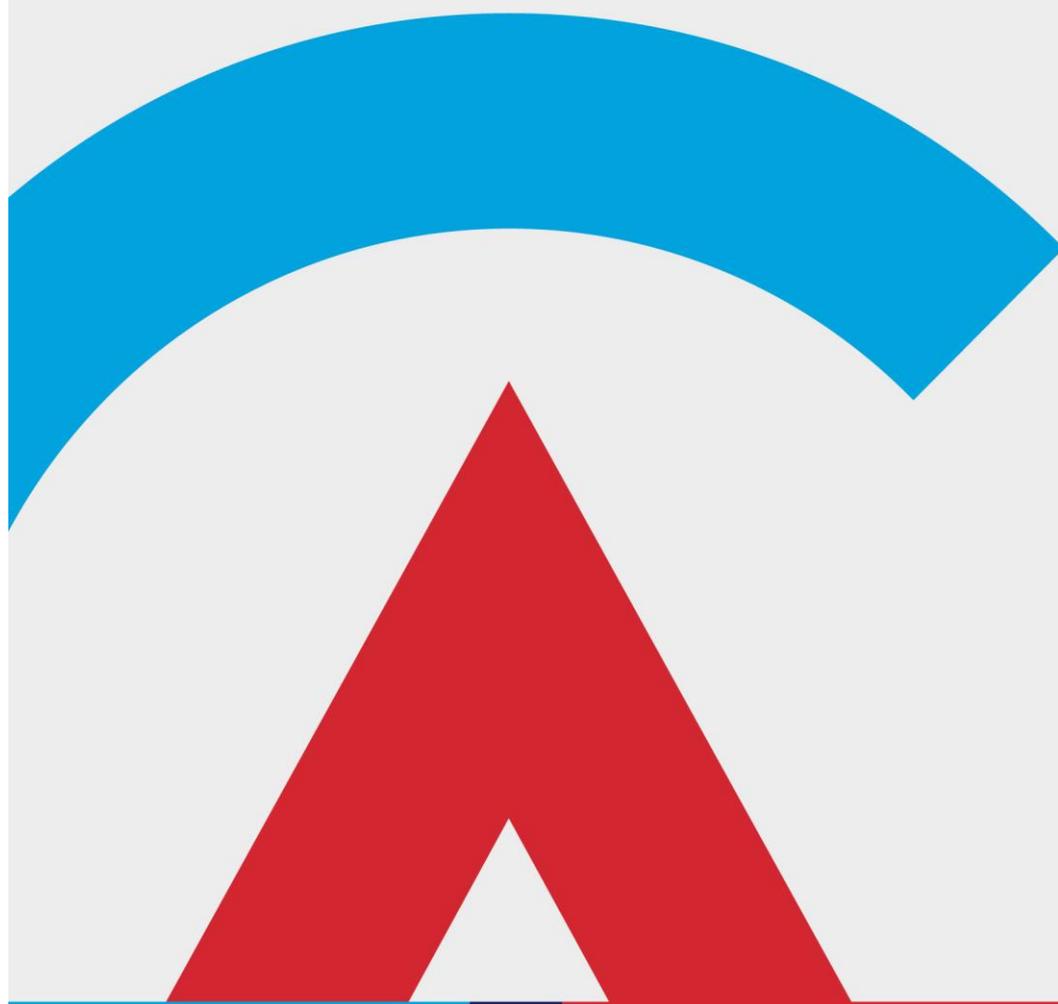


Provisional tax and UOMI implications for a person in their first year of business

8 February 2019



8 February 2019

Team Manager, Technical Services
Office of the Chief Tax Counsel
National Office
Inland Revenue Department
PO Box 2198
Wellington

Dear Grant

QWBA Income tax – provisional tax and UOMI implications for a person in their first year of business PUB 00336

Thank you for the opportunity to provide comments on this item.

We support the publication of the Commissioner’s view on the provisional tax and use of money interest (UOMI) implications for a person in their first year of business. However, we note that while the QWBA sets out the correct position it is very legalistic and stylistically it is more in the nature of an interpretation statement. You may wish to consider whether the wording of the document is appropriate for the target audience.

This item has also highlighted whether charging a taxpayer UOMI from potentially the first provisional tax instalment date (P1) in their first year of business but not charging an existing business is the right policy outcome. Our concerns are set out in the Appendix and we recommend that these are referred to Policy and Strategy for their review.

We set out below our comments on the draft QWBA:

Paragraph 14

Given s RC 9(9) has not been changed since 2007, in our view it is potentially misleading to say, “the purpose of s RC 9(9), with effect from the 2018 tax year, is to treat ...”. Prior to 2018 s RC 9(9) was a concessionary provision that ensured UOMI did not apply to new provisional taxpayers before the day they started a taxable activity. Under the new rules it has become a penal provision imposing UOMI when no UOMI would be imposed under s 120KBB of the Tax Administration Act 1994.

Examples

Although the QWBA is limited to persons in their first year of business, we note, there seems to be general confusion amongst practitioners whether UOMI applies to a taxpayer who has been carrying on business for several years but for the first time has RIT greater than \$2,500 (i.e. previously incurred losses). An example on this point would be helpful.

An example on how the provisional tax and UOMI rules apply for a person who, for the first time, becomes a partner in an existing partnership would also be helpful.

Flowcharts

We suggest that it would be useful if the QWBA included flowcharts so there are easy, cohesive decision trees that can be followed without the need to comprehend and apply all the surrounding commentary to get the right result.

We would be happy to discuss our submission with you.

Yours sincerely



John Cuthbertson CA
New Zealand Tax Leader



Teri Welham CA
Senior Tax Advocate

Appendix

We have set out below our policy concerns and ask that you refer these to Policy and Strategy for their review:

Paragraphs 12 and 13

Paragraph 12 and 13 refer to “a person with a new provisional tax liability”; “person with initial provisional tax liability” and new provisional taxpayer”. Paragraph 13 concludes “all three terms have the same meaning”.

Although we appreciate the legislation uses these three terms it does create confusion. Therefore, we recommend one term be adopted and the legislation (Income Tax Act 2007 and Tax Administration Act 1994) be updated.

We note the term “initial provisional tax liability” was introduced in the Income Tax Act 2007. The corresponding provision, s MB 8(8) Income Tax Act 2004 referred to a “new provisional taxpayer” which was a defined term in s OB 1.

First year of business v existing business

While we agree that the draft QWBA answer is correct, it does raise the issue of whether charging a taxpayer UOMI potentially from P1 in their first year of business but not charging an existing business is the right policy outcome.

Amendments were made by the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act. UOMI only applies from the final instalment date when a taxpayer’s RIT is greater than \$60,000 and they use the standard uplift method. The reason for the change was to increase certainty for taxpayers. As the final instalment date of provisional tax occurs after the end of the income year these taxpayers will have reasonable certainty as to how much income they

have earned before they make their final payment and become liable for use-of-money interest.

In principle there should be no reason to treat a “new provisional taxpayer” differently and impose UOMI for the first two instalments. The differentiation in treatment is unfair and difficult to justify in terms of taxpayer equity. Good tax policy should promote fairness. Counter to the reasons given for recommending changes to provisional tax¹ the rules effectively penalise new provisional taxpayers, cause stress and increase their compliance costs. UOMI is based on the assumption that income is evenly earned throughout the year which for most taxpayers does not reflect reality let alone a person in their first year of business who generally has little idea how the first year of trading will go.

¹ Regulatory Impact Statements for the Taxation (Business Tax, Exchange of Information, and Remedial Matters)
Bill page 8