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Client Newsletter

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Working for Families Tax Credits

Clients may not be aware that a further nine categories of "income" are included in addition to a person's taxable income in order to calculate the Working for Families Tax Credits (WFF) from the 2012 income year.

These are:

- Attributable trustee income;
- Attributable fringe benefits;
- PIE income;
- Passive income of children;
- Income of non-resident spouse;
- Tax exempt salary or wages;
- Pensions and Annuities;
- Other payments; and
- Income equalisation scheme deposits (excludes "adverse events" deposits).

The intention to include the above categories is more about the "economic" income rather than your usual income. This is so that a family's true economic income is captured from all sources to best target those who need Government assistance. Each of the above categories is explained in detail on the Inland Revenue website (www.ird.govt.nz/wff-tax-credits).

However, an explanation of "Other Payments" is in order since this appears to be a 'catch-all' category. According to the government, these would include the "value of payments...from any source" received by a family for day to day living expenses or to replace lost or diminished income.

This is a fairly wide inclusion on which the Inland Revenue has attempted to provide further clarification as follows.

Value of payments means:

- cash payments (including any amount credited to an account); or
- market value of benefits provided (does not intend to extend to free babysitting or Sunday dinners but yet to be seen!); or
- soft loans (loans made available to a person on favourable terms such as no or little interest payable and no set repayment date).

A payment is considered to be used to meet day-to-day living expenses if it is:

- replacing lost or reduced income (e.g. payments from an insurance policy that covers loss of earnings/employment); or
- used to pay regular liabilities (e.g. car payments, hire purchases, mortgage, loans); or
- used to meet the family's usual living expenses (e.g. monthly phone bill or power bill); or
- paid directly by another person on behalf of the principal caregiver (or their family members) for regular expenses (e.g. paying the power, phone, gas bills directly).

If the total amount received is more than \$5,000 for the tax year, then the total amount must be included as family income. However if the total amount for the year is less than or equal to \$5,000 then there is no need to tell the Inland Revenue.

Items specifically excluded from "Other Payments" are:

- any one-off capital payments (e.g. payment from the sale of a house);
- any payments that have specific purposes other than income-related purposes such as funeral grants, educational scholarships, lump sum ACC compensation payments, non-taxable payments under the Social Security Act 1964, charitable distributions or compensation based payments;
- any student loan payments including the living costs component;
- any income from a specified source that is declared not to be income for the purposes of the Social Security Act 1964 by regulations made under s 132 of that Act (e.g. payments to victims of crime);
- periodic payments received from the repayment of loan principal or when the recipient of the sale of an asset is paid in instalments;
- one-off gifts such as gift vouchers for a birthday; and
- payments that are received as a result of being adversely affected by an event declared to be an emergency event by the Commissioner of Inland Revenue.

KiwiSaver Changes

The minimum contribution rate for employers and employees will increase from two per cent to three per cent of gross salary or wages from the first pay period commencing on or after 1 April 2013.

Employers will need to change the contribution rates for existing KiwiSaver members if the employee's contribution rate is two per cent. If the employee currently contributes at either four per cent or eight per cent, there is no need to change the contribution rate. The default rate for new employees over the age of 18 years that are automatically enrolled into KiwiSaver has also increased from two per cent to three per cent of gross salary or wages from the first pay period commencing on or after 1 April 2013.

There are also changes in relation to employment of primary and secondary school children. As noted in our previous newsletter, the tax credit that covered the tax on their first \$2,340 of income from employment was repealed from 1 April 2012 and the entitlement to claim it was withdrawn in May 2012. Employers will now have to deduct PAYE/tax from their wages/scholar payments respectively. As a result, if the employee is a KiwiSaver member, the employer will have to make deductions at three per cent. However, if the employee is less than 18 years of age, employers will not need to make employer contributions.

2013 National Standard Costs for Specified Livestock

The national standard costs (NSCs) have been released for specified livestock for the 2012-2013 income year. These costs apply where the taxpayer has elected to value livestock under the NSC scheme for that income year. The NSCs for the 2012-2013 income year are given below.

Category of Livestock	NSC	Category of Livestock	NSC
Sheep		Deer	
Rising 1 year	\$34.70	Rising 1 year	\$114.80
Rising 2 year	\$22.60	Rising 2 year	\$56.50
Dairy cattle		Goats (meat and fibre)	
Purchased bobby calves	\$171.40	Rising 1 year	\$26.50
Rising 1 year	\$487.60	Rising 2 year	\$18.20
Rising 2 year	\$119.20	Goats (dairy)	
Beef cattle		Rising 1 year	\$155.50
Rising 1 year	\$339.20	Rising 2 year	\$26.40
Rising 2 year	\$190.10	Pigs	
Rising 3 year male non-breeding cattle (all breeds)	\$190.10	Weaners to 10 weeks of age	\$105.30
		Growing pigs 10 to 17 weeks of age	\$87.20

Insolvency Options

It has been four years since the financial crisis hit us but some businesses are still affected by it and in fact struggling. Others have gone into receivership or liquidation. This article attempts to identify the different options available to a company before it is closed down.

When a company runs into a financial difficulty, the owners can engage an insolvency expert who can assist with negotiating new terms with its bankers, creditors or customers. Often, the directors/shareholders sink more funds into a business with the hope of saving it and just as often they incur greater losses because it is too late by then.

If they seek help early they may have a choice of options rather than have unpleasant outcomes forced upon them. These options are summarised below.

Creditors' Compromise

This is an agreement between the company and the various classes of creditors. Creditors typically comprise of the lenders of money, trade creditors for purchases, Inland Revenue for unpaid PAYE and GST, hire purchase creditors, landlords etc.

The purpose of a compromise is to give the company an opportunity to survive by avoiding liquidation and trading out of its financial difficulty. Usually, the directors decide to allow the company to enter into a compromise with its creditors. On the other hand, the creditors will agree to a compromise only if they believe that they will get more money by not placing the company into liquidation. In order to reach a compromise, a majority in number representing 75 per cent in value of each class of creditors voting in favour of such a resolution is required.

Once an agreement is reached, all debts are frozen and no creditor can take action against the company during the term of the compromise. The outcome could be that the creditors are repaid either in full or in part. Where they are repaid in part, the balance of the remaining debt is written off by the creditors. Creditors' compromise is probably a good option where the business is fundamentally solid but is in financial difficulty.

Voluntary Administration

Voluntary administration is a rescue mechanism that can be initiated by the directors of a company in distress or a creditor with a charge over the whole or substantially all of the company's property.

This is done by appointing an independent and suitably qualified person (an administrator) to take full control of the company and its business with an aim to provide a better return to creditors than they would if placed straight into liquidation.

Basically, voluntary administration is intended to be a relatively short-term measure that freezes the company's financial position while the administrator and the creditors determine the company's future. Often, it results in liquidation.

It is not a favoured option because the administration process is very expensive, Inland Revenue has a preferential creditor status (see schedule 7 of Companies Act 1993) and lastly, the company directors are not held personally responsible for tax liabilities of the company.

Receivership

A secured creditor, such as a bank, financial institution or a private lender, usually puts a company into receivership by appointing a receiver to recover the funds lent by it.

A secured creditor is a General Security Agreement (GSA) holder who would have been allowed to register a security interest over the company's assets on the Personal Property Securities Register (PPSR) at the time of lending funds to secure its debt.

The receiver acts for and reports to the secured creditor only and it effectively has control over those of the company's assets which are subject to the security.

Receiverships are governed by the Receiverships Act 1993, so although the receiver's primary duty is to recover the secured debt; it has a duty to protect the rights of other creditors. Once the secured creditor is repaid from realised assets, the receiver ceases to act after notifying the Companies Office. If there are unsecured creditors who are still owed money or further assets to be realised, then the company can be put into liquidation.

Liquidation

A company can be put into liquidation by its directors, shareholders or creditors with the main purpose of realising the company's assets to pay its creditors.

Once a liquidator is appointed, liquidation commences immediately. The procedure for liquidations is set out in the Companies Act 1993. A liquidator's powers are wider than a receiver's in that a liquidator can carry out investigations into why the company failed, take possession of the company's records to assess its assets, set aside insolvent transactions and other actions.

The directors have to support and co-operate with the liquidator including providing information when requested as their powers are limited throughout the liquidation process.

Sometimes, a company is placed into liquidation by a court order, usually when the directors/shareholders do not take any action when the company is already insolvent. In such situations, the court appoints a liquidator (may be private or the court's Official Assignee).

Once liquidation is complete, the company is struck off the Companies Register.

A company does not have to be placed into receivership first before it can be placed into liquidation. Likewise, a receiver can be appointed before or after a liquidator has been appointed.

Income Equalisation for Farmers

The income equalisation scheme allows farmers to deposit money in a good year and withdraw when affected by "adverse events" to enable them to better manage the peaks and troughs in their income.

The recent drought is likely to affect their income for the 2013 and later years. For the farmers whose current or future income is significantly affected by the North Island and West Coast drought, the Commissioner of Inland Revenue allowed late deposits for the 2012 income tax year up to 30 April 2013, regardless of when the 2012 return is filed or what the due date is for filing the tax return.

Normally, income equalisation deposits are not available for refund until 12 months after the deposit is made. However, the Inland Revenue has discretion to allow early refunds, particularly in the case of "adverse events" or when the person is suffering serious hardship.

The Inland Revenue will allow those North Island and West Coast (limited to the Buller and Grey district) farmers materially affected by the drought to make early withdrawals. Materially affected here means that net income has been or will be significantly decreased as a result of the drought and the withdrawal is needed to cover the income gap that results in a following year.

All applications for an early refund must be in writing and will take approximately 20 days to be processed. Note that the refund will be income in the year that the application is made unless it is elected to treat the refund as income in the prior income year provided the application for refund is made in the specified period.

For further information on this topic, we refer you to our article in the Oct-Nov 2009 Newsletter.

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Client Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Client Newsletter is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 191/2013.