Tacks FAX

DON'T LET THE IRD NAIL YOU

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No interest and penalties – GST

Use of Money interest or penalties will be remitted if a mistake in a GST return arises prior to 31 December, 2010 and it has occurred due to the change to the 15% rate. The legislation will not apply to allow remission if shortfall penalties are applicable.

GST traps in changeover to 15%

Lay-by

Clients selling goods on Lay-by may be paying GST on each instalment as it is received. However, IRD has warned that GST applies on the date the final payment is made. Therefore, if a lay-by agreement straddles the GST change over date, the payments made before 1 October will be insufficient.

GST on hire purchase operates on the agreement date.

Progress Contracts

Progress contracts have special time of supply rules for GST. The 12.5% rate will apply from the date an invoice for a particular progress payment is issued if this is prior to 1 October 2010. However, if no invoice has been issued you fall back to the earlier of the date the progress payment is due or the actual date of the progress payment. The GST rate applicable will depend on whether these dates fall before or after the 30 September 2010. For non progress type contracts the time of supply for the whole contract is the earlier of invoice or receipt of any payment. Clients should possibly consider issuing an invoice **for the whole transaction** before 1 October if they want the GST rate to be 12.5%. An example might be a builder or painter working on a domestic property.

Early withdrawal of funds

IRD is changing its view on the tax treatment of losses arising from early withdrawal of funds on term deposit. Currently this loss is deductible immediately if the money is used to pay a business expense. IRD now considers there is not a sufficient link between the two transactions and a loss should not be claimed at that time. However, since the deposit with the bank is a financial arrangement, the loss will be claimable as part of the base price adjustment. This adjustment will occur when the balance of the deposit is repaid by the financial institution.

This is currently an exposure draft, so the old rules apply, in the meantime.

Don't forget to alter your GST questionnaire

You will need to alter your GST questionnaire for the period ending 30 September 2010. Clients who operate on a payments basis have to incorporate an adjustment for debtors and creditors in that return.

Patents, trade marks and franchises

Fixed life intangible assets may be able to be depreciated over the life of the asset provided they are listed in Schedule 17 of the ITA 2007.

If you can get in early when a client is buying a franchise, you may be able to get the agreement worded so that part of the cost can be depreciated. If part of the agreement is for a fixed term **and** the amount attributable to it has been stated, refer to Schedule 17. If the cost is listed in the schedule and it can reasonably be expected to depreciate over time, depreciate the fixed life intangible asset on a straight line basis over the maximum term of the agreement. Thus if the franchise agreement is for ten years with a right of renewal for a further five years, the depreciation is spread over 15 years.

The Commissioner's view is that Lotto franchises cannot be depreciated because they gain in value.

Quick outline of case Z23

A property developer took frequent draw downs of loans as he needed them for living expenses. Effectively, they were a substitute for remuneration and hence they were deemed to be income.

No NRWT on some dividends

A dividend paid to a non resident client in Australia will be subject to 0% NRWT, if the client owns 10% or more of the shares in the New Zealand company. This change was effective from 1 February 2010.

Opportunity to save tax

Juggling company income between shareholders and companies to take advantage of the lower company tax rates is going to be common for the 2010 and 2011 tax years. This could raise tax avoidance issues. Past behaviour, the viability of the company etc could provide non tax reasons to vary the pattern of shareholder salaries. Risks will reduce if the client's changed salary policy is not greedy. Leaving something for the IRD could be prudent.

The confusing story of PIEs

If a client uses the correct PIR, the PIE income is excluded from her tax return, right? Usually, yes. However, where the PIE investment is listed on the stock exchange, (a listed PIE) the client may choose to include (or not to include) the distribution in her tax return to take advantage of imputation credits.

PIEs do not have to pay withholding tax on dividends. They can simply attach the ICA credits.

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