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NEWSLETTER

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INSIDE THIS EDITION

PAID PARENTAL LEAVE CAN BE A COST TO THE EMPLOYER

Paid parental leave entitlements in New Zealand have been highlighted in the media recently following a member's ballot in which the Labour Party's Bill was drawn. The Bill seeks to gradually extend paid parental leave from 14 weeks to 26 weeks.

For workers to be entitled to paid parental leave they have to have worked with the same employer for at least six months prior to commencement of the parental leave. Parental leave payments are administered by the IRD. However, if there is any uncertainty labour inspectors from the Department of Labour (DOL) determine eligibility. If a person is declared ineligible for paid parental leave, they may take the matter to the Employment Authority.

As evidenced by a recent case, the rules are interpreted rigidly with no room for discretion. The case (*Yarrell v Department of Labour 2011 NZERA)* involved a woman in Christchurch who was made redundant as a result of the earthquakes. She was able to find alternative employment immediately, but was only working for her new employer for five months before she went on maternity leave. The DOL ruled that, as she had not been with the same employer for the six months prior to commencing leave, she was ineligible for paid parental leave. This was upheld by the employment relations authority who confirmed the DOL's ruling.

Where an employee is dismissed in the six months prior to taking parental leave, and that dismissal is

found to be unjustified, the loss of paid parental leave could be included in the amount of compensation received.

This outcome is supported by the Employment Court decision *McKendry v Janine Jansen & Anor 2010*, which considered whether loss of entitlement to paid parental leave was a lost benefit and therefore subject to compensation. The Court concluded that "the purpose of an award of compensation is to restore the grievant to the position they would have been in, but for the grievance", and therefore the employee was entitled to compensation for the loss of parental leave.

In that particular case, the employer was required to pay *McKendry* for the period from dismissal until she would have commenced parental leave, which was a little over 13 weeks, and then for the full period of the parental leave, which was a further 14 weeks.

If paid parental leave is extended to 26 weeks, an employer's potential liability in this situation would also increase if the employee is found to be unjustifiably dismissed in the six months preceding commencement of parental leave.

Although the Government has indicated it would veto the Bill at this stage, it has not ruled out discussing extending paid parental leave in the future. The wider application of the provisions is likely to be the subject of that future discussion.

INTEREST AND PENALTIES

Having now passed 31 March, which is the income tax return due date for most businesses, tax returns should now be lodged and tax positions crystallised for the 31 March 2011 year.

The current economic climate is reflected in anecdotal evidence that the number of businesses in a tax loss position is comparatively high. For those businesses that have made a profit, cash flow is still likely to be tight, making it difficult to meet tax payment obligations.

In the event tax is owed to the IRD, without prompt action the combination of interest and penalties charged can quickly add-up. Since 16 January 2011 the IRD use-of-money interest (UOMI) rates on under and overpaid taxes were 8.89% and 2.18% respectively. It was recently announced that from 8 May 2012 these rates will reduce to 8.4% (on underpaid tax) and 1.75% (on over paid tax). However, penalty rates remain high; a total of 5% for the first month and 1% for each following month.

If a person finds themselves in the situation of being unable to pay the total amount owing by the due date, the following options should be considered.

IRD Arrangement - at a minimum, if a person owes tax after the due date and penalties are being charged, the IRD should be contacted to discuss the situation. If an instalment arrangement is entered into, some penalties can be remitted if the terms of the arrangement are met.

Tax Intermediary - the option of using a tax intermediary has also become common practice. Intermediaries allow taxpayers who have overpaid their tax to sell those credits to another taxpayer. The credits can be transferred at the date it was originally paid. The transactions are generally able to be set-up to align the original payment with the purchaser's due date. From the IRD's perspective, the tax liability is met when the payment was due and interest and penalties are not charged (or are reversed if already charged). The cost of purchasing the tax is based on an interest rate that is less than that charged by IRD – everyone wins.

Tax can also be purchased from an intermediary if a tax liability arises as a result of a reassessment, for example due to an IRD investigation or voluntary disclosure.

IRD Remission - in what can potentially be seen as a last resort, a 'request for remission' could be made. The IRD is obliged not to pursue taxpayers for outstanding tax if the recovery of the tax would be an inefficient use of the IRD's resources or would place taxpayers, being natural persons, in serious hardship. Although the serious hardship provisions can't extend to a company, the IRD may take into account whether the recovery of outstanding tax would place a shareholder in serious hardship.

As outlined, a number of options exist. Perhaps the most daunting of which is approaching the IRD for help. However, in the context of a worst case scenario the cost of not doing so could be worse.

ECONOMIC RELATIONS – NEW ZEALAND/AUSTRALIA

The Productivity Commissions of New Zealand and Australia are undertaking a joint scoping study on strengthening economic relations between the two countries. The intention of the study is to determine ways in which to reduce the regulatory burden on business, increase competition and encourage closer economic co-operation. An Issues Paper has been released in which specific questions are asked and feedback on suggested changes sought by 31 May 2012.

Issues for which responses have been requested include:

- the barriers faced by businesses when conducting business across the Tasman and the role of government in reducing or eliminating these barriers,
- what are the advantages and disadvantages of implementing a "currency union",
- is there a line that should not be crossed when integrating the two economies, and
- what should the end-point look like.

TRADE IN GOODS

Changes that are being considered include:

- relaxing Australian coastal shipping regulations,
- aligning food regulation standards between the two countries,
- aligning product standards (especially in relation to the regulations governing the newer areas of standard making e.g. energy efficiency) not only between New Zealand and Australia, but within Australian territories, and
- the linking of the countries' respective emission trading schemes by 2015.

SERVICES TRADE

Free trade in services has already been agreed between the two countries, subject to exclusions. Removal of some or all of these exclusions will be considered. These include areas of air services, broadcasting, third party insurance, postal services and coastal shipping for Australia, and air services and coastal shipping in the case of New Zealand. The integration of New Zealand and Australian banking regulation frameworks will also be considered.

CAPITAL FLOWS

Mutual recognition of imputation credits is to be investigated, taking into account the costs and benefits of doing so.

LABOUR MOVEMENTS

Although citizens of either country are free to live and work in either country without seeking authority from the relevant immigration department, there are still a number of barriers that deter people from moving between countries to work. For example, occupational licensing is still a barrier in a number of occupations. Occupation health and safety regulations could also be a burden for trans-Tasman businesses.

Other areas being considered include improving the creation and transfer of knowledge (such as integration in the higher education sectors and Government owned research institutes) and Government functions (such as having single trans-Tasman regulatory bodies).

Public responses will be used to produce a final report by 1 December 2012. More information can be found at:
http://www.transtasman-review.productivity.govt.nz/ .

ACC & ACCIDENT INSURANCE

Protection against the consequences of personal injury is an important part of operating any business. The options that are available include ACC CoverPlus, ACC CoverPlus Extra, no cover or acquiring insurance from a private provider.

All self-employed and shareholder employees should have some form of ACC cover. If no action is taken ACC CoverPlus is the default policy that will apply.

ACC CoverPlus provides 24/7 cover for all workplace injuries, weekly compensation based on 80% of an individual's earnings and access to a full range of medical and rehabilitation benefits. However, in self-employed or shareholder employee situations, this policy may not provide a satisfactory level of compensation and the requirements to satisfy a claim can be onerous. For example, a person's prior year income tax return may not be sufficient to prove a person's loss of earnings.

ACC CoverPlus Extra can provide a better option. It has all the standard benefits of ACC Coverplus. However, you can negotiate the level of cover, so that 100% is received should an accident occur. There is also no requirement to prove loss of earnings when making a claim. The additional cost of the cover is approximately 4% more than the default cost.

For example, a self-employed tradesman injures an arm and his doctor issues him with a certificate stating a recovery period of six weeks.

- If the tradesman has ACC Coverplus, he would have to report to ACC to confirm the number of hours worked each week to determine his entitlement to compensation and prove his loss of earnings, which can be difficult if his income fluctuates from year to year.
- Compared to ACC Coverplus Extra, under which the tradesman has previously agreed cover for $800 per week, ACC will pay this amount as weekly compensation with no adjustments and no requirement to confirm loss of income.

A shareholder-employee with no PAYE or shareholder salary allocation from the company would by default have no ACC cover, however they can apply for ACC Coverplus Extra.

Private Insurers offer additional options for accident and sickness cover through one of the commercial insurers. In some cases a combination of both ACC and private cover may provide the best solution.

Each individual should evaluate their own personal circumstances, risks and associated costs to determine the best option.

SNIPPETS

PENNY & HOOPER ARRANGEMENTS

Following the Supreme Court decision in *Penny and Hooper v C of IR 2011*, the IRD has recently outlined its approach to taxpayers who have similar taxable income reducing arrangements in place. In a letter to the New Zealand Institute of Chartered Accountants (NZICA) dated 24 November 2011, the IRD initially advised that if a taxpayer voluntarily discloses a Penny and Hooper style arrangement, the IRD will only re-assess the last two tax returns filed and shortfall penalties should not apply. The IRD will not seek to investigate earlier years within the four year time bar period.

In a further letter dated 13 March 2012, the IRD clarified that its approach, as set out in the letter referred to above, applies to the last two income tax returns filed that have Penny and Hooper style factors present, and only to returns filed before 24 November 2011.

For example, if a taxpayer's income tax returns for the periods ending 31 March 2010 and 2011 were filed before 24 November 2011 and included a position similar to Penny and Hooper, then the IRD will only re-assess those two returns and shortfall penalties would not apply.

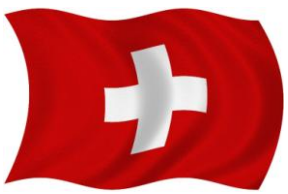
However, if a 2011 return was filed without a position similar to Penny and Hooper, and a Penny and Hooper style position was present in previous years, the IRD would look to re-assess the 2009 and 2010 returns.

If a return is filed after 24 November 2011, and includes a Penny and Hooper type arrangement, that return could be subject to shortfall penalties.

SWITZERLAND INVESTIGATE GERMAN TAX INSPECTORS

The Swiss Government has issued arrest warrants for three German tax inspectors in relation to the purchase of stolen bank information. The information apparently contained details regarding tax evading German citizens, which was apparently leaked from Credit Suisse in 2010. The purchase of the information led thousands of Germans to disclose their financial information to avoid prosecution.

The move by the Swiss Government to issue the warrants has led to tension between the two countries as the German Government had recently signed a tax treaty with Switzerland (although the treaty is being opposed by the German opposition). If approved, Switzerland will be required to tax accounts held by Germans and pass the proceeds to Germany. The deal would see Germans holding undeclared assets in Switzerland avoid facing penalties, but would require a one-off payment of between 21% and 41% of the asset value. The German authorities expect to raise over 10 billion Euros from the agreement.



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