



December 2020



The Small Business Cashflow (Loan) Scheme (SBCS) has been introduced to support businesses and organisations struggling because of loss of actual or predicted revenue as a result of COVID-19.

Organisations and small to medium businesses, including sole traders and the self-employed, may be eligible for a one-off loan with a term of 5 years if you have been adversely affected by COVID-19.

To be eligible for the SBCS loan your business or organisation needs to be viable and you must have a plan to ensure it remains viable. You must keep any evidence of the business or organisation's ongoing viability at the time of requesting the loan, as you may be audited.

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Holiday Closing Period

Our office will close on 22nd December 2020 at 5pm and reopen in the New Year on 25th January 2021 at 8:30am.

If you require any assistance please email

howard@sawden.co.nz



To all of our clients, business associates and supporters, we wish you a wonderful Christmas and an exciting and successful 2021.

Evidence might include, for example:

- a cash-flow forecast for the business or organisation for the short term
- a plan for where revenue will come from in future market conditions, and a forecast of those revenues
- financial statements showing the business or organisation has enough resources to sustain itself when including the SBCS loan
- your accountant's assessment that the business or organisation is viable and ongoing.

You must have 50 or fewer full-time-equivalent employees. Commonly owned group of businesses and organisations will be treated as a single firm when applying the eligibility cap of 50 full-time equivalent employees.

Inland Revenue will administer the payments and repayments of this scheme. Applications are opened on 12 May 2020 and can now be submitted up to and including 31 December 2023. The maximum amount loaned is \$10,000 plus \$1,800 per full-time-equivalent employee.

The annual interest rate will be 3% beginning from the date of the loan being provided. Interest will not be charged if the loan is fully paid back within 2 years.

Businesses and organisations can apply for the SBCS loan through myIR. In the 'I want to' section of myIR, select 'Apply for a Small Business loan'. Businesses without a myIR account will need to create one to apply for the SBCS loan.

If you have an SBCS loan, Inland Revenue will notify you or your tax agent in myIR or by letter ahead of key events, such as:

- interest accruing if the loan is not repaid in full within 2 years
- the start date for regular loan instalment payments.



Provisional tax threshold

The New Zealand Government has recently passed legislation to increase the provisional tax threshold from \$2,500 to \$5,000. This means any current provisional taxpayers with provisional tax payments of less than \$5,000 will have until 7 April following the year they file to pay their tax bill. This is intended to lower compliance costs for smaller taxpayers and allow them to retain cash for longer.

This is a permanent change that will take effect from the 2020-2021 income year. For most taxpayers, this will mean 1 April 2020.

If you would like to continue paying in instalments throughout the year, you can make a voluntary payment to Inland Revenue or put aside money in a bank account until your tax payment is due.

Effect of the increase provisional tax threshold

The provisional tax threshold determines whether a person is a provisional taxpayer in a tax year and whether they are required to pay provisional tax for a tax year. The increased provisional tax threshold from \$2,500 to \$5,000 for the 2021 and future tax years may mean that some taxpayers no longer have to pay provisional tax.

For example, if a person has RIT (residual income tax) of \$3,500 for the 2020 tax year, they will be a provisional taxpayer for that tax year. For the 2021 tax year the person will not be required to pay provisional tax because the threshold has increased to \$5,000 RIT.

However, when the person files their 2021 income tax return, their RIT turns out to be \$5,500. They are a provisional taxpayer for the 2021 tax year (even though they were not required to make any 2021 provisional tax payments because in the 2020 tax year their RIT was not at least \$5,000).

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Therefore, If you are a provisional tax payer with RIT of less than \$5,000 you will have no provisional tax to pay during the year but a large terminal tax payment due in April the next year. If you make voluntary payments during the year this will reduce your terminal tax.



Owners of existing residential rental properties may incur expenditure to meet the Healthy Homes standards. Can owners of existing residential rental properties claim income tax deductions for costs incurred to meet Healthy Homes standards?

Costs of a revenue nature are generally deductible in the income year they are incurred and these may include the costs of:

- repairing items that would otherwise meet the standards if operational or in a reasonable condition;
- minor additions or alterations not involving repairs that do not change the character of the building, such as:
- some costs of meeting the draught-stopping standards, such as blocking unused chimneys or fireplaces (if sufficiently attached to the building);
- Making mechanical ventilation systems compliant; and
- some costs of meeting the moisture ingress and drainage standard in respect of ground moisture barriers;
- replacing items on a like-for-like basis in the future where they have previously been treated as part of the building; and
- record keeping and providing information in tenancy agreements.

Capital costs will generally result in a deduction for a depreciation loss unless they are for something that is part of the residential rental building. The cost of items that are part of the building are added to the building's cost and

depreciated at the same rate as the building. Generally, this is zero percent.

Items that are likely to be part of the building include:

- smoke alarms;
- insulation;
- ducted or multi-unit heat pumps;
- flued fires (wood or gas);
- new or replacement openable windows;
- new exterior doors;
- most extractor fans or rangehoods;
- ground moisture barriers; and
- drainage systems for storm, surface and ground water and drainage of water from roofs.

Capital costs for some items acquired that are not part of the building will be either:

- depreciated over multiple income years using a rate set out in Depreciation Determination DEP80: Residential rental property chattels for assets of that type; or
- depreciated at a rate of 100% in the income year the expenditure is incurred if the item is a "low-value asset".

Items able to be depreciated include:

- electric panel heaters (67% DV or SL);
- some heat pumps (eg, single-split type) (20% DV or 13.5% SL); and
- through-window extractor fans, window stays, door openers and stops, external door draught excluders and some devices for blocking fireplaces or chimneys (if the devices are not sufficiently attached to the building) (40% DV or 30% SL).





In 2013 the law commission was asked to review the Trustees Act 1956 and NZ Trust law generally. Following this initial review, nearly eight years later, the long-awaited "Trusts Act 2019" will finally come into effect on 31 January 2021, replacing the entire 1956 Act.

One of the most significant changes in the new Act that is generating interest from trustees and practitioners alike is the introduction of beneficiary disclosure requirements on trustees. This becomes sensitive if it means disclosing a trust's financial information, or to what extent some beneficiaries have benefitted more than others. However, the problem is what level of information should be disclosed and to whom?

Under the new Act, there are two layers to the disclosure obligations:

1. A "presumption" exists that Trustees will make available "basic trust information" to every beneficiary.
2. A beneficiary may request additional "trust information".

Basic trust information comprises:

- the fact the person is a beneficiary of the trust,
- the name and contact details of the trustees,
- any changes to the trustees as they occur,
- their right to request a copy of the trust deed, and
- their right to request trust information.

"Trust information" has a wide definition and includes information regarding trust property. Although, it specifically excludes "reasons for trustees' decisions". It is reasonable to assume 'trust information' includes financial information, but how detailed that information has to be is unclear, e.g. does it include amounts distributed to other beneficiaries? Given the new rules are intended to ensure beneficiaries have sufficient

information to enforce the terms of the trust deed, it is presumed the answer is yes.

Before making "basic trust information" or "trust information" available to beneficiaries the trustees have to consider numerous factors, including:

- the personal or commercial confidentiality of the information,
- the age and circumstances of the beneficiary,
- the practicality of giving the information, and
- the effect on the beneficiary and family relationships of providing the information.

After taking all factors into consideration, the trustees can decide to withhold information from beneficiaries if they "reasonably" consider the information should not be provided.

Although the legislation needs to be applied correctly (which in itself is uncertain), each situation is different based on the nature of family and beneficiary relationships, which makes it difficult to determine the best course of action.

We have observed many lawyers have been advising their clients regarding this new trust legislation and in some cases there has been some scare mongering going on. If you would like to discuss what these changes mean to your trust please contact us. If you do meet with your lawyer to make changes to your trust or consider resettling your trust, we strongly advise contacting us before any decision is made.





After Labour's victory in the 2020 General Election, their proposed tax policy changes are now likely to be implemented.

Labour has ruled out a capital gains tax and an increase in fuel taxes but is prepared to introduce a Digital Services Tax to target multinational digital businesses who have taken advantage of tax structuring options. Labour's historical coalition partner, the Green Party, have notably been campaigning for a wealth tax, which Labour has repeatedly ruled out. Given that Labour has won enough seats to govern alone, the possibility of a wealth tax seems unlikely.

Labour's election campaign promised no income tax changes for 98% of New Zealanders, however a new top marginal income tax rate of 39% for individuals earning over \$180,000 will be implemented – expecting to raise \$550 million of revenue a year.

For some of us this provides a sense of déjà vu, as we remember when we previously had a 39% tax rate from the 2001 to 2009 financial years. We saw disputes in the courts regarding the requirement to pay fair market salaries, legislation requiring income to be attributed to individuals and various policy statements from Inland Revenue.

As differences in tax rates widen, it impacts behaviour by incentivising tax planning to minimise application of top tax rates. Currently, there is little difference between the top income tax rates, 33% for trusts and individuals and 28% for companies.

It also leads to further inequity within the tax system because it is typically employees who are unable to alter how they are taxed, whilst business owners have greater flexibility to alter how their income is taxed.

For example, a distribution of accumulated income from a trust that has already been taxed at 33% may be distributed tax-free to a beneficiary who has a marginal tax rate of 39%. Individuals with investment income may also be further

incentivised to invest in Portfolio Investment Entities instead of shares, where the top tax rate is capped at 28%. Conversations are likely occurring right now regarding whether shares in companies should be moved from personal ownership into trusts – and whether this is tax avoidance. Companies will also face further costs with a 39% tax rate. Companies that currently pay fully imputed dividends at 28% are also required to withhold tax at 5% in order to reach the 33% marginal income tax rate. This withholding tax liability is likely to increase to 11%, which may place constraints on company cash flow or prevent dividends from being paid altogether.

This will place further pressure on tax administration to keep accurate, up-to-date records as individuals on lower marginal tax rates may be entitled to tax refunds comprising the additional tax withheld.

Ultimately, this policy provides an opportunity for individuals to explore their different options to ensure efficient tax planning. However, utmost care should be taken when restructuring one's affairs, in order to avoid undesirable consequences such as the breach of shareholder continuity resulting in the loss of imputation credits or tax losses, or potentially undertaking a tax avoidance arrangements. Please contact us so we can advise on any tax consequences.



Christmas is fast approaching and so is the time that businesses may reward customers and staff with Xmas functions and Xmas gifts. This article considers the deductibility of these expenses.

Fully Deductible

Gifts to clients are 100% deductible, provided they do not come within the Entertainment Rules (below). For example, gifts to clients of movie tickets, books or calendars would be fully deductible. (Continued on next page)

Entertainment Rules

The following is a list of the types of entertainment where deductibility is limited to 50%:

- The cost of corporate boxes, corporate marquees or tents
- The cost of accommodation in a holiday home or time-share apartment
- The cost of hiring a pleasure craft
- The cost of food and beverages enjoyed in any of the three locations listed above
- Food and beverages enjoyed on or off the business premises for a social event

GST on these expenses is also limited to 50%.

So gifts of beer, wine and food to clients will be 50% deductible, as will food and beverages provided at a Xmas social function with clients or staff.

However there is an exception where the benefit is provided to an employee and the employee can choose when and where to enjoy the benefit, or the benefit is enjoyed outside of New Zealand. For example, a meal voucher given to an employee would come within the FBT rules rather than the entertainment rules, as the employee can choose when and where to enjoy the meal.

FBT Rules

Gifts to staff are generally treated as a fringe benefit unless the benefit is covered by the entertainment rules. However, if the value of the gift is less than the FBT exemptions for employees and employers, then FBT will not be payable. These exemptions are:

- \$300 per employee per quarter
- \$22,500 per employer per annum

For example, John and Sarah are employees and John is given a book (value \$100) and Sarah receives a free trip to Queenstown (valued at \$800). John's benefit would not be liable for FBT (assuming he does not receive any other benefit worth more than \$200 in that quarter) but Sarah's benefit would be liable for FBT.



*Well, we are glad this year is nearly over.
What a year it's been....
Thank you for your support and
we wish you a very happy holiday season
and a prosperous New Year.*

Merry Christmas

From the team at

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