



**DON'T LET THE IRD NAIL YOU**

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## **Change to TBV**

When preparing this year's annual account, watch for the client who is adjusting for fringe benefits on a car based on original cost. If the car has been owned for 5 years and cost more than \$15,000 switch to TBV and save FBT.

## **Some LAQC pitfalls**

- Bringing losses forward when they should have been claimed in personal tax returns. What happens if this is discovered for a loss occurring more than 5 years ago?
  - Defect in your LAQC application which you discover several years later and realise you have claimed losses you were not entitled to.
  - Claiming losses when you think you have an LAQC but you don't. EG changes in shareholdings with no re election or election sent late to IRD.
  - Winding up company without cancelling LAQC. The write off of the credit balance in the shareholder account could be seen as taxable income to the company in terms of the accrual rules. The shareholders have agreed to pay the company's tax.
- Review LAQCs every year and check for compliance.

## **IR336**

The IRD leaflet IR 336 explains how to distinguish between an employee and a self employed person for tax purposes. Some clients are reluctant to accept the law in this area. You could hold a supply of these leaflets and support your advice by giving a copy to the client. While the IRD test is fairly slanted in their favour, if you are not going to accept it, then you may be in for an argument.

## **Rental property changes into home**

When a rental property becomes a home for the owner, adjust depreciation recovered at the end of the year **following** the change. This solves the problem arising when a client is uncertain whether to go back to renting. She has a full year to make up her mind.

## **IRD Changed interpretation**

Conditional contracts entered into after 30 June 2007 are no longer considered to be invoices. The department has changed its mind. GST, for a client on an invoice basis, will become payable once a payment has been made or if an invoice is issued.

An unconditional contract will always be an invoice and trigger time of supply once a deposit has been paid.

## **IRD refunds in error**

If IRD sends a refund in error, it is illegal to retain it.

## **Sale of rental property to company**

Be careful with documentation:-

Borrowed money must go into an account in the company's name.

Beware of the casual solicitor or their clerk who thinks a credit in their client's own name in their trust ledger will do.

Create a director's minute recording a call being made by the shareholder for repayment of debt owing.

Ensure your client is very careful when talking to the bank. Bankers are careless in the way they write up notes of conversations. It could be prudent to be present at bank interviews in these circumstances.

Ideally have the loan paid directly into the company bank account.

## **Dividends paid to non residents**

In an earlier edition we pointed out capital dividends paid from a company in liquidation are subject to NRWT ( Non Resident Withholding Tax). Well there is some good news about imputed dividends paid to non residents. The non resident will not be able to use the imputation credits in his or her own country and you still have to deduct NRWT even if the dividend is fully imputed. However by using the FITC (Foreign Investor Tax Credit) regime you can effectively use a portion of the imputation credits to pay the NRWT. By applying the formula you can usually get a tax refund from Inland Revenue for the NRWT you have paid.

## **Tax Trap exposed**

Those who pay GST on a half yearly basis pay provisional tax twice a year on 28 October and 7 May.

Taxpayers are not entitled to use the 6 monthly returns if gross taxable supplies exceed \$250,000 (to become \$500,000), subject to exceptions. Therefore, if you allow a client to continue with 6 monthly GST returns, when they should have changed to two monthly, they will be paying provisional tax only twice a year.

Their first instalment will be late and their second instalment will be underpaid. Allow this to accumulate over several years and at the least you could be looking at a significant amount of use of money interest and possibly penalties.

Adjust your annual accounts checklist and review the situation annually.

## **Capital Costs, Marketing - pre going into business**

These expenses can now be deducted even though sales or commercial production may not have commenced.