

Tacks **FAX**



DON'T LET THE IRD NAIL YOU

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Tax Bill before parliament - KiwiSaver

Initial contributions to KiwiSaver are to be in addition to current remuneration, regardless of any employment agreements, including those entered into prior to this bill. Further into the transition period employer contributions may be offset in part against pay movements.

Redundancy payments are expected to be excluded from salary and wages for KiwiSaver purposes. Taxable allowances for accommodation and living costs overseas are to be excluded. However ACC weekly compensation comes into the net as does paid parental leave.

The SEC has recommended extending the period for splitting the employee contribution into 2% employer and 2% employee through to 2010. It also wants to give a second chance to home buyers where housing NZ determines a person is in the same financial situation as a first home buyer.

Warning: Parliament can change these proposals before they become law.

Trust and non resident settlors

Clients go overseas leaving behind a family trust of which they are the effective settlors. Settlers are not necessarily those named as such in the trust deed. These people may be only nominees. Those who fund the trust are the true settlors. If the true settlors go overseas, the trust is likely to become a non qualifying trust. If it were to make a capital gain, this would become taxable on distribution at the rate of 50%.

The IRD allows a settlor, trustee or beneficiary to make an election to continue the trust as a qualifying trust in terms of S HH 4(7) if application is made within the time for filing the tax return for the year in which the trust would have ceased to be qualifying. This concession by the department does not seem to be supported by the legislation because the election does not bring the trust back into the definition of a qualifying trust.

From a NZ tax perspective ensure you retain a settlor in NZ or make the election in terms of S HH 4(7) to maintain the trust's qualifying status. Under NZ law, the residence of the settlor determines whether the trust is a qualifying trust.

You also need to consider the tax laws of the country where your client is going to reside. For most countries, unlike NZ, the place where the trustees live determines whether the trust is taxable in that country. In some countries the trust may not be taxable if the majority of trustees live outside that country. Therefore, it could be worth creating additional trustees within NZ, if the trust deed permits.

More on Approved Issuer Levy and NRWT

If a NZ resident owns a property overseas, for example Australia, and pays interest overseas on money borrowed to buy the property, the interest payments will be subject to non resident withholding tax (NRWT) or approved issuer levy (AIL). This applies even if the interest never leaves these shores, such as being paid out of rent received. An exception arises when the lending institution carries on business in NZ through a fixed establishment here. The only major trading bank to which this applies is Westpac.

A New Zealander might be able to avoid NRWT and AIL by appointing a manager in Australia and thereby creating a fixed establishment there. This person would need to have the authority to enter into contracts on behalf of the NZ resident AND the manager would have to work only for the NZ principal. Thus if a real estate agent is appointed manager, NRWT will still apply.

The problem is also interesting the other way round.

You may have a client who is a resident of a country which has a low rate or no income tax, such as Dubai. Your non resident client has a rental property in NZ and other investments deriving interest income. He wants the bank paying the interest to deduct AIL at 2% rather than NRWT at 10%. To achieve this, he must not have a permanent establishment in NZ.

The rental property could become a permanent establishment depending on how it is administered. If he gets a real estate agent to handle everything there should be no problem. However, if parents or friends look after the property the situation might be different.

Companies having 25% or more overseas shareholders etc

You will be aware audited financial statements no longer have to be submitted to the Registrar of Companies for small companies having an overseas shareholding.

This does not mean the company can dispense with appointing an auditor. Refer to Section 196 (3) of the Company's Act 1993.

FDR and Tax paid overseas

If fair dividend rate applies to your client, any tax paid overseas, regardless of which country it is paid in, can be deducted from the NZ tax payable. This is subject to the usual rules limiting the amount of the deduction.

Interest paid to related entities

If the total amount of interest for a year paid to a related party exceeds \$5000, be sure to deduct withholding tax from the interest payment. However, if the interest is incurred by the borrower for a project which is not a taxable activity, for example parents lending money to a child to buy a house, RWT does not apply.

Estimating provisional tax for UOMI credit

Further to our article in the previous Tacks Fax, to get interest on provisional payments when RIT could fall below \$2,500, elect (letter to IRD) to be a provisional taxpayer and have reasonable grounds for this election. This is required in addition to estimating provisional tax

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