

Tacks **FAX**



DON'T LET THE IRD NAIL YOU

Published by **The Small Business Institute Limited**

ISSUE 0901

Independent earner rebate, new S. LC 13

The new Government has introduced a new rebate for NZ residents, starting from 1 April 2009, aimed at middle income earners who do not get any State assistance, which includes Working for Families (WFF). The rebate is \$520 per year and is to rise to \$780 per year from 1 April 2010. It is available to those with incomes over \$24000 and under \$48000. From \$44,000 the rebate reduces at the rate of 13 cents in the dollar, disappearing at \$48000. If the person is in a relationship and the partner is **entitled to WFF** the rebate is not available. It could be unfortunate if the WFF entitlement is minute. However, it appears if the partner gets New Zealand Superannuation the credit is still available. WFF only is excluded for the purposes of partner income. The revenue is further protected by excluding anyone (or partner) getting the equivalent of State assistance from outside New Zealand.

- There will now be an incentive to justify shareholder salaries of at least \$24,000 per year to get the rebate. There will also be a disincentive to even up incomes in a relationship if the tax saving is less than the rebate lost. Note: the top personal tax rate is being reduced.
- If the client qualifies for part of a year, a claim can be made for a proportion of the rebate based on the number of whole months the taxpayer qualifies.

CV losses can be claimable

Some foreign shares are treated as debt rather than equity. See Sections EX 46(10) and EX 46(11). These are shares carrying a fixed rate of return and similar. The use of FDR is not permitted. They are being treated as though they are financial arrangements. Therefore losses are claimable.

Capital Gains from Oz shares or unit trusts

A return of capital or other "capital" distribution from a foreign company to an individual or trust, not subject to the FIF rules, is often taxable income. To find out, apply the New Zealand tax law. For example, an Australian company called up more share capital than it required so decided to return some to shareholders. There was no cancellation of shares so the return of capital did not comply with NZ rules and the "capital gain" was taxable income.

The Oz exempt list

Have you seen the IR 871? IRD has prepared a list of companies which they believe comply with the requirements for them to be exempt from the FIF rules. We understand this is to be updated in about May each year. We will attach a copy of the IR 871, for those who receive their Tacks Fax email.

Dual purpose rentals

We suggest caution when claiming losses from rental properties which are used partly by the owners but are also available for rental for part of the year. Holiday homes are an example.

The Commissioner has recently put out an exposure draft on this subject.

The IRD is considering issues like:

Is the rental being promoted all year, when not required by the family?

Is the entire house available or are there locked rooms?

Case law includes:

No deduction for expenses when a home was let to a friend for 16 weeks. The costs related to keeping the house and not to rental.

Losses on rental of home let while taxpayers were overseas were disallowed

House was rented pending sale. TRA said there was a dual purpose of selling the house and getting rent. Expenses were limited to the income.

Property development companies

Perhaps the easiest way to understand the proposed new associated person rules is to assume any association you can imagine for reducing tax will be covered and if it is not then your idea is likely to be tax avoidance. The new laws will apply to land bought from 1 April 2009 and most of the changes are effective from 1 April 2009. Also note: A builder who buys a piece of land potentially gets caught if he improves the land by more than a minor amount. A builder is a person in the business of erecting buildings.

To avoid the 10 year holding rule, a client should not buy any property while a property developer. A separate company for property development is recommended and when the business is finished wind it up. A minute recording the property development business has ceased might be adequate but winding up is likely to be safe.

Payroll giving

If the July Taxation Bill is passed in its present form, employees will be able to have donations made by deductions from their payroll at any time on a one off basis. The donations do not need to be continuous. The donee could change every pay day. However, payroll giving will also be voluntary for the employer and will only be available for those firms which file PAYE electronically. Employers must remit the donations within 3 months.

The employee will not need to put in an IR 526 because the tax relief will have been claimed as each donation is made. The law change is to be effective from 1 April 2009.

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, fax 04-9399724, e-mail mail@smallbusinessinst.co.nz