



DON'T LET THE IRD NAIL YOU

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New tax resident and trusts

Reminder: If you have a client coming to live in New Zealand who has a trust, you have 12 months to elect to become a complying trust and to pay tax on foreign income. Otherwise the trust is a foreign trust up to the time of residency and a non complying trust thereafter.

If your client is a transitional resident, you appear to have a year from when transitional residency ceases, in which to elect. However, as opinions vary as to whether this is the case, elect within the 4 years or, to be thoroughly safe, in the first year.

GST changes being proposed by IRD

IRD has put out an exposure draft which proposes to simplify the apportionment between business and private use of an asset. All you will have to do is claim the percentage of business use up front. If the private use percentage changes by more than 5%, an adjustment will be required. It will not matter whether the asset is primarily for business or primarily for private use. There'll be no more adding a bit back in each GST return.

Also, buyers under a deferred settlement arrangement lasting more than a year and being worth \$225,000 or more, will only be allowed to claim GST on a payments basis even if they are registered on an invoice basis.

Sponsorship

Application of the rules for claiming "sponsorship" is tighter. Clients must get realistic value for the money they spend on sponsorship. For example, sponsorship of the New Zealand Festival of the Arts, for which there is only mention of the donor's name in its publications, is not usually going to be tax deductible. If, however, the festival happened to be a major customer of the client and there had been pressure to become a sponsor because of this, it could be possible to argue the cost is tax deductible. The client needs to keep good records to show the expenditure was necessary for deriving the income.

Transfer of KiwiSaver to Oz now a bill

Clients going to live permanently in Australia will soon be able to take their KiwiSaver accounts with them, **including the Government contributions**. This money must be invested in a complying Australian superannuation fund. There will be no right to withdraw any retirement savings as is permitted if they go to other countries. The law is expected to be effective in the latter part of next year. KiwiSaver will still mature at 65 as per NZ law. Australian pensions are available from 60, so long as the claimant has retired.

Claiming PIE losses

If you need to include PIE income in a tax return, the best place to put it is in the overseas income section. Include a covering letter detailing the income. (IR 858 at page 8).

Reminder: Trusts must bring in PIE income if there has been no election and the default rate has been used.

Where a PTRE pays tax on a quarterly or an annual/exit basis (non provisional tax), zero-rated portfolio investors (companies and also trust which have elected 0%) are allowed a deduction under s DB 53 for an allocated loss in the income year which includes the end of the PTRE's income year. The general limitations still apply like where the loss is of a capital nature.

However, where the PTRE pays provisional tax, investors cannot claim the PIE loss. Instead, losses incurred by the PTRE are carried forward and offset against the income of subsequent income years. You may need to find out from the PTRE how it pays tax.

The reason for the difference is the non provisional tax PTREs allocate income to investors on an on-going basis. Due the administrative costs, some PTREs have opted out, particularly those schemes already in existence when the PIE system came in. These PTREs, the ones paying provisional tax, do not credit profits to investors on an on-going basis.

Individuals are different. Generally, they are not able to be zero rated. S. DB 53 does not apply to them. They cannot usually claim PIE losses. They can only benefit from PIE losses by the PIE allocating the resulting tax refunds to their investment.

However, Section HM 61 provides that for investors in a PIE which pays tax on a quarterly basis who have a portfolio investor exit period, the PIR is deemed to be 0%. If all the terms of S HM 61 are met, S DB 53 provides that a loss may be claimed by an individual. S HM 61 is new and not effective until 1 April 2010.

Giving accidental financial advice

The Chartered Accountants Journal has an article by Tom Davies. You can inadvertently give financial advice simply by a throw away comment in response to a question from a client. You could find your PI Insurance does not cover you because you have declared you do not give financial advice. We think you should:

- Use your engagement letter. State, clearly, you are not in the business of giving financial advice and any comment made by you on the subject of investment is not to be interpreted as advice. Warn clients to take financial advice elsewhere.
- Insist on your PI insurance covering you for this risk.

We recommend issuing a new engagement letter every year and keeping evidence the client has a copy.

NZICA proposals to reduce costs for small businesses:

- Micro businesses (under \$60,000 sales) pay 15% tax to cover almost everything. No deductions.

Small businesses

- Small businesses (up to \$1.2m of sales) pay tax on a cash basis
- Shareholders pay the tax on company income even if shares owned by trust
- No need to prepare accrual accounts for a company
- Private use adjustments instead of FBT and entertainment rules
- Pay tax and GST at the same time
- Depreciation rules to be simpler
- No need to keep ICA
- No need for attribution rule
- Balance date issues and square ups will go
- No need for stock takes (except livestock)
- No provisional tax

Our dates got muddled

In Tacks Fax 0909, we originally wrote the article "Cash Basis non individual" with the words "Commencing from 1 April 2009". Unfortunately, we changed this to "From the start of the 2009 financial year". Please correct your copy. The new rules start from the beginning of the 2010 tax year.

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