Tacks FAX

DON'T LET THE IRD NAIL YOU

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Danger in using tax consultants

If you sign an engagement letter agreeing with a tax consultant to a cap on their risk, you could be in trouble. By signing an agreement of this nature, your PI insurer can no longer recover damages, in your place, for the excess over the limit. For example, the engagement letter you have signed limits the adviser's risk to say $30,000. You receive a claim for $200,000 for damages resulting from faulty advice you have received and passed on. Your insurers will probably refuse to pay out more than $30,000 because by signing the agreement, you have given away the insurers' rights.

Change in use and 15% GST

Look out for clients who need to or want to make a change in use of an asset currently being used as part of a taxable activity. For example, a client is developing some real estate and has a domestic rental on the land. It is now going to be retained for permanent rental instead of being knocked down as originally planned. A change of use adjustment is needed and GST repaid. If the client delays, it will cost them more in GST payments. The adjustment is calculated on the cost price or the market value, which ever is the lower.

Clients wishing to deregister for GST should also do this before 1 October 2010.

Budget

- Look carefully at your classification of assets in a residential rental property. Anything which ought to be part of a building structure will have nil depreciation from the beginning of the next financial year. This is a good time to review your depreciation schedules to see you are getting it right. For help with your classification, see Tacks Fax 1004. IRD is also expected to review its depreciation policy for commercial buildings.
- Now the trust tax rate is going to be the same as the top individual marginal income tax rate, the tax advantage of having a family trust as a shareholder in a company has been reduced. However, the leader of the opposition has already announced his intention to increase the top individual tax rate when Labour is re-elected as the Government. Therefore, you may wish to keep your existing structures in place and carry on as usual. You may also wish to continue setting up company shareholdings involving trusts in anticipation of a possible future increase in the top tax rate.

Get your salary patterns set up while there's no tax advantage in doing so. It may help in the future.

Reminder:

Check each tax return to see if you should be claiming IETC (Independent Income Earner Rebate)? IRD will not automatically adjust the tax for you. Fill in box 32A and 32C in the IR3.

Unlimited kms for employees not unlimited

IRD may have given the impression employees can be reimbursed for all their vehicle expenses used for business at 70 cents per kilometre.

In the February 2010 TIB the department says the employer has to ensure the payments are a reasonable estimate of actual costs. The 70 cents reimbursement rate may not automatically be used. Beware clients wanting to use 70c per kilometre for large amounts of business car running costs, particularly if they are also shareholders.

Spouse/partner going to conference

IRD is cautious about allowing claims for the cost of taking a family member to a conference.

The argument that a partner is expected to attend is weak. In 1988 Case K 75 referred to a husband taking his wife to an overseas conference put on by a directly associated company to the one which employed him.

The Taxation Review Authority, in allowing the deduction, noted that it was company policy for wives to accompany executives to overseas conferences and on other business trips. The company benefited because the wives were familiar with company business and contributed to business-related social activities.

The Judge also said "At these conferences and meetings Mrs G's presence was expected for a delegate of the stature of Mr G." Perhaps one should be forgiven for asking what stature has to do with tax deductibility.

Note case K 75 refers to a directly associated company only. It does not cover any conference.

Generally, the spouse needs to be actively engaged in the business while overseas or contribute in some integral way to the conference, for a claim of costs to be acceptable. Claiming the cost of taking a spouse to any conference, at which it is generally expected that a spouse will attend, may be deemed a private cost by IRD. There would probably be insufficient nexus between the income earning activity and the cost.

Log returns to IRD

For many practices, not **all** forms and returns are sent to IRD by email. If a return goes astray, how are you going to prove you sent it? The onus is on you.

Keep a log. It's reasonable evidence the return was sent.

Opportunity arising from GST change

Retailers could offer to sell goods on the basis of a down payment before 1 October and spread payments into the future. The time of supply will have been triggered at 12.5% GST. It would be hard to argue GST avoidance because the law has offered a genuine commercial opportunity

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