

# Tacks **FAX**



DON'T LET THE IRD NAIL YOU

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## IRD loses – shareholder salaries

Two orthopaedic surgeons have won a High Court case over low company salaries. They were sole traders before switching to companies. IRD said the salaries were below commercially realistic levels and there was therefore tax avoidance.

- The Court saw no reason why switching to a company should be construed as tax avoidance.
- The Court's view was there was nothing in the Income Tax Act which required payment of commercially realistic salaries
- The surgeons shunted the money through their trusts and obtained interest free loans. The Court said since all the taxes had been paid, there was no avoidance.
- The Court did not agree with the reasoning in Case W33, the dentist's case.

This case is important. The idea that paying low salaries from companies can be tax avoidance is probably finished, unless there is a law change.

The IRD has decided to appeal. Any clients in a similar position could consider helping to fund the legal battle to make sure of the best possible outcome. We can put interested parties in contact with the barrister.

## Student early repayment bonus scheme

The 10% reduction for early repayment of student loans applies for amounts of \$500 or more paid in excess of the required repayments for the year.

The scheme commences from 1 April 2009 (provided it is passed into law), so over payments made last year will not assist in getting the bonus.

Since it doesn't matter when in the year the excess payment is made, most of the extra payments will probably occur in March.

At 10% pre tax, the offer is likely to be tempting.

## Change in use

Reminder: Unless you are winding up the entity or contemplating doing so, the change in use may be calculated on the lower of the cost or market value at the time an asset is transferred from business use to private use. A new law is coming so that any change in use will have to be at market value only.

## Holiday homes

IRD has issued its interpretation of how income from holiday homes should be taxed. We are **attaching** the IRD notes because there are some useful examples to follow. Most of the report is much as expected. It could be useful to save this for easy reference. A comment has been made that IRD's view is wrong in many respects.

## Accruing accountancy fees

Generally, the TRA says you can claim accounting fees only in the year the cost was incurred. Thus, if you are preparing accounts for the year ended 31 March 2009 and the client was very late getting accounts for 31 March 2008 to you, you will not be able to claim the 31 March 2008 fee unless the work was done before 31 March 2009. What if the work was started by this date? The answer is may be. If you can establish there is a genuine commitment at 31 March 2009 to pay accounting fees in a quantifiable manner over a reasonable contract period, an accrual can probably be justified.

## Amending tax returns

It is very difficult to amend a tax return if the correction will result in less tax to pay. Most practices want to do this from time to time.

If an issue is going to arise, it will usually do so a short time after the client has signed the return.

Instead of sending completed tax returns promptly to the IRD, you could hold them for a couple of weeks as a routine part of your quality control, just in case. The more complex ones could be held longer. Delaying sending the returns will give you the best chance to avoid the need to correct them after they have been sent in.

## Subvention payments

Make sure the payment is made in cash by the due date. We understand the Commissioner of Inland Revenue will accept a cheque swap, whereby the payer receives a simultaneous loan from the payee.

Never group companies for tax set off unless you want to get your imputations in the wrong company.

## Shareholder/employee uses company assets

Where a shareholder/employee uses a company asset, the correct way to charge for the value of the benefit is to use open market rental for the item.

If the asset is a business tool and costs less than \$5,000 and the private use is not material, no adjustment is needed. Also, you may not need to make an adjustment if the value of the benefit is less than \$300 per quarter. If the benefit fluctuates during the year, consider registering for FBT on an annual basis to make the exemption \$1,200 per year instead of \$300 per quarter.

## Determination E 12

Determination E 11 has been cancelled and replaced, with effect from 1 April 2009, by E 12. There are a couple of additions and a few minor changes. We attach a copy of E 12 for your reference.

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