CLIENT UPDATE AUGUST 2012

Company Annual Return Fee.
From 1 August 2012 the Companies office has reintroduced a fee for filing company annual returns. Filing an annual return is a statutory requirement and it is an offence not to comply. The new fee is $45 per annual return. We have increased our charges for the preparation and filing of annual returns by $40 and will make the $45 payment on behalf of clients to the Companies office. These fees must be paid prior to our filing of the annual returns.

Directors Responsibility.
Many business people choose to operate their businesses under a company structure, especially with the current company tax rate (28%) being lower than the highest individual tax rate of 33%. It is worth reminding clients of the responsibility of being a company director. Just as directors of defunct finance companies face court penalties, imprisonment and loss of personal assets such a fate could potentially await directors of smaller companies who are not aware of their directorship responsibilities.

The Companies Act confers responsibilities on directors and the Board to manage the company. Directors are responsible for making key decisions as to the operation of the company. The duties of care for directors can be summarised as follows:

- To act in good faith and in the interests of the company
- To exercise powers for a proper purpose
- Not to act in a manner which contravenes the Act or the Constitution
- Not to agree to or cause or allow the company's business to be carried on in a manner which is likely to create a substantial risk of serious loss to the company's creditors (reckless trading)
- Not to agree to incurring an obligation unless the company can perform the obligation when required
- To exercise care, diligence and skill, taking into account the nature of the company, the nature of the decision, the position of the director and responsibilities undertaken
- When exercising powers or performing duties directors may rely on professional and expert advice.
- Be able to pay its debts as they become due in the normal course of business, and
- The value of the company's assets are greater than the value of its liabilities, i.e. not trading while insolvent.

Mixed Use Assets.
This is the term used to describe assets that are used for both private and business purposes. These include baches, luxury boats and aircraft. The Government has expressed concern about the tax losses generated by these types of assets.
Historically if your family bach was "available for rent" for the whole year, then the expenses relating to that bach were also claimable for the whole year. This is despite it having been actually rented for a portion of the year. That is about to change.
From 1 April 2013 it is being proposed that if the asset cost over $50,000 and is unused (not rented) for 62 days or more per year, then the expenses will be apportioned.
Furthermore, if a loss still arises after apportionment of expenses and if the gross rental received for the asset is less than 2% of its cost price, then the loss cannot be claimed against other income e.g. salary, investment income etc. Such losses will only be available for offset against future profits of renting the asset.
These rules will apply irrespective of what type of entity owns the asset.
Lastly if the gross rental income is less than $1,000 per annum or generates a loss, then taxpayers can simply opt out of claiming the losses.

Holiday Pay and Parental Leave.
An employee's annual leave entitlement accrues while they are away on parental leave as the leave is considered to be part of the employee's continuous service. However, a little known fact amongst employers is that the method of calculating holiday pay for employees who have returned from parental leave is different to the normal holiday pay calculation.
Holiday pay is normally calculated as the higher of either the average weekly earnings for the 12

months immediately before the end of the last pay period before the holiday is taken, or the employee's ordinary weekly pay at the beginning of the holiday. This calculation changes when the employee takes holidays in the 12 months following parental leave.
The calculation for holidays taken within 12 months of return from parental leave is based on the average weekly earnings for the 12 months immediately before the end of the last pay period before the parental leave holiday, and is not compared to the ordinary weekly pay. This means that it is very likely that the amount of holiday pay may be less than the employee is expecting.
It is important that both employers and employees are aware of the difference in calculation methods.

IRD Interest and Penalties.
31 March 2012, the IRD due date for filing 31 March 2011 income tax year returns for most businesses has passed.
The current economic climate indicates that the number of businesses in a tax loss position is comparatively high. For those businesses that have made a profit, cash flow is still likely to be tight, making it difficult to meet tax payment obligations. Where tax is owed to the IRD and not paid, the combination of interest and penalties charged can quickly add-up. Current IRD use-of-money interest (UOMI) rates on under and overpaid taxes are 8.40% and 1.75% respectively. However, penalty rates remain high; a total of 5% for the first month and 1% for each following month that the tax remains unpaid.
If you find yourself in the situation of being unable to pay the total amount owing by the due date, contact us to discuss the following.

IRD Arrangement – at a minimum, where tax is owed after the due date and penalties are being charged, the IRD should be contacted to discuss the situation. If an instalment arrangement is entered into, some penalties can be remitted if the terms of the arrangement are met.

Tax Intermediary – the option of using a tax intermediary has also become common practice. This was discussed in our May newsletter and can be a win win situation.
Tax can also be purchased from an intermediary if a tax liability arises as a result of a reassessment, for example due to an IRD investigation or voluntary disclosure.

IRD Remission – in what can potentially be seen as a last resort, a 'request for remission' could be made. The IRD is obliged not to pursue taxpayers for outstanding tax if the recovery of the tax would be an inefficient use of the IRD's resources or would place taxpayers, being natural persons, in serious hardship. Although the serious hardship provisions can't extend to a company, the IRD may take into account whether the recovery of outstanding tax would place a shareholder in serious hardship.
For many people approaching the IRD for help is particularly daunting. If you need help contact us. Doing nothing is not an option!

Budget 2012
The Governments Budget on 24 May contained few changes that impact on business when compared to previous budgets. The changes made include:

Tax credits abolished.
Three tax credits have been removed from the 2012/13 year as being "outdated" and no longer serving their original policy intent. They are:

- **Income under $9,880 –** this was introduced in 1986 to ensure low paid full-time workers were not worse off due to tax reforms. A taxpayer earning less than $9,880 could claim the tax credit for every week they were in paid work for 20 hours or more.
- **Childcare and housekeeper tax credit –** this credit (of up to $310) was first introduced in 1933 and last revised in the 1984/1985 tax year. Since then Government support programmes such as Working for Families and free early childhood education have been introduced.
- **Tax credit for active income of children –** this was introduced in 1978. The policy intent was to reduce the compliance cost for employing children part-time. This will be replaced by a limited tax exemption for income not taxed through the employer's PAYE process.

Livestock Valuation Rules.
A further notable change is to the livestock valuation rules. The livestock regime caters for the fact that some farmers might hold stock on capital account (Herd Scheme) versus other farmers who might hold stock for resale (national standard cost). Under the current rules, farmers are able to switch methods which can cause a significant tax advantage. This was not intended and the rules have been tightened to restrict switching between valuation methods.

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