



DON'T LET THE IRD NAIL YOU

Published by The Small Business Institute Limited

ISSUE 0709

Qualifying company trap

IRD prints the date on which a company has applied to become a qualifying company on the summary of income. Unfortunately, if there has been an update this is not recorded. The Institute has asked the department to fix this but nothing has happened. It is unsafe to rely on the IRD income tax summary.

\$35,000 UOMI threshold

As you are aware, if your client's RIT exceeds \$35,000, Use of Money Interest applies (unless your client is paying provisional tax based on the GST ratio). What if your client's RIT is close to the threshold and she has more than \$35,000 provisional tax to pay, when the 5% uplift has been added?

IRD will claim UOMI if there is a tax shortfall at the end of the year but will not pay out if tax has been overpaid and RIT dips below \$35,000. Your client is exposed to an upside risk of 14.24% but gets no interest on the downside if RIT does not exceed \$35,000, **unless** the client has estimated.

Suggestion: we should **always** estimate if the provisional tax payable exceeds \$35,000. The same applies to the \$2,500 threshold, for example if the client is a family trust. There is nothing to lose by estimating in these circumstances but there is the possibility of a gain to be made.

Property tfers between associated persons

IRD has issued standard practice statement 07/05. It is an attempt to define the department's attitude towards allowing depreciation based on market value instead of the original cost to the vendor, when a property transfer takes place between associated persons.

In the Lys case a property was transferred to a family trust. A court held the market value of the property was the correct basis for calculating depreciation and not the original cost of the vendor.

The point to note about SPS 07/05 is the Commissioner is tightening the rules. Whereas previously a transfer of property to a family trust would often get the OK for the higher depreciation rate, you now need to satisfy the Commissioner the associated purchaser does not have some form of indirect control or interest. A clause allowing those who are selling the property to hire and fire trustees of the purchasing trust would exclude the purchaser from an entitlement to depreciate based on the price paid for the property.

The SPS also considers other factors such as a Marshall clause having to be at a realistic interest rate. The Commissioner does not accept rating or insurance valuations unless the parties can show they are market values.

GST Input tax – 2 years to claim

Clients have two years to claim input tax. It runs from the time the goods or services were bought until the period in which the claim is made.

This means, if you are furnishing IRD with late GST returns, you may not be out of time just because the client has been slow getting to you.

A tax invoice dated 12 July 2004 is valid for a return for a six months period to 30 September 2006 even though you are preparing the return in November 2007. It would be out of time if the return is for two months to 30 Sept 2006.

Prescribed investor rate

Just prior to 1 October, clients have been asked to provide their tax rates to PIE's. This will occur again in March 2008 for the 2009 year. This time you have to look at the income for the last two years, being 2007 and 2006. You may choose the rate which better suits your client. You ignore PIE income for this year, only.

Tax in a PIE is a final tax. If, however, your client chooses a rate which is lower than the one that should have been used, he/she must put in a tax return and include PIE income so the balance of the tax can be paid.

Tax pooling

In case you have missed it, IRD has tightened the rules. Tax transferred from Tax Management Limited (The only tax pool we know of) cannot be transferred from an income tax account to any other type of tax and retain the original tax payment date.

The Institute considers the IRD is wrong and has asked members for feedback. The earliest date you can make the transfer is the date it is requested.

If **you** deposited the funds into the tax pool then you are permitted to retain the original date.

New legislation is currently being drafted and it is expected this will restore the right to transfer income tax to other taxes for future year.

Checklist - Finance leases

When deciding if you have a finance lease, look for:

1. You are dealing with personal property
2. The lessee will get ownership of the asset
3. The lessee has an option to buy the asset for an amount likely to be substantially lower than market, when acquired
4. Long lease term . more than 75% of asset's useful life
Note: An associate of the lessee can be regarded as being the same as the lessee for the purposes of these tests.

A lessee may buy an asset, subject to an operating lease, at the end of the term of the lease. The key is that the lessee must have no right to do so.