or long payment times. Payment delays from customers can create significant cashflow problems. The purpose of the Act is to provide greater transparency in business-to-business payments and enable members of the public and other entities to access information about those payment practices, so that they can make informed decisions about who they want to do business with.

An entity will be a reporting entity and subject to the disclosure requirements under the Act if, at each of its two preceding accounting periods, it had (together with its subsidiaries):

- total revenue of more than NZ$33m, and
- total third party expenditure (excluding salaries and wages) of at least NZ$10m.

A reporting entity will be required to make disclosures every six months on a publicly searchable register. The first disclosure period runs from 1 July 2024 – 31 December 2024, with the second disclosure period running from 1 January 2025 – 30 June 2025. However, only reporting entities which had (together with its subsidiaries) total revenue exceeding NZ$100m at each of its two preceding accounting periods are required to disclose from the first disclosure period commencing 1 July 2024. This phased approach provides additional time for smaller reporting entities to transition to the new rules, for example, to change or put in place new processes and systems to be able to comply.

Reporting entities will have up to three months after the end of a disclosure period to file their disclosures.

The points below summarise the different types of information that will be required to be disclosed by a reporting entity every six months:

- The average payment time for invoices (from when invoices are received to when paid in full).
- The percentage of the total number of invoices paid in full within specified day periods.
- The percentage of the total value of invoices paid in full within specified day periods.
- Whether the reporting entity allows other entities to use e-Invoicing.
- Whether the reporting entity uses standard payment terms and what those terms are.

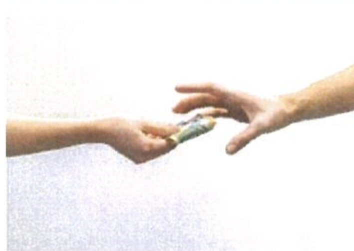
There are a number of exclusions (i.e. information not required to be disclosed) from the disclosed information for items such as: salary/wages, tax, rent or lease, utilities charges, transactions not in NZD and intra-group transactions.

Penalties will apply for non-compliance, including up to $9,000 for failing to make a disclosure, and up to $50,000 for an individual or $500,000 for an entity for filing false or misleading information.

If your business meets the definition of a reporting entity, it is time to start considering what internal processes will need to be implemented to ensure compliance with the Act. For small businesses, it won't be too long before you'll be able to search the payment performance of some of your suppliers.

Tax pooling & provisional tax

For a standard 12-month year, provisional tax is due in three instalments. The instalments generally fall on the 28th day of the fifth, ninth and thirteenth months. However, this is varied in certain situations. For example, for a business with a 31 March balance date the instalments are due on 28 August, 15 January and 7 May. The second and third instalments being pushed out due to the Summer and Easter holidays, respectively.



Most taxpayers use the 'standard uplift' method where instalments are calculated based on the previous year's ("year-1") residual income tax (RIT) +5%, or the RIT from two years ago ("year-2") +10% if the prior year tax return has not been filed.

Understanding the way provisional tax works is complicated by the fact there are different rules for the purpose of late payment penalties versus interest. This means it is possible to pay the required amount on-time, as calculated under the standard uplift method, and not be subject to late payment penalties. But then incur interest from that same point because the final liability for the year exceeds the provisional tax amounts paid.

Whilst the rules can be complex, concessionary changes over the past few years have made the regime less onerous and costly. For example, provisional tax use to be calculated as at a particular instalment date based on the most recently filed income tax return, whether year-1 or year-2. If profits declined across the two prior tax return periods, the provisional tax payable would not be reduced until the most recent return was filed and only for subsequent provisional tax payments.

Under current rules, the amount due at a past instalment is re-calculated based on the lesser of year-2 or year-1. This 'lesser of' approach means there is less risk in choosing to pay a lower amount of provisional tax based on the prior year's estimated taxable income, even though the income tax return for that period has not been filed.

Finally, the practical effect of tax pooling means late payment penalties and interest based on punitive Inland Revenue rates should be a thing of the past.

To illustrate the way tax pooling works is to imagine a large company like Air NZ at the start of Covid. Things were looking up, then Covid hits and profit plummets. Any provisional tax previously paid would likely be spare and otherwise refunded by Inland Revenue at a low interest rate. Alternatively, if Air NZ paid its provisional tax to a tax pooling intermediary, that tax can be sold to other businesses 'effective' as at the date Air NZ paid it. Then let's say another business has outperformed expectations and therefore has a large tax bill, but under the provisional tax rules, interest is being charged from its third provisional tax date of 7 May. It can go to Air NZ and purchase some of its excess tax that it paid on 7 May.

There is a cost to tax pooling, but it is less than what Inland Revenue charges and Air NZ would receive a margin that is more than what Inland Revenue would have paid. Everyone wins, well almost everyone…

At the extreme, if a business has a borrowing rate similar to the tax pooling cost, it could choose not to pay any provisional tax during the year and instead use tax pooling to purchase the exact amount required at each instalment date once their tax return has been filed. With the current interest rate on underpayments of 10.91%, tax pooling should be front of mind when the provisional tax dates roll around.

© 2023

Australia's tax system compared

With the recent inflation driven surge in the cost of living, apparent increase in crime and seemingly constant complaints about the education and health systems, some New Zealanders are considering packing up and moving to Australia. But is the grass really greener – at least from a tax perspective?

Firstly, unlike New Zealand, Australia has a capital gains tax (CGT). The amount payable is tied to the taxpayer's respective tax rate, and a person's main residence should not be subject to CGT on sale. A 50% CGT discount is available where an Australian tax resident or Australian Trust has owned the asset for at least 12 months prior to selling. Companies do not qualify for the discount.

Another tax imposed on property in Australia is stamp duty. This is a tax that is imposed when buying land (as well as other specific transactions). The amount of stamp duty varies by state and is imposed on top of a property's purchase price. A $500,000 residential home in Queensland will trigger stamp duty of around AUD$16,000. For the same-priced home in Victoria, you're looking at around AUD$25,000.

Like New Zealand, Australia also has a progressive tax rate system for individuals. The below table compares the two countries' tax rates for individuals.

New Zealand (NZD)		Australia (AUD)*	
$0 - $14,000	10.5%	$0 - $18,200	0%
$14,000 - $48,000	17.5%	$18,200 - $45,000	19%
$48,000 - $70,000	30%	$45,000 - $120,000	32.5%
$70,000 - $180,000	33%	$120,000 - $180,000	37%
>$180,000	39%	>$180,000	45%
*Australian tax rates exclude the 2% Medicare levy, which applies to most residents.			

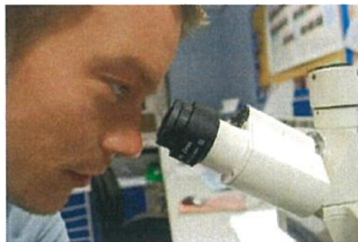
Although the highest personal marginal tax rate in Australia of 45% seems daunting, when comparing tax paid by low-middle income earners in each country, the results are surprising. The below table compares the amount of tax payable in each country (excluding Australia's 2% Medicare levy) if an individual earned the level of income in the first column (in the respective country's currency).

Annual income	Tax on income in NZ	Tax on income in Australia
$40,000	$6,020	$4,142
$80,000	$17,320	$16,467
$120,000	$30,520	$29,467
$200,000	$50,320	$60,667

At one end of the spectrum, the tax-free threshold skews the comparison for lower income earners, and the top rate of 45% skews the cost at the other end of the spectrum. But given such a small difference exists for the average salary/wage earner, it would be reasonable to assume a person's tax bill in Australia will be higher as soon as stamp duty and CGT is incurred - but maybe you get what you pay for.

Research and development regimes

New Zealand currently has two different tax concessions aimed at encouraging research and development (R&D). Namely, the Research and Development Loss Tax Credit (RDLTC) and the Research and Development Tax Incentive (RDTI).



The RDTI has been in effect for eligible R&D activities from the 2019/2020 income year and was introduced to support the then Labour Government's target of raising the total amount of R&D performed in New Zealand to 2% of GDP by 2028.

If an entity qualifies for the RDTI regime, it is able to claim a tax credit calculated as 15% of its total eligible R&D expenditure. This tax credit can be refunded when the taxpayer is in a tax loss position.

The RDLTC has been around for longer than the RDTI – it applies to income years that commenced on or after 1 April 2015.

The RDLTC acknowledges that companies engaged in intensive R&D tend to have significant up-front costs, and as a result, tax losses in their early years. Hence, the aim of this regime is to assist with cashflow by allowing an eligible company to 'cash-out' (and forfeit) its tax losses in an income year, in exchange for a payment; RDTLC payment = eligible tax loss x corporate tax rate (28%).

© 2023

The way the regime is intended to work, is that the payment is subsequently repaid as the company derives taxable income – as the company has forfeited its tax losses, it will repay the RDLTC through paying income tax on its taxable income.

Subject to meeting the eligibility criteria of both regimes, a business can claim both the RDTI and RDLTC under the same R&D activity. However, a few notable differences exist between the regimes:

- Only New Zealand Companies can be eligible for the RDLTC, whereas partners, owners of look-through companies and members of joint ventures can also be eligible for the RDTI if certain conditions are met.
- There are differing definitions of R&D - the RDLTC uses the accounting definition NZ IAS38 whereas the RDTI definition of eligible R&D is set out in the legislation.
- The RDLTC expenditure can only be claimed for R&D expenditure incurred in New Zealand, whereas the RDTI can include foreign expenditure, up to 10% of the eligible spend.
- To qualify for the RDTI, a business must have spent at least $50,000 on eligible R&D expenditure, whereas the RDLTC does not have a minimum expenditure requirement.
- The RDTI is not required to be repaid, while certain events will trigger the repayment of the RDLTC (if it hasn't already been repaid through the mechanism outlined above).
- The RDTI requires that activities are approved before claiming the expenditure with strict deadlines applying. For the RDLTC the activities and expenditure are submitted together at the end of the financial year.

The type of activities that can qualify under the regimes are broad, hence if your business has or is looking at incurring expenditure on creating or improving processes, services or goods, even for internal purposes, it may be worth finding out if the regimes could apply.

Snippets

National's tax policies - property

Given the outcome of the general election, we expect to see legislation that will make the following tax changes.

The ability to claim interest deductions on debt relating to some residential rental properties acquired before 27 March 2021 will be progressively phased out. National's tax policy promises to retain a 50% allowable deduction in the year ended 31 March 2025 (rather than reduce it to 25%), increase it to 75% in the year ended 31 March 2026, and fully restore 100% interest deductibility from April 2026 onward. From start to finish this means the interest deductibility on affected properties will be:

Date Interest Incurred	% interest claimable
1/4/21 – 30/09/21	100%
1/10/21 – 31/03/22	75%
1/04/22 – 31/03/23	75%
1/04/23 – 31/03/24	50%
1/04/24 – 31/03/25	50%
1/04/25 – 31/03/26	75%
1/04/26 onwards	100%

National also proposed to reduce the brightline period for residential investment properties from 10 years (or five years if the property is a 'new build') to two years by July 2024. As a result, properties acquired before July 2022 should not be subject to the brightline test on sale.

Given how complex the current rules are, there is a risk that unwinding them will be equally complex, hence we are unlikely to be out of the woods yet.

Covid fraud

Given the necessity of providing fast relief, the wage subsidy scheme provided during COVID in NZ was largely based on trust.

Today, MSD operates a Wage Subsidy Integrity and Fraud Programme aimed at ensuring the integrity of the payments and who received them. So far, 38 people have been brought before the courts in relation to wage subsidy misuse, 37 businesses have civil recovery action underway to recover payments and 11 cases of significant and complex alleged wage subsidy fraud have been referred to the Serious Fraud Office. By and large, businesses in NZ were sincere in their wage subsidy claims, but overseas there are some more extreme examples where this was not the case.

Each year, the Association of Certified Fraud Examiners selects the five most scandalous fraud stories of the year. One of those stories was the arrest of 47 people affiliated with a Minnesota based non-profit 'Feeding our Future', which defrauded USD$250 million in COVID relief funds through claiming to feed children during the pandemic. The elaborate scheme used various fake documents, invoices and shell companies to give the appearance of providing meals to children, while using the money to purchase luxury cars, jewellery and coastal property abroad.

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

© 2023

ACCOUNTANTS CLIENT NEWSLETTER – ALTERNATIVE ARTICLE

ISSUE 4: NOVEMBER 2023 – JANUARY 2024

Dividends – get the basics right

When the top personal tax rate for individuals increased to 39% from 1 April 2021, it was not surprising to see an increase in the number and quantum of dividends declared by companies (owned by individuals) in the lead up to the change.

With the anticipated increase in the Trust tax rate from 33% to 39% from 1 April 2024 next year (for trusts with a 31 March balance date) it is likely a similar increase will occur. Given the expected 6% difference in tax payable it is reasonable to assume Inland Revenue will review any dividend payments it happens to encounter as part of their audit activity. Worst case, Inland Revenue could assert a dividend was not 'properly' documented and therefore not legally effective or the process followed meant that it was "derived" by the trust after the 39% rate came into effect. It is therefore important to get the basics right.

Most companies and accountants have standard templates, it is a good idea to check these are up-to-date with current legislative requirements as these do change over time.

A company is generally able to attach imputation credits (comprising previous tax paid) to a dividend, and where it is being paid to a trust that does not hold a certificate of exemption from resident withholding tax (RWT), RWT will need to be withheld and paid to Inland Revenue by the 20th of the month following payment. A late payment of RWT would comprise a potential 'flag' that a dividend was not properly executed 'on-time'.

Dividends are not always paid in cash. It is common for a company to declare a dividend and credit the amount to its shareholders' current accounts. The process of journalling the dividend can comprise "payment" as it provides the mechanism or entitlement for a shareholder to extract cash from the company in the future or is often used to clear an 'overdrawn' shareholder current account. A potential risk is that if the journalling is completed late, say after 1 April next year, the dividend income could in fact be derived at that time and therefore taxable at 39%. If a dividend is to be paid in cash, it should be paid prior to 1 April 2024.

Some may try to argue the date of the dividend resolution is sufficient. However, rather than rely on a 'view', paying the cash or entering the journal should put the matter beyond doubt.

Care and attention need to be taken, to ensure getting the basics wrong does not cause a problem.