

# Tacks **FAX**



## DON'T LET THE IRD NAIL YOU

Published by The Small Business Institute Limited

ISSUE 0810

### PI Insurance

If the practice review division of the Institute of Chartered Accountants lodges a complaint to the Institute about your work, does your professional indemnity insurance cover you for the costs? They can be quite large.

We have been told a major supplier of professional indemnity insurance, probably used by many public practitioners, does not cover this cost. The risk of incurring costs at the Institute could be rising, particularly if you are involved in auditing.

We believe there are also circumstances where legal costs are not payable under the policy. It would pay to check the adequacy of your PI cover and perhaps shop around. There is a scheme run for accountants by accountants (through Aon) called Abacus.

### Property bought off plan

A husband and wife agree to buy a unit in a rest home off the plan. Before it is completed, one of them dies. The other decides she does not want to continue with the contract so immediately arranges for resale. She completes the purchase as per her agreement and then sells immediately.

We have heard, but cannot confirm, the IRD interprets this as a property bought by the widow with the intention of resale and therefore any profit is taxable.

### Your help please

If you know of any case, where IRD is similarly taking a tough line, please tell us so it can be shared to save others from a similar fate.

### Inherited foreign shares

For FIF purposes inherited foreign shares are valued at their market value at the time they were acquired. You do not leave them out when calculating the \$50,000 threshold.

### Be careful what you write

A recent case involved the subdivision of land. The IRD investigated lawyers' and accountants' papers, amongst others, to find out what the taxpayers intentions were at the time they purchased land. The TRA distinguished between a firm purpose or intention to sell, at the time of purchase, and a vague and contingent intention. The taxpayer was successful.

### Builders and rental properties

Do you have any clients who are in the business of erecting buildings and for whom you have structured out their rental property so that it isn't tainted? From 1 April 2009 that structuring could be a waste of time and your client could be liable for tax on the capital gain from that rental.

This is because from 1 April 2009 the test for being "associated" will be greatly widened, to the point where it will be almost impossible not to be associated. For builders the tainting under section CB11 "kicks in" to taint the rental property if, at the time the improvements have been made to the rental, the entity owning the rental and the builder are associated.

Therefore, if a person, who will become associated wishes to make alterations to their rental property, they need to **begin** the improvements before they become associated on 1 April 2009.

### IRD audits and your engagement letter

Occasionally a client will want to know why they have to pay additional fees because the IRD wants to conduct an audit. To protect yourself against a client thinking you ought to bear the costs, we suggest you refer, in the fees section of your engagement letter to costs resulting from IRD enquiries and audits.

How about something like:-

In the event the IRD selects your enterprise for review or audit, any work required from our firm will be a separate engagement and we will charge for our time based on the hours of work involved.

### The \$50,000 FIF threshold

Individual clients who hold overseas equities costing less than \$50,000 have to pay tax on dividends they receive. When it is husband and wife, the tax can be significant. Clients who exceed the threshold may pay no tax, because CV > FDR and CV works out to be negative.

Clients in this situation could buy sufficient new shares to push themselves over the \$50,000 threshold. The holding is at any time in the year. So, if they exceed the threshold and later sell some shares to come back below the threshold, they become subject to FDR for that year and do not pay tax on their dividends.

Tax avoidance? Could be. It depends on the circumstances in each case and obviously a pattern of such transactions might suggest this.

What matters to us is what we write down. Letters to our clients and particularly bills could lead to IRD reaching a conclusion which was never intended. May be there's a case for keeping the wording of bills brief. We may have some privilege when it comes to our notes but what if the client has handed over our correspondence to IRD?

### **Client company in financial trouble**

A company director was found guilty of aiding and abetting a tax offence by allowing PAYE to be used to pay creditors. If a client gets into financial difficulty, warn them PAYE must be paid.

The information supplied in this publication has been researched with care. However, the author and the company accept no responsibility to anyone for any error which may occur in the information provided. Readers are advised to consult their normal source of expert advice before acting on anything they read in Tacks Fax. 127 Queens Drive, Lower Hutt, Ph 04-9394156, fx 04-9399724, e-mail [mail@smallbusinessinst.co.nz](mailto:mail@smallbusinessinst.co.nz)

## Supplement to Tacks Fax 0810

### **Clients with cash flow problems**

Provisional Tax Finance Limited (PTFL) operates a tax pooling system with a difference. Clients with cash flow problems can borrow money from PTFL at interest rates, at the time of writing this article, of 8 to 9.75%, unsecured. PTFL pays the tax on the due date, say 15 January 2009. It arranges with the taxpayer, in advance of this date, to lend the money unsecured for an agreed period. Depending on the time of the year, the loan could be up to 20 months. Generally, however, it is for a fairly short time. The scheme is designed to bridge a temporary cash short fall. The taxpayer pays the interest on the loan in advance.

At the agreed repayment time, the taxpayer either repays PTFL or makes a further arrangement. If the taxpayer defaults, the financier gets the money back from the tax pool. The taxpayer pays UOMI and penalties.

PTFL says the following are the advantages of dealing with it:-

1. It provides access to working capital
2. It is the cheapest funding your client is likely to be able to access on an unsecured basis
3. If the taxpayer discovers the provisional tax is too high, it can get the money back from the financier much more quickly than waiting until the tax return has been processed

PTFL makes money available from \$5000 upwards. If you want to contact the company, details are:

Tel 09-9503516

or 021848735.

Email: [kerry.brew@taxfinance.co.nz](mailto:kerry.brew@taxfinance.co.nz)

Website [www.taxfinance.co.nz](http://www.taxfinance.co.nz)

PTFL operates through Perpetual Trust and sources its money through the banking system.