Tacks FAX

DON'T LET THE IRD NAIL YOU

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Independent Earner tax credit and WFF

IETC kicks in at $24,000. A shareholder/employee could just miss out on IETC by having the smallest entitlement to WFF. It's worth watching for this. Crediting a slightly bigger salary, if it can be justified, could push your client out of qualifying for WFF and so entitle them to the $520 IETC rebate.

Lay-by and other changes to GST rules

- The Government is changing the transition rules. **Lay-by** payments made by 30 September will now be subject to GST at 12.5% and after 30 September at 15% provided the contract was entered into prior to budget night – 20 May 2010.
- Payments made on **12 months** (or less) **contracts** being paid in instalments are likely to be subject to the 12.5% rate after 1 October. This is because it would often be too expensive for the payee to get the extra GST back from customers. The balance of the GST at 12.5% is to be payable in the 30 September GST return. A similar problem arises for **private training establishments** and is to be fixed in a similar way.
- **Finance leases** also present a problem. It is proposed to allow the 12.5% rate to be used for 5 years (the choice is the lessor's) so long as the lessor notifies the lessee it has elected to continue with the 12.5% rate. The lessee will only be allowed to claim GST at the 12.5% rate.
- **Invoices issued** for September supplies, dated in September and issued **in October** will be at the 12.5% rate provided they are **issued by 11 October** and payment is due not later than 60 days.
- A technical problem can arise when issuing **replacement invoices.** When varying an invoice, you are supposed to issue a credit adjustment followed by a debit adjustment. Also, the transaction could affect the time of supply. For the transition, replacement invoices are going to be permitted to overcome these problems.

You will need to check the details of the law, when it is passed, to find out the criteria needing to be met. We'll look out for the law change and send you further information as soon as we can.

Depreciation loading concession

IRD proposes (not yet confirmed by law) to allow the extra 20% loading where a business intended to buy depreciable property by 20 May 2010, budget night. There could be documentation on a file to show this. Alternatively, a statutory declaration could be sent to the Commissioner. A proposal to buy is, of course, not an intention to buy.

Limiting your risk

You can attempt to limit your risk to your **business** clients through your engagement letter. However, if you do, you need to add something like the following:

"It is agreed the terms of the Consumer Guarantees Act do not apply unless the law prevents contracting out of the Act."

There is a fine for anyone who tries to contract out of their risk when supplying advice to a **domestic** consumer. Be careful when using a stock engagement letter.

More on PI Insurance

Every so often, when the risks increase, insurance companies change their exclusions. Currently the favourite is financial advice. Some insurance companies will supply partial cover to accountants for this risk. Most, it seems, will give no cover at all to accountants. Some insurance companies don't set out what you are covered for until several months after you have renewed your insurance. Read your PI policy **every year** and check the exclusions. If you don't like any of them, negotiate.

If it is not standard practice to provide you with a copy of the actual policy each year, we suggest you insist on it.

New rules proposed for Depreciation on commercial & industrial buildings

In Tacks Fax 1004 we described the new rules for determining the correct depreciation rates on residential property. There is no start date so you should be implementing these as you do the 2010 tax returns.

IRD has now come up with its equivalent proposal for commercial and residential property. Some important issues have arisen.

The general principle is that industrial, commercial and commercial residential is different from residential. Alterations in a house are much more permanent than in a factory. Therefore, it is proposed the non depreciable portion of a commercial building will be only:

Foundations, building frame, external walls, cladding, windows, doors, stairs, roof and load bearing structures. The rest are to be separate assets that can be depreciated.

If a building is predominantly used for accommodation, it is residential unless it is commercial residential.

A dominant purpose test will have to be applied where a building is mixed commercial and residential. Look at the asset, say a lift, and ask how this is mainly used.

Transition to 0% depreciation non residential

Some clients have not split out the separately depreciable assets in a commercial or industrial building. When the 2012 year starts, they will be given a **one off** opportunity to do this. The proposal is to take 15% of the tax book value of the building and treat this as a pool account. The depreciation rate suggested is 2% straight line.

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, fx 04-9399724, e-mail mail@smallbusinessinst.co.nz