

# Tacks **FAX**



DON'T LET THE IRD NAIL YOU

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## Double Tax Agreement with Australia

Clients who offer services in Australia need to be aware of the changes to the DTA which will probably be substantially operative from 1 April 2010. If they perform services for more than 183 days in any 12 months period and "more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual" the client is deemed to have a permanent establishment in Australia.

In addition an enterprise could have a deemed PE in Australia where an individual (or individuals) is present in Australia for 183 days in any 12 months period and the services are performed on the same project or connected projects.

Withholding tax on dividends, interest and royalties are likely to remain unchanged for our run of the mill clients.

The statutory period for reopening tax returns is 7 years after the expiration of "the date on which the enterprise has completed the tax filing requirements of that State for that year of income." More on this subject in T F 0907.

## Clients taken off your agency list

Some clients are dealing with tax refund services they find in shopping malls. They are merely trying to find out if they can get a refund. They sign up with the tax service, who happens to be an IRD registered tax agency. This service then links their "new client" onto their agency list. If a client is de linked from you in this way, IRD says you will need to get a fresh written authority.

## When a PIE doesn't pay

Watch out for the year a client retires. Consider this scenario:-

Income for 2008 year \$50,000

Income for 2009 year \$55,000

PIR to be used 30%

Client retired at 31 March 2009 so the income for 2010 will be about \$25,000

Tax rate in PIE has to be 30%

Tax rate for investment in own name will probably be 21%

### Conclusion

Clients can lose in the year of retirement when investing in a PIE. Paradoxically, the client who makes a mistake and selects the lower PIR gets the right result!

## GST Ratio and payments

When paying income tax with GST, it can save work if you get the client to make two payments; one for GST and the other for income tax.

## Engagement letters

Practice review checks to ensure engagement letters are reasonably up to date. An easy way to handle engagement letters is to do them **every** year with the annual accounts. Get the client to sign as they sign their tax returns. We suggest you send or give them a copy.

If you would like some suggestions of what to include in an engagement letter, please email us.

## Reminders

### Legal expenses

The \$10,000 limit for claiming legal costs (see restrictions in TF 0903) of a capital nature does not apply until the 2010 tax year.

### Charitable donations from a company

For a company to claim charitable donations as a deduction for tax purposes, there has to be sufficient taxable profit in that year to cover the donations. Any excess would create a tax loss, which would not be tax deductible.

## What is cost for Fair Dividend Rate purposes?

In short, it is valuation. If the client bought shares in 2004 for \$10,000 and there is no market for them, you need a valuation to bring them into account for FDR. Cost is not \$10,000. You are then stuck with the value for 5 years compounding at 5% per annum. You don't have to get a new market value after 5 years. You can continue the 5% compounding.

If, however, the shares were bought in the 2006 or 2007 years, the \$10,000 is treated as cost.

## Income protection insurance

Income protection insurance policies (only) paid by employers for their employees are exempt from FBT. The policy proceeds need to be of the type that will be taxable to the employee.

## More on IRD mileage rates

- 1) The rates may be used for reimbursing employees and shareholder/employees  
BUT
- 2) The 5000 km limit applies to the self employed, which includes shareholder/employees who are not having PAYE deductions from their salaries.
- 3) While there is no 5000 km limit for reimbursing employees at the 70c per km rate, businesses must still meet the test of a reasonable estimate. Therefore if an employee wants reimbursement for 20,000 km, the 70c rate may not be appropriate.

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