
Client Newsletter

July & August 2010

Wills

Ordinary Wills

In these modern times, most people have wills for personal possessions such as antiques, jewellery etc, since Family Trusts are quite prevalent and they often own real property such as land, buildings, shares etc.

A Family Trust is not terminated at the death of the person who created it (usually the settlor as defined for tax purposes) and therefore its assets do not form part of the estate of the deceased individual. However, there are still many people from the older generation, i.e. parents of adult children who own substantial assets in their own names and have wills following the old tradition of leaving their estate to their children.

Although there is no estate duty or inheritance tax in New Zealand, consideration needs to be given to the position of the bequeathers.

It is very likely that the adult children would themselves have family trusts of their own and a gifting programme to gift away the value of their home and other assets. The annual gifting is only \$27,000 per person and it would take a long time for a couple to gift the value of their home.

Instead of increasing the amount that the adult children have to gift, parents may want to update their wills, whereby they leave their estate to their children's family trusts rather than the children themselves. The children will benefit from the inheritance as they are more likely than not be beneficiaries of their own trusts.

Parents may have concerns about the spouse/partner of a child in which case the adult child can set up their own personal trust to receive the bequest which has nothing to do with the spouse. If the relationship breaks down then the inherited asset will not form part of the relationship property as it is not personally owned by the adult child but is in a separate asset.

Living Wills

Living wills are quite different from ordinary wills. A living will is a directive by a person on how they wish to be treated medically should they become mentally impaired in the future.

It allows a person, while they have their mental competence, to make a healthcare choice on the procedure to follow, should they become mentally incapacitated.

Doctors recognise the clinical usefulness of such wills as they are ethically obliged to provide the necessities of life even where a patient is:

- In a persistent coma, or
- Suffering from an incurable and progressive state of illness and is in the final stage, or
- Never expected to recover from a severe injury and is on a life-support system.

A living will cannot be used to demand euthanasia, as this is not legal, but it can be used to refuse medical treatment in a situation where a person has lost his or her decision-making capacity, as our Bill of Rights allows this.

Lawyers have to ensure that the person making a living will -

- Is fully informed of the process,
- Has full mental competence and
- Has not been affected by undue influence or pressure

Once the living will is made, it is important that the person's doctor, partner and close family members have a copy of it.

Payroll Giving

A new initiative coming out of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 allows employees to donate to donee organisations and receive immediate tax credits for payroll donations of 33.33 cents for each dollar they donate. From 6 January 2010, employers could choose to offer payroll giving to their employees.

1. Only employers who file both their employer monthly schedule (EMS/IR348) and employer deduction form (EDF/IR345) using ir-File could offer payroll giving to their employees.
2. If a tax agent is registered for Online Services then it can file EMS/IR348s and EDF/IR345s electronically for itself and its clients.
3. Payroll giving is voluntary. Employers can choose to offer it to their employees, who can in turn choose to donate using the offered payroll giving scheme.
4. Donations are collected by the employer and passed directly to the employee's chosen donee organisation.
5. Donations can only be made to approved donee organisations. A list of these donee organisations is available on the Inland Revenue website.
6. If employees choose to donate through payroll giving, they can't claim additional tax credits for these donations using the tax credit form IR526.
7. The IR526 will still be available for people who donate to donee organisations directly and not through a payroll giving scheme.

When someone makes a combination of donations, some by payroll giving and some straight to an approved donee organisation, the IR526 can be used to claim tax credits for the non-payroll giving donations (ie, those made straight to the approved donee organisation).

GST Refunds

What are your rights when the IRD withholds your GST refund?

If the IRD is withholding your GST refund, they must notify you within 15 working days of receiving your GST Return that they require further information before releasing it or that they are investigating your return.

If notification has not been sent to you within 15 working days, the refund must be released.

If the IRD requires further information, they have another 15 working days after the receipt of that information to either release the refund or request further information.

If the refund is withheld on the grounds that they are investigating it, the IRD is not under any time limit for requesting information from you. In such a case, the IRD may take as long as it is required to withhold the GST refund while they are conducting their investigation.

Tax Snippets

Allocation of beneficiary income in Trusts

From the 2010 income year, the period within which a trustee must allocate income to the beneficiaries has been extended from the six month period following the year-end. Trustees will now have the option of choosing the later of:

- the end of the six month period after balance date; or
- when the trustee files or is required to file the trust's tax return to allocate beneficiary income.

The above option may not be available to trustees where the Trust deed has a clause limiting the beneficiary income allocation period to within six months of balance date.

Transfer dates for share purchases

It is interesting to note that the transfer date of shares may not be the date the shares are sold.

Legally, the shares are owned by the party whose name is registered in the company's share register. For example, if both parties have agreed on a settlement, sign an unconditional agreement of sale and purchase, sign and deliver the share transfer to the registered office, the legal ownership will still not pass onto the purchaser until the purchaser's name is registered on the company's share register.

However, for tax purposes, the effective date of transfer is the settlement date.

Cash basis holder

Until 31 March 2009, only a natural person had the cash basis status for accruals, subject to certain rules and thresholds being met. However, from the 2010 income year, the cash basis status is no longer limited to individuals but also extended to trusts and companies meeting the same thresholds.

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. 191/2010.