Chapmans
CHARTERED ACCOUNTANTS

Tax Update – July 2023

Following the recent budget announcement, the government has introduced the Taxation (Annual rates for 2023 – 24, Multinational Tax and Remedial Matters) Bill which contains important tax change s, the most controversial being the proposed increase in the trustee tax rate to 39%.

Key changes

- Increase in the trustee tax rate to 39%.
- Implementing the OECD Global Anti-Base Erosion (GloBE) rules to ensure multi-national enterprises (those with a turnover of greater than NZ$1.3b) are subject to a minimum 15% tax rate on income attributable to NZ.
- Amending the tax treatment of backdated lump sum ACC and MSD payments.
- Introducing a 3% kiwisaver government contribution to recipients of paid parental leave who also make their own contribution of at least 3%.
- Introducing further tax relief measures for flood-hit businesses in the North Island.
- Clarifying the bright-line main home exemption where a main home is being constructed.

Proposed change in trustee tax rate to 39%

Trustee income is income that is not beneficiary income. Currently income that is retained by a trust and not distributed to beneficiaries is taxed at 33%. Once this income has been taxed at the trustee level it is able to be distributed to beneficiaries without any further tax obligations.

The proposal is to increase the trustee tax rate from 33% to 39% to match the top marginal tax rate

Inland Revenue recognises there is a tax advantage to leaving income in a trust rather than distributing to beneficiaries on the top marginal tax rate.

There will be concessions available for deceased estates and disabled beneficiary trusts which will allow trustee income to be taxed using the individual beneficiaries marginal tax rates rather than the trustee rate.

Please note there will also be a specific anti avoidance rules in place to stop distributions being made to a company to avoid the 39% tax rate.

The new rate will apply from the start of the 2025 income year (ie **1 April 2024**).

What is the likely impact of the increased trustee rate?

- Consideration should be given to paying out fully imputed dividends prior to 31 March 2024 where a trust is the shareholder.

- Income can still be allocated to beneficiaries on lower marginal tax rates (as is current practice) and a credit to the beneficiary current account is acceptable (rather than physical payment). Please be aware that any decisions made need to be consistent with the purpose of the trust bearing in mind the implication of the new Trusts Act.

- There is still scope to distribute and hold income in companies or introduce a holding company structure (subject to considerations).

- Trustees are likely to be more attracted to investing in Portfolio Investment Entities as the tax rate is capped at 28%.

We expect this change will result in many taxpayers reviewing their affairs and considering the need to retain a trust structure going forward. Trusts are still a good vehicle for investment purposes and asset protection and will still likely provide flexibility from a tax perspective. However, consideration should be given to whether trusts should be wound up.

Please note this legislation is unlikely to be passed before the election, and depending on the result of the election this change **may** not eventuate. Watch this space!

Amending the tax treatment of backdated lump sum ACC and MSD payments

Currently a lump sum back payment of ACC is unfairly taxed at a higher tax rate due to our marginal tax rate system.

The proposal is to fix this problem by introducing an average basic rate for lump sum payments relating to more than one year.

For MSD payments, the tax that is deducted by MSD will be treated as a final tax (and no further tax will be payable).

Tax relief measures for flood-hit businesses in the North Island

A rollover relief (similar to what was introduced following the Christchurch earthquakes) is proposed for assets destroyed or made economically useless as a result of the adverse weather events in January and February this year.

The proposal is to allow the deferral of income recognition resulting from insurance proceeds received which would otherwise create depreciation recovery income on the deemed disposal of an asset.

To qualify you must intend to rebuild or replace the asset before the 2028 income year otherwise depreciation recovery income will be recognised in that year.

Clarifying the application of the bright-line main home exemption for properties under construction

When the 10-year bright line test was introduced the main home exemption was also amended to introduce an apportionment rule for applying the main home exclusion based on actual use with a 12 month buffer period to cover situations where taxpayers might go on holiday and leave the property vacant for up to 12 months.

It was also clarified that this buffer period would include a period of time where the main home was being constructed and where this was the case there would be no time limit.

There was uncertainty as to whether this also applied to property acquired on or after 29th March 20 18 but before 27th March 2021 (ie subject to the 5 year bright line test).

The relevant legislation will be amended to clarify that, for property subject to the 5 year bright line test, the construction period will be ignored in determining whether the main home exclusion applies.

The key with both exclusions is that the constructed property **must actually be used as the main home** and therefore we consider there is a risk the main home exemption will not apply if the property is sold within the relevant bright line period and was never lived in. In this case bright-line capital gains tax may apply.

If you have any questions regarding these proposed changes, please contact your Chapmans advisor.