

Tacks **FAX**



DON'T LET THE IRD NAIL YOU

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Currency conversion for interests in a FIF

You will be aware that once you have chosen a method of currency conversion, you may not switch your method from year to year. So if you choose the actual (spot) exchange rate for FDR purposes, you must continue to use the actual rate for ever, for the FDR calculation. Since most fund managers are likely to tell you the value of your client's investment on 31 March each year, you are likely to be using the spot rate by default.

If you are using a different method to calculate your FIF income, for example FDR is not an available option, you are entitled to choose the other option for valuing this FIF interest, if you wish. So if your FIF interest is in a guaranteed return investment or an investment for which the Commissioner has ruled (through one of the Determinations) that FDR may not be used, you may choose to use the average method for currency conversion as supplied by the IRD.

Foreign tax credits

If you get a loss from the FDR/CV method you cannot use the foreign tax credits because there is no income. They cannot be carried forward, either.

Disclosure

If you have a client who has invested in a company **with which New Zealand does not have a double tax agreement**, there are disclosure requirements. An example is Hong Kong. You will need to complete the appropriate disclosure form which is in the series IR 445 to IR 449. Use IR447 for the FDR method and IR448 for the CV method

Investments where FDR is not permitted

In some circumstances you are not permitted to use FDR and must use CV. These include the

- Guaranteed return investments
- Non participating redeemable shares
- Investments in offshore companies where 80% or more of the company's investments are in financial arrangements denominated in NZ dollars.
- Those which have been subject to a determination which does not permit the use of FDR. There are

Domestic reverse charge

The policy advice division of the IRD has produced a paper which proposes some significant changes to the GST regime.

The "going concern" concept could be replaced by a better one. Buyer and seller enter into an agreement whereby the buyer takes responsibility to account to the IRD for GST output tax. The seller does not have to pay. The buyer accounts for the tax and claims a corresponding input tax, which achieves GST neutrality.

This idea would work nicely for property transactions. The time of supply could be the date of settlement. The new scheme would reduce risks for the taxpayer and get out of mismatch problems for the IRD.

Overseas shareholders and ICA

Be careful if you have a New Zealand company with an overseas shareholder which is itself a company. If the shareholding in the overseas company changes, this impacts on the 66% retention required to retain ICA credits, losses to carry forward and grouping.

Lawyers and Conveyancers Act 2006

This Act became effective in August.

You are no longer permitted to draw up a simple agreement between Jo Bloggs and Jo Bloggs Limited to sell Jo's business to the company **as a going concern** and charge for this service directly or indirectly or obtain any gain from doing it.

The best you can do is to get a lawyer to draw up a template you can reuse. You must not alter it except for names, prices etc. You must not charge for the service.

Donations

Donations paid through a company can save 39 cents in the dollar tax if it is going to reduce shareholder income, which would otherwise be taxed at the highest rate.

Capital transactions in Australian companies and unit trusts

NZ (not Australian) tax law applies in this country to "capital" income derived from Australian sources.

Therefore, if there is a transaction **of a capital nature**,

<p>currently 6 of them.</p> <ul style="list-style-type: none"> When you do have the choice of FDR or CV and the calculation results in a loss, the income is deemed to be nil, as you will be aware. However, where you do not have a choice and have to use CV then you are permitted to use the losses and carry them forward if required. Tax credits are claimable subject to the normal rules. 	<p>look at the NZ tax law to determine if it is taxable. Generally, amounts distributed by a company to a shareholder are taxable as a dividend unless the company is being wound up. Share buy backs must conform with the NZ rules to be tax free. Other "capital" payments to clients could be taxable in NZ.</p>
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Software trap

A client was a sole trader. His GST returns were sent in 6 monthly. A few years ago he formed a company and ceased trading as an individual. He registered his company for 6 monthly GST returns.

Can your software tell that the client, now a shareholder, is no longer putting in GST returns? If it can't, it is likely to remember the 6 monthly GST returns of old and produce provisional tax reminders on 28 October and 7 May for the individual. He/she should of course be paying tax three times a year.

Recommendation: Check your October 28 GST reminders to make sure you do not have a client who should have been paying tax at 28 August.

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