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Trustpower v CIR

The case concerned the tax deductibility of costs for obtaining various resource consents. These consents were obtained by Trustpower with respect to potential electricity generation projects - as part of its overall development plan/strategy.

Trustpower claimed deductions for these costs, simplistically, on the basis this was feasibility expenditure incurred in the ordinary course of business.

The Commissioner, on the other hand, maintained that the expenditure was on capital account.

The Supreme Court considered whether or not the consents were "feasibility expenditure".

The Supreme Court has held that as the resource consents related to specific projects, these are capital expenses and not feasibility expenditure. That is, the costs relate to specific projects that would be capital assets if the projects came to fruition.

And, as the projects could not proceed without the resource consents, the consents "represented tangible progress to [the projects] completion" - making it capital expenditure.

The SC judgement appears to indicate that only very "preliminary expenditure" may qualify as feasibility expenditure.

Taxation (Business Tax, Exchange of Information, and Remedial Matters) Bill

The Bill was introduced in Parliament yesterday. It includes changes to simplify the taxation of small businesses and introduces new disclosure requirements for foreign trusts following the inquiry led by John Shewan.

Foreign Trusts

Registration

NZ resident trustees of foreign trusts will have to register the trust with Inland Revenue. For existing foreign trusts, the registration has to be done by 30 June 2017. For foreign trusts formed after the date of enactment, registration has to be done within a month of establishment.

In addition, the NZ resident trustee has to provide details of the settlor, beneficiaries and the trust deed to Inland Revenue. Details will include the names of the settlor/beneficiary, their country of residence, tax file numbers, email addresses, residential addresses, etc.

Annual returns

NZ resident trustee will have to file an annual return including the trust's financial statements and details of settlements and distributions made during that year.

Annual returns to be filed within 3 months of the trust's balance date. If it does not have a balance date, then by 30 June following the end of the tax year.

Existing foreign trusts have to file their first annual return by 30 June 2018.

New migrants

A grace period of 2 years is provided for New Zealand trustees who are new migrants (provided they are not professional trustees).

Sanctions

Foreign sourced income of a foreign trust with NZ resident trustees is exempt income for NZ tax purposes. However, under the proposed rules, if the NZ resident trustee does not meet the compliance obligations (both disclosure and annual returns), this exemption will not apply.

Provisional Tax - New Method

A new method for the payment of provisional tax is proposed - the accounting income method (AIM). Simplistically, accounting software providers can obtain an AIM certification. This means that taxpayers who use AIM-certified software for accounting can use their current year tax adjusted income (as calculated per the software) to make provisional tax payments, provided the accounting packages are kept up to date.

To use the AIM method, the taxpayer must:

(a) elect to use it before their first payment date;

(b) use an AIM-capable accounting package that is up to date;

(c) have gross income below $5 million or have approval from the Commissioner as a previous user of AIM if their income is over $5 million; or

(d) be a member of the class of taxpayers with income over $5 million using a software package the Commissioner has approved for AIM.

Other business tax changes

Use of money interest (UOMI)

For taxpayers using the standard uplift method, no UOMI for the first 2 provisional tax dates - provided the provisional tax payments are made in full by the payment date. Applies from beginning of 2017-18 year.

Safe harbour threshold

Currently, individual taxpayers do not have to pay UOMI if their residual income tax for the year is less than $50,000. Under the proposed change, the threshold will increase to $60,000 and will now also apply to non-individuals.

Safe harbour only available to taxpayers who have made 3 payments under the standard method. Taxpayers who have made 2 payments under the standard method cannot change to the estimation method for the third instalment if they want to use the safe harbour. Applies from the 2017-18 year.

Provisional tax attribution

Shareholder-employee and company can agree that the provisional tax payment obligations for the shareholder salary be transferred to the company. The company will pay the provisional tax and transfer the tax credits, out of its provisional tax paid, to the shareholder at the end of the year. Applies from the 2018-19 year.

Late payment penalty

The 1% incremental late payment penalty is removed for:

(a) GST tax periods ending after the 24 March 2017;

(b) Provisional tax and income tax for the 2017–18 or later income years; and

(c) Working for Families tax credit overpayments for the 2017–18 or later income years.

Disclosing reportable unpaid tax to credit reporting agencies

Proposed amendment will allow the Commissioner to disclose taxpayer information and significant tax debt details to approved credit information agencies. This will apply to non-individuals only. The tax debt must be $150,000 or more; or more than a year old and more than 30% of the taxpayer's annual income for the past year. Applies from 1 April 2017.

Information sharing with Companies Office

Inland Revenue, under the proposed amendment, can share information with the Registrar of Companies in relation to the following breaches of the Companies Act:

(a) a serious breach of a director's duty to act in good faith and in the best interests of company (section 183A(1));

(b) false statements (section 377);

(c) breaches of various orders and prohibitions from directing, promoting and/or managing companies (section 382(4), section 383(6), section 385(9), and section 385AA(9));

(d) breach of restrictions on involvement with phoenix companies (section 386A(2).

Other proposed amendments

(a) Amendments to simplify calculation of deductions for dual use vehicles and premises;

(b) RWT exemption certificates will be issued for an indefinite period (no longer required to renew annually);

(c) Annual FBT return threshold increased from $0.5m to $1m of PAYE/ESCT;

(d) Taxpayers now have the option whether or not to use rule re timing of deductions for employee income paid 63 days after the end of the income year; and

(e) Amendments to comply with the G20/OECD standard for Automatic Exchange of Financial Account Information in Tax Matters.

ANZCO Foods Limited v Commissioner of Inland Revenue: [2016] NZHC 1015

While the High Court judgement was released in March this year, the case is an interesting one that is worth a read. Here is a summary:

The taxpayer, a meat processing company, purchased, from a third party, a meat processing plant (including land) that was no longer in operation ("the Waitara plant"). The third party had bought the Waitara plant from a competitor of ANZCO ("the vendor").

There was an encumbrance on the land - the land could not be used for slaughtering/processing meat for a period of 20 years. Following a settlement between ANZCO and the vendor, ANZCO made a payment so that the encumbrance could be varied - which allowed ANZCO to use the Waitara plant to process meat (the restriction on slaughtering meat remained).

ANZCO recorded the payment as depreciable intangible property (namely, the right to use land) and claimed depreciation for tax on a straight line basis. ANZCO contended that as part of the settlement it received a chose in action, which could be assigned, and therefore was intangible property.

The CIR disagreed with this and disallowed the deductions. The CIR contended that the settlement ANZCO reached simply allowed it greater use of its own land - that no "new" rights were created. Furthermore, ANZCO did not acquire any rights that were "diminishing in value" as required for the purposes of the definition "depreciable intangible property".

The HC held in favour of the CIR. Mander J held that all ANZCO obtained was a variation of the encumbrance - that the vendor did not have any actual rights to use the land that it could "give" to ANZCO. That ANZCO received, when it bought the land, all the rights to use the Waitara plant, other than those ring fenced by the encumbrance. When settlement was reached, the right to use the Waitara plant for processing was conveyed - this was for an indefinite term - and therefore this could not be subject to depreciation as it was not for a definite term nor could it be expected to decline in value.

Employee share schemes

The Taxation (Transformation: First Phase Simplification and Other Measures) Bill was enacted on 2 June 2016 and included amendments to the Income Tax Act 2007 so that the taxation of employment income in the form of employee share schemes is now dealt with under the PAYE system.

The following table, from Inland Revenue's special report (Simplifying the collection of tax on employee share schemes) summarises the changes:

When income arises	Pre 1 April 2017	Post 1 April 2017
When the employee acquires shares – section CE 2(2)	Employee must report income and pay tax.	(i) Employer reports income for current employees. (ii) Employer may choose to withhold tax. (iii) Employee must pay tax if (ii) does not apply. (iv) Former employees must report and pay tax unless (ii) applies.
When employee disposes of rights to acquire shares to non-associates – section CE 2(3)	Employee must report income and pay tax.	Employee must report income and pay tax.
When an associate of the employee acquires shares – section CE 2(4)	Employee must report income and pay tax.	(i) Employer reports income for current employees. (ii) Employer may choose to withhold tax. (iii) Employee must pay tax if (ii) does not apply. (iv) Former employees must report and pay tax unless (ii) applies.
When an associate disposes of rights to acquire shares to non-associates – section CE 2(5)	Employee must report income and pay tax.	Employee must report income and pay tax.