Chapmans
CHARTERED ACCOUNTANTS

New 39% top tax rate

Key changes:

- The new top tax rate of 39% comes into effect from 1 April 2021 and applies to all amounts over $180,000 earned by individuals.

- The FBT flat rate will increase to 63.93% and the alternate rate will increase to 49.25% from the 2021-2022 income year.

- The new 39% withholding rate on interest will not apply until 1 Oct 2021.

- The DWT rate on dividends will remain a flat rate of 33%.

What should you be doing prior to 31 March 2021?

- Consider paying out dividends to clear retained earnings and imputation credits.

- Review and consider restructuring business ownership.

- Review shareholder salaries.

- Consider paying out any bonuses or other accrued employee entitlements.

Should companies consider paying out a divided before 1 April 2021?

Where the owners of the company are individuals in the top tax bracket, a payment of a dividend prior to 1 April 2021 should be considered.

Businesses may also wish to consider paying the third instalment of provisional tax early (prior to 31 March 2021) to enable the imputation credits to be available to attach to the dividend.

It is unlikely that paying a dividend or bringing forward a provisional tax payment would be viewed as tax avoidance by Inland Revenue.

Level 1, Westgate Chambers,
3A/2 Maki Street, Westgate,
Auckland 0814.
PO Box 84 148 Westgate 0657

P 09 831 0205 | F 09 831 0206
E team@chapmans.co.nz
www.chapmans.co.nz

Should you review your ownership structure?

When considering a business restructure, it is important to have commercial reasons (for example asset protection, estate planning).

While the transfer of assets to a trust is not in itself tax avoidance, Inland Revenue could challenge this where the sole driver is due to the increase in the top personal tax rate.

While there may be good commercial reasons for restructuring corporate ownership from an individual to a trust for example, it is important to be aware that Inland Revenue are monitoring changes in behaviour through its new automated system and the new trust disclosure rules.

Please note Inland Revenue could still consider an increase to the trust tax rate if the use of trusts starts to change dramatically because of the increase in the top personal tax rate.

Other tax considerations

- A change in shareholding of a company could give rise to income tax consequences such as the loss of imputation credits and tax losses.

- Where an LTC is used, consideration may be given to revoking LTC status prior to 31 March 2021. However, it is important to note this will result in a deemed disposal of the assets held by the LTC which could give rise to income tax consequences such as depreciation recovery income.

- There are new trust disclosure rules coming into force from 1 April 2021 which require certain disclosures to be made regarding settlors and beneficiaries receiving distributions. As mentioned above, Inland Revenue will be using their new automated system to carefully monitor the use of trusts.

Please consult with your Chapmans advisor if you are considering changing the ownership of your business.

Review shareholder salaries?

In light of the increase in the top personal tax rate it may be timely to review the current salaries paid and consider leaving some profit in the company and/or paying a salary to a spouse for example.

However, it is important to be aware of the anti-avoidance measures Inland Revenue already have in place, for example the personal services attribution rules and the expectation of a market salary (from the famous Penny & Hooper case).

Therefore, any salary changes will need to be able to be justified as being a market salary and any payments to a spouse would need to be for genuine services provided to the company.

Consider paying out any bonuses or other accrued employee entitlements?

Provided actual services have been provided to the company to justify the payment of a bonus then it is unlikely Inland Revenue would take issue with this.

Summary

While there are some options available in light of the increase in the top personal tax rate, it is important to be aware of the above issues.

Generally, where payments are made to a person who performs the work on behalf of the company, Inland Revenue will expect to see most of the income attributed to that person and taxed at their marginal tax rate. Where the nature of a payment made suddenly changes from income to capital this is something Inland Revenue are likely to take an interest in.

Please feel free to contact us to discuss paying out dividends or any restructuring options that might be available prior to 1 April 2021.