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Tax Time

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Improving Your Cash Flow in Tough Times

Recovering debts can be a slow process in these continually gloomy economic times. There are measures you can take to increase the likelihood of being paid on time and to improve your debtor collections.

Terms of Trade

Firstly, review your terms of trade. Do your terms of trade allow you to charge interest on overdue accounts? Can you register a charge on the Personal Property Securities Register (PPSR)? Can you pass on legal costs for debt recovery to your debtors? These terms of trade will encourage the debtor to make the payment of your invoices a priority over others' invoices.

If your terms of trade allow the registration of a charge on the PPSR, register that charge as soon as possible, as priority is based on the registration date. Your registered charge will be given priority over other debt.

Where possible, obtain personal guarantees from the directors of customer companies as part of your terms of trade agreement.

Debtors Collection

Pursue your bad debts early on to improve your chances of receiving payment, or have an arrangement for payment. The creditor who puts the most pressure on a debtor will be the most likely to receive their money before the others.

Consider using a debt collection agent if the debtor has not taken any steps to repay your debt.

For those debtors from whom collection has become extremely difficult, consider taking legal action. If that debtor continues trading, it is likely that the debtor is getting deeper into debt and it will become less likely that you will receive payment.

If a debt is not in dispute, a statutory demand can be issued against a company. A statutory demand requires the debtor to pay you the outstanding debt, the interest on the debt and the legal costs for issuing the statutory demand if your terms of trade allow. If the debtor does not pay the amount claimed within 15 working days, you can apply to put the company into liquidation. This is a powerful tool as the debtor will no doubt go to some lengths to make the payment as they won't want other creditors to know that liquidation proceedings are in progress.

New customers

Before extending credit to potential new customers, it pays to check their creditworthiness with a credit agency. Find out about the company and its directors before you start dealing with them. You do not need a company's permission to do a credit history check, but you will require permission from the directors if you wish to search their personal credit histories. Search the PPSR for charges that have been registered against the company.

There are no guarantees that you will be paid even if the company and the directors have a good record, but it will help you to make a decision of whether you wish to deal with them and if so, how. If they look a bit dubious and you still want to deal with them, you can take precautions by dealing in cash or giving only 7 days credit.

Redundancy Tax Credit Extended

Revenue Minister Peter Dunne has announced an extension to the redundancy tax credit. The May 2010 Budget repealed the tax credit from 1 October 2010, but it's now extended to 31 March 2011.

The intention to extend the credit is in response to the Christchurch earthquake. Mr Dunne said, "Without the tax credit, in some situations, people could be taxed too highly if they had worked part of the year".

The redundancy tax credit was originally introduced to provide some tax relief to those who received a redundancy payment. In these situations, the payment often moved the person into a higher tax bracket. This was perceived to be an unfair outcome and the tax credit rectified that situation.

The extension will apply to all redundancies received before 1 April 2011. If a Redundancy tax credit (IR524) form is lodged with us now, claims for redundancy payments received on or after 1 October 2010 will be processed after the legislation is passed, which is expected in early December 2010. It will be paid at the rate of 6 cents in the dollar to a maximum of $3,600 for each redundancy payment.

To Gift, Or Not To Gift?

Earlier this year, the Government announced a review of gift duty and the associated consequences of not having a gift duty regime. Following this review, the Government has announced that gift duty will be abolished effective from 1 October 2011. Legislation to implement this change will be introduced later this month. Surprisingly, no additional legislation is planned to provide protection for creditors and social policy initiatives.

The primary driver behind abolishing gift duty is that the cost of compliance far outweighs the annual revenue collected. The regime has remained largely untouched since the abolition of estate duties in 1992 and as a result has become outdated in its application. The majority of gifting statements filed are for nil duty.

The Government's view is that the concerns held about the removal of gift duty are outweighed by the compliance cost, as the duty does not currently prevent the transfer of assets under a gifting program, rather it simply limits the amount that can be forgiven or gifted each year before gift duty is payable. The protections currently offered by gift duty have never been the intended policy goals, but rather have only been a secondary effect of the regime. Existing provisions in the Property (Relationships) Act 1976, the Criminal Proceeds (Recovery) Act 2009, the Insolvency Act 2006 and the Child Support Act 1991 all provide protection for creditors and other affected parties where assets have been alienated.

When gift duty is abolished, it will allow people to forgive an unlimited amount each year. Although this will mean that gifting can be done at one time, rather than spread over numerous years, this will not necessarily be the best option for everyone. Retaining a "settlor loan" will give settlors the flexibility to have that loan repaid rather than receive income or capital distributions from the trust, at the discretion of the Trustees. The recent decision against Krukziener indicate that there is a tax avoidance risk where funds are simply drawn down as loans to be later repaid with capital distributions. More caution will be required in this area once gift duty has been abolished.

How it affects you

If you are currently paying gift duty, you should contact your advisor immediately to determine whether it remains an appropriate course of action. If you have a gifting program or intend establishing one in the future, we recommend discussing the impact of the abolition of gift duty, and whether upon abolition you want to continue gifting, with your advisor.

- From WHK Sharp-As Tax

IRD Installment Arrangements

The Inland Revenue Department (IRD) have released an updated Exposure Draft of their Standard Practice Statement in relation to instalment arrangements and the payment of tax. The draft Standard Practice Statement sets out what the IRD expects of taxpayers when entering into an instalment arrangement and what is required before an arrangement can be finalised.

There are a number of important things to note about the instalment arrangement process. The first is that, before the IRD can enter into an instalment arrangement, the amount of tax outstanding must be quantified and, as such, a return must be filed or an assessment must be issued. This requires that taxpayers are up to date with their filing requirements and it is only once the tax payable is quantified that the IRD is able to commence negotiation of an instalment arrangement and put a halt on further penalties being imposed.

When entering into an instalment arrangement, the IRD has an obligation to ensure that the taxpayer, being a natural person, would not be put into a position of serious hardship as a result of the arrangement. Serious hardship is defined in the Tax Administration Act 1994 and means, significant financial difficulties that arise because of the taxpayers inability to meet minimum living expenses according to normal community standards, or the cost of medical treatment for an illness or injury, or a serious illness, or the cost of education for the taxpayers dependents.

The IRD has an obligation to maximise the recovery of tax debt from a taxpayer, but not to the extent that it would be an inefficient use of the IRDs resources or that a natural person taxpayer would be placed in serious hardship by enforcement of the debt.

The IRD are likely to pursue an instalment arrangement where this will result in a greater recovery of tax than they would receive from bankruptcy or liquidation action. The IRD is required to take a pragmatic approach with respect to the obligation to maximise the recovery of outstanding tax and it must also protect the integrity of the tax system.

How it affects you

If you have tax arrears, entering into an instalment arrangement and applying for financial relief can be a way to remedy the immediate issues and provide a plan to successfully trade in the future and meet their ongoing tax obligations. If you have unpaid tax obligations, we suggest you contact your tax adviser immediately to see what options are available to you.

- From WHK Sharp-As Tax

Holiday Period Tax Payments

As the Christmas holidays are nearing, now is a good time to be reminded of your income tax requirements over the summer period.

For most provisional taxpayers, the next provisional tax instalment will be due on the 15th January 2011. 15 January is also the due date for GST returns for periods ending 30 November 2010. For many businesses this can be a problem as staff members are away on holiday and tax due dates can be easily forgotten. Taxpayers also need to remember to put away sufficient funds to meet their provisional tax and GST liabilities. January can also be a difficult time with low sales volumes, higher costs due to the holiday period and lower productivity as the staff are in holiday mode.

If you think that you will be unable to make the payment required, we urge you to get in contact with the Inland Revenue Department (“the IRD”) now through your tax adviser. It is better to be proactive and contact the IRD before payment becomes due as this will ultimately save you money. For example, if you think that you will not be able to meet your payment obligations on 15 January, and you advise the IRD now and enter into a payment arrangement, you will not be charged the incremental 4% late payment penalty or any of the subsequent monthly late payment penalties (provided you adhere to any arrangement entered into). You will still be liable for the initial 1% penalty and use of money interest until the tax is paid in full. You may be able to come to an arrangement with the IRD to enter an instalment arrangement. This could be by instalments over a period of time, or a lump sum at a later date. In most situations, your adviser can organise an instalment arrangement over the phone.

If you do nothing and leave the tax bill outstanding then the IRD can take stronger action against you, and you could end up paying a lot more than the value of your original tax bill in interest and penalties.

For provisional tax it may also be appropriate to re-visit your provisional tax payments and make an estimate, but be wary of the consequences of doing so. There are also a number of finance options in relation to making the 15 January provisional tax payment which may defer the problem with less cost than just ignoring the payment.

How it affects you

If you are unsure of any tax liabilities you have that are due for payment soon or if you know that you are unlikely to be able to make payment, we urge you to contact your tax adviser to determine the best solution for you – don’t wait until nearer the due date because with all the Christmas festivities the 15th January 2011 will be here in no time.

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Good Trust Records Essential

The news that Gift Duty is being abolished will result in one of two reactions for many people who have Family Trusts in New Zealand:

Some people will be relieved that the hassle of signing and initialling pages of legal jargon and baffling schedules is over. They may also be pleased at not having to pay for this service to comply with the IRD. For others, the reaction might be "what's gifting?"

Either way, appropriate documentation for Trusts is not a groovy topic, but it is a critical one. Trust experts agree that a startling number of Trusts in New Zealand have little or no supporting documentation. In many circumstances, a Trust is established, the first year's gifting is sometimes completed, and the Trust is never looked at again, particularly for those only owning the family home. The results are a useless structure that offers little asset protection, and ultimately a settlor who is out of pocket, confused and understandably disgruntled.

At the bare minimum, a "straight-forward" Family Trust which only holds the family home will have the following documentation: the Trust Deed and any variations to that deed, at least one Memorandum of Wishes, the Trust Minute Book containing the minutes of all trustee meetings and trust resolutions for Trustee decisions, Sale and Purchase Agreements for assets being sold to the Trust, Deeds of Acknowledgement of Debt, Gift Statements and Deeds of Gift (not required after 1 October 2011), a record of why the Trust was established, the current aims, all incoming and outgoing correspondence and the Trust financial statements for each year.

Far more records will be required for a Trust holding rental property, investments, farms, or engaged in any form of trading or business.

If you have concerns about the lack of paperwork being kept for your Trust, you need to contact your adviser immediately. Time is of the essence when getting your asset protection plans in order.

When you are absolutely certain that your Trust is supported by solid documentary evidence, you need to ensure that the record-keeping standards continue to be maintained. A professional independent trustee should not only be able to assure you of this, they should be happy to show you.

So while removing gift duty may have some impact on Trust administration, it cannot be an excuse for weak Trust record keeping. People who have Trusts must be vigilant and keep their Trust Advisors accountable. It is important to have a reliable team of professionals to assist you, but remember you are ultimately responsible for protecting your assets.

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Quick Bits

- The minimum family tax credit will rise from $21,204 from 1 April 2011.
- Employees will be checking their pay packets this month so make sure you've paid them the right amount and deducted the correct amount of PAYE using the new lower PAYE rates that came into effect from 1 October.
- The tax treatment of disposal and demolition costs incurred when assets were irreparably damaged by a natural event (such as an earthquake), will be dealt with as part of the disposal of the relevant asset. In general, the change will apply from 1 April 2010, but if a taxpayer has filed their returns on the basis that such costs are part of the disposal cost of an asset, then those returns will be grandparented.