Tuesday, 26 April 2022

Hi there, and welcome to this week's review of tax issues where I comment on what's been happening in the world of tax over the past week. If you have a question or would like a second opinion on any national or international tax issues, please contact me on my email.

EMAIL RICHARD HERE

GST & finance leases

Inland Revenue (IR) has published IS 22/02, which is an interpretation statement providing guidance surrounding issues of time of supply and value of supply for GST purposes, once it has been determined that a finance lease exists.

The document is 54 pages in length and commences with a basic summary of the time of supply rules once you have established that the finance lease is either an agreement to hire, a hire purchase agreement, or a third category agreement (one which falls outside of the previous two definitions). In this regard, IS 22/02 outlines the following timing rules:

- **an agreement to hire** -the goods are treated as being successively supplied and each successive supply is treated as taking place at the earlier of when a payment becomes due or is received,

- **a hire purchase agreement** - the time of supply is the time the agreement is entered into; and,

- **a third category agreement -** the ordinary rules will generally apply, and the time of supply is the earlier of the time the supplier issues an invoice or receives a payment for that supply.

In terms of value of supply issues, IS 22/02 suggests that firstly the reader must determine whether or not the finance lease is a credit contract (defined under the *Credit Contracts Act 1981* or *the Credit Contracts and Consumer Finance Act 2003* (as applicable)).

Gilligan Sheppard Limited is a CPA Practice | Ph: +64 9 309 5191 | Em: gilshep@gilligansheppard.co.nz
PO Box 6310, Victoria St West, Auckland 1142, New Zealand | Lvl 4, Smith & Caughey Bldg, 253 Queen St, Auckland 1010

www.gilligansheppard.co.nz

If the finance lease is a credit contract, GST is generally calculated on the 'cash price' of the leased goods, which will usually be specified in the contract. The cash price is usually less than the total amount payable under the contract with the balance being interest or finance charges.

If, however, the finance lease is not a credit contract, then the ordinary rules apply, and GST is calculated on the total amount payable under the lease (because there is no implied interest or finance component).

Finally, if a lessee sells the leased goods as agent for the lessor, the supply is deemed to be made by the lessor. The lessor must account for GST even if the lessee issues the tax invoice for the supply. The lessee is required to notify the lessor of the sale and provide sufficient information for the lessor to account for GST correctly. An exception to this treatment can apply where the lessee and lessor agree to treat the supply as two separate supplies.

If you have any questions or would like a second opinion
on any national or international tax issues, please email me directly.

Covid-19 variation for PIE exit rules

IR has released determination COV 22/17, '*Variation in relation to ss.HM 25(3)(a) and HM 72(2)(b) of the ITA07 (PIE exit rules)*'.

The variation provides extra time under s.HM 25(3)(a), for a PIE to remedy a failure to satisfy the requirements of ss.HM 14 (minimum number of investors) and HM 15 (maximum investor interests) before it will lose PIE status, where that failure is due to Covid-19 response measures or as a consequence of Covid-19.

If the variation is applied, the time period in s.HM 72(2)(b) is extended by replacing the '12-month' period with the '18-month' period. This is subject to the conditions that:

- the failure to meet any of the requirements of ss.HM 14 and HM 15, under s.HM 25(1)(a)(ii), and remedy that failure as required by s.HM 25(1)(b)(ii), is due to circumstances arising either from the imposition of Covid-19 response measures or as a consequence of Covid-19,

- when applying the extended period of time in s.HM 25(3)(a) under this variation, the last day of the quarter to remedy a failure to meet a requirement, described as the 'second quarter' in s.HM 25(1)(b)(ii), must be on or before 30 September 2022; and,

- the entity has taken all reasonable steps within its control to attract investors and limit investor interests, as required by ss.HM 14 and HM 15, within the first 12 months of the date on which the entity becomes a PIE.

The variation applies from 18 March 2022 to 30 September 2022.

IR finalises Covid-19 related costs & deductibility issues IS

Back in February, an edition of AWIR covered the release of PUB00432, a draft interpretation statement titled *'Income Tax – deductibility of costs incurred due to Covid-19.'* IR has now finalised its interpretation of the issues which surround usual/abnormal expenditure items related to Covid-19 and has released IS 22/01 accordingly.

In case you missed the earlier commentary, IS 22/01 commences with four key principles to remember when considering the application of the general permission contained within section DA 1:

- it is important to consider how the business earns its income, and whether the cost relates to that process,
- the factual situation at the time the cost is incurred is relevant,
- a cost does not need to be linked to a particular amount of income, or even be incurred in the same year; and,
- costs incurred to protect a business can be deductible.

With that understanding now firmly under your belt, IS 22/01 then covers the following specific issues:

Employee costs including:

- relocating new or existing employees to New Zealand, including obtaining visas, exemptions, places at managed isolation and quarantine facilities and transport,
- retaining teams in New Zealand where they may be unable to work (such as paying retainers to contractors) or keeping teams housed together in a bubble,
- payments to employees such as vouchers for going back to the office, incentive payments for vaccinations or the provision of mental health and wellbeing services; and,
- redundancy payments.

Contract & legal costs including:

- costs for terminating contracts, including any settlement payments for breach of contract; and
- legal costs incurred in contractual or employment disputes.

Assets & equipment costs including:

- repairs and maintenance on assets or equipment not being used due to Covid restrictions or a temporary reduction in business activities,
- re-activating costs so equipment can be put back into use,
- ongoing depreciation loss for depreciable assets that are not being used due to Covid restrictions or a temporary reduction in business activities; and,
- security costs.

Premises expenses including:

- payments made to terminate a lease (by the lessee),
- incentive payments to encourage new tenants (by the lessor); and,
- additional costs incurred to keep teams appropriately distanced within a workplace, including changes to relevant fit-out (such as erecting barriers).

The finalised document retains the original draft's 24-page length, and I again would suggest that the doc is a good read in terms of general principles surrounding the claiming of these types of expenses even in a 'non-Covid' world.

Don't forget the new trust reporting requirements

I've had a number of client enquiries already regarding the new reporting requirements for trusts which in general applies from the 2021-22 income year. In this regard, IR has now finalised and published OS 22/02, *'Reporting requirements for domestic trusts'*.

In essence, all trusts must now:

- file an income tax return,
- comply with additional disclosures (as set out in s 59BA of TAA94; and,
- prepare financial statements.

Exempt from the above requirements are non-active complying trusts with no income (which includes those with income of $200 or less in interest income, provided they complete an IR633 declaration). Also exempt from the additional s 59BA disclosures, are foreign trusts, charitable trusts, trusts that are eligible to be Maori Authorities, widely held superannuation funds, exempt employee share schemes, debt funding special purpose vehicles, and lines trusts.

In terms of the additional disclosures required in the IR6, required are:

- a statement of profit or loss and a statement of financial position,
- the amount and nature of all settlements made to the trust in the income year (excluding minor services incidental to the activities of the trust provided at less than market value),
- the name, date of birth, jurisdiction of tax residence, and tax file number/taxpayer identification number of all settlors who have made a settlement on the trust in the income year, or settlors whose details have not previously been supplied to IR,
- the amount and nature of all distributions made by trustees of the trust in the income year (excluding minor, non-monetary distributions that are incidental to the activities of the trust),
- the name, date of birth, jurisdiction of tax residence, and tax file number/taxpayer identification number, of all beneficiaries receiving such a distribution; and,

- the name, date of birth, jurisdiction of tax residence, and tax file number/taxpayer identification number, of each person having a power of appointment under the trust deed (including the power to appoint or dismiss a trustee, add or remove a beneficiary, or amend the trust deed).

Now you may have noted that the third requirement above was for the trust to prepare financial statements. In this regard, all trusts required to file a tax return must prepare financial statements to a minimum standard that includes:

- a statement of financial position (showing assets and liabilities of the trust using one or more of three specified valuation methods, and state which type is used),
- a statement of profit or loss (showing income derived and expenditure incurred),
- using the double-entry method of recording transactions; and,
- disclose the type of valuation principle adopted for shares/ownership interests, land, and buildings.

Additionally, there is now the concept of a 'simplified reporting trust', which is defined as one that has:

- assessable income of less than $100,000 in an income year,
- deductible income of less than $100,000 in an income year; and,
- total assets of less than $5 million.

If your trust does not meet the above criteria, then the financial statements for the trust must also:

- be prepared applying the principles of accrual accounting,
- include a statement of accounting policies,
- disclose comparable figures for the previous income year to the extent that the trustee has that information,
- include a reconciliation between the profit or loss in the statement of profit or loss to taxable income,
- include an appropriately detailed schedule of the trust's fixed assets and depreciable property used for tax purposes; and,
- disclose details of any below market value transactions between a trustee and an associated person (aside from minor transactions incidental to the trust's activities) including the person's name, the nature of the association, the nature of the transaction and the amounts involved.

Finally, trusts with forestry businesses must include information about the cost of timber at the end of the income year, and trusts owning a specified livestock business must include details of livestock valuation methods, valuations, and calculations for tax purposes.

Good luck!

More creative. More collaborative. Less corporate.

Richard Ashby BBus, CA, CPA
Em: richard@gilshep.co.nz | Ph: +64 9 365 5532 | Mb: +64 21 823 464

SUBSCRIBE HERE