

WINTER 2021



**LYNCH & PARTNERS**  
CHARTERED ACCOUNTANTS  
YOUR BUSINESS PARTNER

# THE Client Link

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## KNOW THE BRIGHT LINE TEST

The last National Government introduced a so-called “bright line test” for people who sold residential property after owning it for only a short time.

The property had to be owned for two years or the profit would be taxable. The last Labour Government increased this to five years, and then to 10 years for properties bought on or after 27 March 2021.

The first thing to note is the period of ownership is not strictly two years, five years or 10 years because for a sale which is not off the plan, it is measured from the date of transfer of title to the buyer as a starting point, and the date a sale and purchase agreement is signed at the time of selling. If it's a purchase off the plan, it is from the date of signing the sale contract.

If you acquired a property before 27 March 2021 and settle after that date, you are subject to the five-year rule. Acquired means a written binding agreement for purchase. Some people will have put in tenders before this magical date and have no right to withdraw them. If the tender is successful the five-year rule applies.

## PROTECT YOUR ONLINE PRIVACY

**Privacy has become a huge issue in recent years, as more and more is being revealed about how big companies analyse our behaviour.** Knowing what we do and what we spend creates vast sums of money for them. If they know from our browsing that we're interested in photography or travel, for example, the data is sold on to other companies who want to sell us cameras or holidays. We're then targeted with ads and promotions.

Can we do anything? Yes, we can, and it's more than just turning on the browser privacy mode or using Incognito on our smartphone. These just stop others who use your device from seeing our internet history. It doesn't block internet spies.

Some web browsers, such as Duckduckgo, do offer privacy because they don't store your data, or track your search habits and history. Third parties don't get data from your browsing. It's worth noting that these browsers offer privacy, but they don't protect you from other online threats. Individual websites and social media platforms can still track you and collect your data.

A good VPN (virtual private network) adds another level of safety by offering encryption on all your online traffic, while keeping your IP hidden. Most VPN providers charge, so look for one that suits you.



## AGRICULTURAL APPRENTICESHIP

**Under the Apprenticeship Boost scheme that started in August 2020, farmers who take on an apprentice will be eligible for \$1,000 a month for the first year of an apprenticeship and \$500 a month during the second year.**

The Apprenticeship Boost scheme provides payments to employers to help them keep existing apprentices and encourage them to take on new ones. It recognises that farmers who take on an apprentice are investing their time and knowledge in that person. The scheme was set up to ensure that apprentices could keep earning and training towards their qualification as the economy recovers from the impacts of COVID-19. Under the COVID-19 pandemic, it became apparent how dependent New Zealand was on the primary sector, and the sector's reliance on migrant labour.

With a closed border preventing migrant labour, greater efforts have gone into encouraging New Zealanders to work in the primary sector. It also allows existing employees to upskill or to get formal qualifications. This package is aimed at training across all areas of agriculture, and includes sheep, beef and dairy farming, horticulture viticulture and extends into areas such as landscaping, sports turf and beekeeping.

To be eligible, apprentices must be part of a Tertiary Education Commission-approved New Zealand apprenticeship or managed apprenticeship programme and have done less than two years of their training. The scheme is focused on the first two years of an apprenticeship because this is when apprentices are at highest risk of being laid off. This is another tool in New Zealand's post-COVID economic recovery plan of helping businesses keep employees in jobs.

Employers can apply for the Apprenticeship Boost whether an apprentice has just started their training programme, or right up until near the end of their first two years. The scheme is administered by Work and Income, and the money is paid directly to farmers monthly in advance. First year apprentices are eligible for \$1,000 per month and second year apprentices \$500 per month. These amounts do not include GST. If the employer is GST registered, these amounts will be plus GST.

Other conditions for receiving the payment include paying the apprentice at least the minimum or training wage, and employers are required to confirm each month that they are still eligible to receive the payment.

Apprenticeship Boost can be paid for an apprentice who is self-employed. This is a real benefit for the dairy industry, as this will allow contract milkers and sharemilkers to upskill. In this situation the farm owner needs to apply for the apprentice and there needs to be a training agreement in place between both parties and the approved training provider. The Apprenticeship Boost scheme is complemented by the free trades training package that was introduced in July 2020. The free trades training pays the fees associated with the majority of Primary ITO programmes and the costs are covered by the Government up front.

Agricultural courses through Primary ITO run from level 1 through to level 4. The level 1 courses are generally practical hands-on learning so that employees can be safe and productive on-farm. The content of the courses builds on previous learning and skills, and will depend on the farming sector.

Dairy trainees will study and develop to include feed budgeting management reporting and planning. Sheep and beef trainees will study soil and pasture management, production management and livestock productivity. These courses can go on to include various diplomas in agribusiness. The result of this is that farmers and apprentices will not have to pay the costs of any formal training while completing the apprenticeship.

Many of our farming clients already have employees working their way through Primary ITO qualification and are doing this unpaid. The Apprenticeship Boost scheme recognises the value of the mentoring, and benefits both the primary sector, the farmer and their employees.

This may also provide an opportunity for farmers who are willing to become mentors to become the employer of choice. These farmers will be able to provide a more attractive employment package that goes beyond a house and a wage, but also includes a qualification. We often see at DairyNZ Awards that many of the award-winning dairy trainees, farm managers and sharemilker/contractors are all from the same farm. The farmers that recognise education and personal development often get the better staff.

For more information on the Apprenticeship Boost scheme and its rural sector application we recommend contacting the Primary ITO or visiting their website.



## TAX CALENDAR

**31 May 2021**

Deadline for Fringe Benefit Tax returns

**30 June 2021**

Last day to apply for annual FBT returns

**28 July 2021**

3<sup>rd</sup> instalment 2021 provisional tax  
(June balance date)

## NOWHERE TO RUN FOR TAX EVADERS

Unfortunately, tax evaders create an unfair playing field in their industry. Those who obey tax law experience unfair competition from those who don't. As cash disappears due to the increasing use of debit and credit cards, it is becoming more difficult for some businesses to evade tax.

The net is also getting tighter for those who think they can hide money overseas. Cooperation between the New Zealand government and a large number of other governments around the world is increasing by means of the OECD. Not only does information pass between the governments but also there is cooperation in finding those who would dodge their responsibilities, such as childcare.

### What if you rent your home?

Two lots of rules apply. If the five-year bright line test applies, you look at the percentage of the time the house was used as a main home. If it's more than 50 percent, no problem. If the new 10-year bright line test applies, you get caught under the bright line test only if you have not lived in your house for more than 12 months, continuously. So if you decide to have an extended period overseas and rent your home, you might need to consider the tax implications.

### When is a gift really a gift?

A gift is not really a gift if you get a benefit as a result of it. IRD says the payment must be voluntary and there must be no "identifiable direct valuable benefit" arising or may arise as a result of the payment. If a non-profit body receives a true gift then they don't pay GST. On the other hand, if it is not a true gift because there is a benefit, GST has to be paid on the money received. If you are involved with any organizations that are GST registered, which receives "gifts" of money, make sure there isn't anything given in return for the "gift" or you will be liable for GST.

### Change afoot for losses carried forward

New Zealand has had one of the harshest tax schemes in the OECD when it comes to allowing company losses to be carried forward. The rule used to be, there must be at least a 49% continuity of ownership of the shares. This presented a problem for some start-up companies, which wanted to get capital from new shareholders by issuing new shares. The law placed an unreasonable limit on their ability to raise more share capital. The law was changed at the end of March to allow losses to be carried forward provided the nature of the business has not changed.

### Factor sick leave into pricing

If you have a large number of staff your costs are going to increase as a result of the doubling of the sick leave entitlement to 10 days. You might wish to calculate how much this is going to cost you and try to factor it into price negotiations.

Those involved in labour intensive industries, such as cleaning, will need to consider the implications of the 10 days sick leave. You will have to start granting the extra five days two months after the legislation is enacted, which is expected to be about mid-year. Each time an employee gets to their anniversary of sick leave entitlement, it will go up to 10 days.

## BRIEFLY



### Interest deductions on rental property

The Government is phasing out interest deductions for residential (but not commercial or industrial) rental property. It is being reduced progressively so that at 1 April 2025, there will no longer be a claim. Those who buy after 26 March 2021 get a deduction for interest paid only up to 1 October 2021. We don't have all the details but the Government have indicated "new builds" will be exempt from these rules but at this stage we have no definition of what constitutes a "new build"



### In-Work Tax Credit

Taxpayers will be able to keep receiving the In-Work Tax Credit for up to two weeks when taking an unpaid break from work. This could arise when transitioning to a new job. Taxpayers will need to let IRD know if their work situation changes to ensure they receive the correct entitlement. If a person starts receiving an income-tested benefit or student allowance, the In-Work Tax Credit will be stopped.



### GST reform

Inland Revenue has come up with some proposals for improving the GST system. Among these are reducing some of the requirements for a tax invoice:

- There shouldn't be a need to detail quantity and volume of goods.
- Do away with the requirement to write "copy only" on any copy supplied. It's a nonsense in an electronic environment.
- Buyer-created tax invoices would not need Inland Revenue approval.



# CONTRACTOR VERSUS EMPLOYEE

Identifying whether someone is an employee or a self-employed contractor can be a challenge.

In theory it should be simple, but there are significant consequences if it's gotten wrong. It can raise problems with IRD through unpaid PAYE, use of money interest and penalties with ACC for unpaid levies, and with the employee themselves for minimum wage, annual and sick leave, and public holidays.

In the rural sector, there are many people acting as self-employed contractors such as fencers, shearers, relief milkers and tractor drivers. Most of these contractors bring their own specialised equipment and work for a large number of farming clients. Some of these work for many different farmers.

Problems can arise with the contractor vs employee definition when the contractor is working for mainly one farmer. Although both



parties may perceive there to be contractor type relationship this may change over time or be incorrect.

## What is the difference between an employee and a contractor?

An employee is a person employed to do any work for hire or reward under a contract of services (an employment agreement). The hire or reward is almost always a wage or salary.

A contractor is a person engaged by a principal (the other party) to perform services under a contract for services (commonly called an independent contractor agreement). Contractors are self-employed. They earn income by invoicing for their services.

To correctly identify whether there is an employee or independent contractor relationship one must look at the real nature of the working relationship not just the title the parties have given it. Case law has developed some legal tests to differentiate between the two. All tests need to be considered, as no one point will provide an answer. These legal tests are based around questions of:

- Intention
- Control vs Independence
- Integration
- Economic Reality

Some of the legal tests that define between an employee and a contractor are shown below:

Legal Test	Defining Question	Employee	Contractor
Control	Has the employer the right to control the way the work is performed?	Yes	No
Integration	Is the type of work the same as other employees?	Yes	No
	Is the work an essential part of the employer business?	Yes	No
Independence	Is the person required to provide their own tools?	No	Yes
	Do they work from home?	No	Yes
	Are they free to work for other persons?	No	Yes
	Do they pay for their own training?	No	Yes
	Do they advertise their skills?	No	Yes
Economic Reality	Is the person carrying on a business?	No	Yes
	Does the person have a business to sell?	No	Yes
	Have they contributed capital to the business?	No	Yes
	Is the person responsible for bad decisions and/or losses?	No	Yes
	Can they make investment decisions?	No	Yes
Intention	Are the duties performed the same as any other contractor?	No	Yes
Other Factors	Is Leave paid?	Yes	No
	Is FBT paid?	Yes	No
	Are they registered for GST?	No	Yes
	Do they supply a tax invoice?	No	Yes
	Do they employ staff?	No	Yes
	Can the person work for more than one employer?	No	Yes



CHARTERED  
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