CLIENT UPDATE AUGUST 2011

Tax Refunds – A Hoax?
Clients continually receive e-mails from what is purportedly the Inland Revenue Department advising of tax refunds available. Ignore these e-mails because they are a hoax. Replying may give rise to identity theft or draining your bank account.

If you are linked to our firm as your tax agent and are due a tax refund, we will advise you. If you have any concerns, please contact us.

Gift Duty to be Abolished.
From 1 October 2011 gift duty is to be abolished. Many people are considering gifting (forgiving) any and all debts that their family Trusts owe to them. We urge caution, particularly if you are a shareholder in a Look Through Company (LTC).

The loss limitation rules for LTC's come in to play when the shareholder has no equity in the LTC, or nothing at risk. Forgiving all your debt to your trust might protect your assets and give you an unexpected tax bill at the same time.

Direct Debits – Beware.
Many people have automatic payments and direct debits as a means of paying accounts directly out of their bank accounts. Automatic payments are used for regular amounts that are the same every period e.g. rent. They can be stopped by the payer i.e. the person whose bank account the payment is coming out of.

Direct Debits tend to be used where either the payments are irregular in frequency or variable in amount. There are several potential problems with direct debits.
Firstly the power to change (increase) the amount being paid out of your bank account rests with the payee i.e. that is the person receiving the payment.

Secondly the ability to stop a direct debit also rests with the payee. If you want to stop a direct debit coming out of your back account, your bank will normally direct you to contact the person or business the direct debit is being paid to.

The point here is, that it is your money and your bank account. We suggest you use automatic payments in preference to direct debits. If you must use a direct debit, keep a copy of it, do it for a limited time (at least then the payee has to make some effort to contact you at expiry) and be careful that you are dealing with a reputable organisation.

Employment Contracts
From 1 July 2011 employers must retain a signed copy of every employee's employment contract. There are penalties for these not being available if requested by the Labour Department.

Now is a good time to ensure you have these on hand. Not only that, but check they are up to date and for example include 4 weeks annual leave, 90 day probationary periods and no age requirements for retirement.

Making the Most of the 90-day Trial Period.
The new Employment Relations Amendment Act 2010, which came into effect on 1 April 2011, extended the 90-day trial period to all employers. Prior to the amendment only those with fewer than 20 staff qualified.

The Employment Relations Act legislation requires that in order for a trial period provision in an employment agreement to be valid, the agreement must be in writing and state:

- that it is for a specific period not exceeding 90 days starting at the beginning of the employment, and

- that during the period the employer may dismiss the employee, and

- if the employee is dismissed they are not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

If any of these elements are missing the trial period is not valid. In addition, the trial period provision applies only if that the employee has not previously been employed by the employer.

Working for Families – Changes to Income Definition.

The Working for Families (WFF) Tax Credits Scheme is provided by the Government for families with children aged 18 or younger, to help with day-to-day living costs. To more accurately reflect the amount of income available to meet these costs, the definition of "family scheme income", which is used to determine family assistance entitlements, was amended from 1 April 2011.

The following amounts will now need to be included when calculating a person's income for family assistance purposes:

- The income of a trust of which the person is a settlor (certain trusts are excluded, but income of a generic family trust will be caught), and income of a company of which that trust (and an associated person) holds 50% or more of the shares. In this situation the attributed income of the company is calculated based on the trust's proportionate shareholding in the company. The amounts attributed are reduced if the trust or company has either distributed its income or paid a dividend, respectively. If there is more than one company, the net income of each company is calculated and attributed separately and if one company has incurred a loss, the loss cannot be offset against the profits of other companies.
- The taxable value of fringe benefits attributable to a person who (including associated persons) holds 50% or more of the shares in a company.
- Total passive income over $500 derived by dependent children such as interest, dividends, royalties and rent.
- Portfolio Investment Entity (PIE) income where the income is not locked in until retirement.
- 50% of certain pensions and annuities that are treated as exempt income.
- Foreign sourced income of a person's non-resident spouse.
- Tax exempt salary and wages such as those from specific international agreements e.g. salaries received from employees of the United Nations.
- Deposits paid to the main 'Income Equalisation Scheme' (for income from farming, fishing or forestry). Deposits captured include those made by the person and companies and trusts that meet the above requirements for family scheme income. Conversely refunds from the scheme are excluded.
- A further catch-all provision has been introduced to capture additional payments received by a person that are used to replace lost or diminished income or meet the living expenses of the person's family if the total of the amounts received exceed $5,000. For example, if a person's parents pay his/her family's utilities bills each month and the amounts total more than $5,000 per year, then that total amount is included as income.

IRD Audit Focus.

The 2010 Budget provided $85m extra funding to the IRD to increase their audit capabilities.

For the past 12 months they have had a focus on the hidden economy, hospitality and international taxation. Included in the international taxation is collecting student loan repayments from residents who are living overseas.

Their emphasis going forward will be on the misuse of Charities, Complex financing (cross border), transfer pricing, offshore bank accounts and professionals, once the Penny and Hooper Supreme Court decision is known.

Companies – change of shareholding Warning.

Nowadays advising the companies office of a change in shareholding can be performed on line. If you or someone associated to you e.g. a trust, are shareholders in a privately owned company, do not change any shareholding without contacting us first.

A change in shareholding of more than 34% will result in the loss of imputation credits and possibly affect the ability to subvent losses. A change of over 51% may affect the ability to offset past year losses against current year income.

Look Through Companies (LTC's).

The deadline for LAQC's to elect in writing to IRD to become LTC's for the 2011/12 year expires on 30 September 2011.

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