

Tax Time

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Website Launch! - www.stephenlarsenandco.co.nz

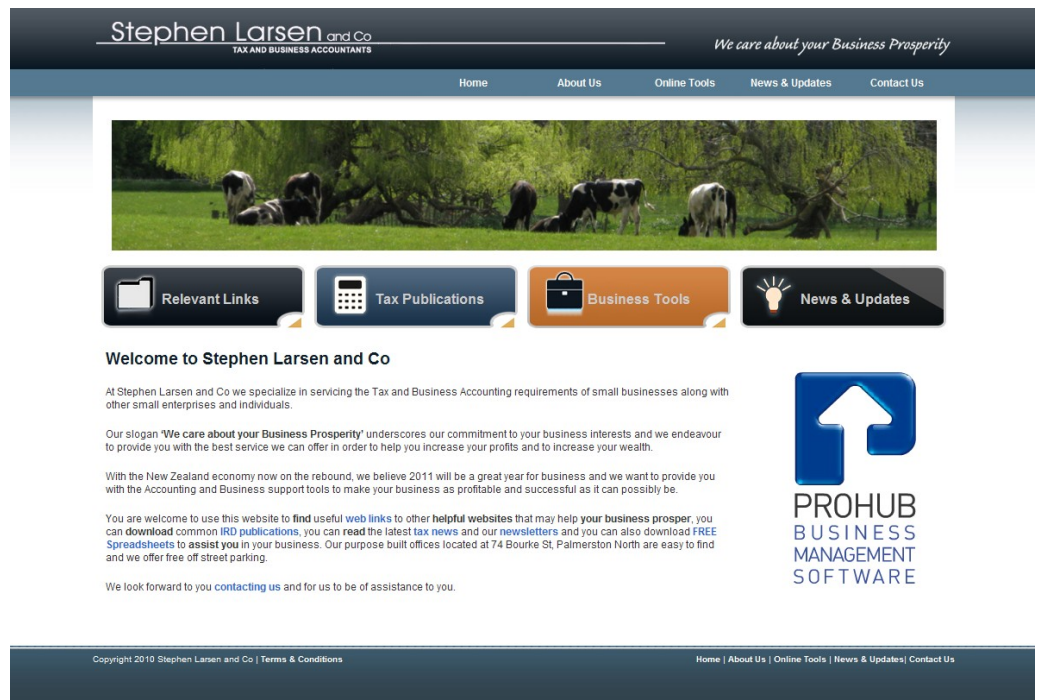
Stephen Larsen & Co are pleased to announce to all of our clients that we have now launched our website.

We hope that you will find this interesting and informative as it includes back issues of our Tax Time newsletter and recent tax news and policy updates.

There are also some FREE tools & calculators available for download, links to relevant government and accounting software websites...

We look forward to developing this over time to become an integral part of keeping you up-to-date and communicating with you.

Please do take a look!



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IETC (Independent Earner Tax Credit) Reminder

The IETC is a tax credit for individuals whose annual net income is between \$24,000 and \$48,000.

You will be entitled to IETC for any months during the period 1 April 2009 to 31 March 2010 if you're:

- a New Zealand tax resident
- not entitled to Working for Families Tax Credits (or received an overseas equivalent)—this includes their partner.

And you didn't receive:

- an income-tested benefit
- NZ Super
- a veteran's pension
- a foreign pension or benefit, or an overseas equivalent of any of the above.

If you don't meet the above criteria for even one day of any month you won't be entitled to IETC at all for that month, so don't include it in your calculation.

The Year Ahead

In 2010 we experienced a significant year for change with respect to tax in New Zealand, and it is likely that 2011 will be another. Government debt and the increasing Government deficit mean that additional revenue sources will be required to meet the shortfall. Whether this means increased or new taxes in the future remains to be seen, but change is inevitable.

Much of the legislative change that occurred in 2010 actually takes effect in 2011 and, as such, people need to be aware of, and take into account in their business dealings, the lower tax rates from 1 April 2011 for companies, the likely abolition of gift duty from 1 October 2011, changes to the way entitlements to working for families are calculated, the removal of depreciation on buildings, and the zero-rating of transactions involving land for GST purposes.

The new Look Through Company (LTC) regime commences from 1 April 2011 and in some respects replaces the LAQC regime, which will cease to apply for income years starting on or after 1 April 2011. LTCs will present an opportunity for existing LAQCs to transition to that regime should the shareholders continue to require limited liability and access to tax losses from the company. A number of other transitional options exist which you will need to consider in the coming months.

So, Who is a Director Exactly?

In a recent Australian Federal Court decision, guidance was given on the circumstances in which Courts will extend the application of directors' duties to individuals who, although never formally appointed as directors, are nonetheless substantially involved in the operation of a company. This case also gives some guidance as to what could equally happen in a New Zealand Court, as the concept of "de facto directors" is contemplated by the New Zealand Companies Act 1993.

This case considered the role played by Mr G in Company A, even though he was not a named director of that company.

The Court held that there were a large number of actions carried out by Mr G which would typically be expected of a director. These included:

- Negotiating the acquisition of a mining interest by Company A. This was a central plank of Company A's business operations and would not ordinarily be delegated by a Board to a person who was not a director.
- Deciding the contents of the prospectus for Company A's proposed capital raising, in circumstances where Mr G's functions were not limited to professional or advisory duties that were part of the overall planning and verification process.

In the latter part of 2010, the Law Commission released its first two Issues Papers on the Law of Trusts in New Zealand, and it is likely that we will see significant reform to trust law in the coming years, not only to reduce the prevalence of trusts, but also to introduce a much greater focus on compliance for trusts to ensure that people are not using trusts to avoid personal liability.

As we are now in an election year, discussion has already commenced by the main political parties as to the future of New Zealand's tax system. Both major parties have signalled that capital gains tax is not on the agenda. Labour has indicated that it would proceed with a tax-free threshold and the introduction of a new top personal tax rate, possibly as high as 45% (in line with Australia).

With spiralling debt levels, income tax rates and other taxes will be a key election issue, bringing with it the certainty of change.

How it affects you

Because 2010 was a year of significant change, with many of those changes taking effect from 1 April 2011, we are set for a roller coaster ride in 2011. If you are unsure whether there are any tax changes that will impact on you, we suggest that you contact your tax advisor to discuss these changes so that you can adequately plan for the future.

- From WHK Sharp-As Tax



- Finding investors in order to raise capital for Company A.
- Corresponding with lawyers on behalf of Company A which evidenced that Mr G was reasonably perceived by an outsider dealing with the company as a director or senior officer.
- Directing dealings that went to the heart of Company A's financial standing.

Having found that Mr G was a director, the Court then held that, given the various eventualities, Mr G had first misused his position as a director of Company A for personal advantage and secondly had misapplied two cheques totalling \$152,750. The Court found, therefore, that Mr G had breached his fiduciary duty to Company A, and had failed to act in good faith and in the best interests of the Company. As such, Mr G was liable to account to Company A for the personal benefits obtained by his conduct.

How it affects you

Although this is an Australian Court case, similar rules apply in New Zealand. This case demonstrates that it is your actions, rather than the official paper work, that determines who is a director of a company.

- From WHK Sharp-As Tax

GST on the IRD's Radar

The IRD has released another warning about taxpayers making improper GST claims on the purchase of property. In the media release, the IRD state that they are aware of "contrived or fraudulent transactions" occurring when a GST advantage is being sought. The IRD also note that the temptation to make an improper claim has increased now that the GST rate has increased to 15%.

The media release hints that there will be further audit activity in relation to GST on land, and that they have the resources and tools to capture transactions involving inappropriate GST claims. At present, it is not uncommon for the IRD to question GST claims before releasing the refund to the purchaser.

The claiming of GST on land has been on the IRD's radar for sometime, hence the move to zero rate all transactions partly or wholly involving land between two GST registered parties.

We have observed many situations where taxpayers have claimed GST on the likes of lifestyle properties, home stays or bed & breakfasts, where the existence of a taxable activity is, at best, questionable. An important point to note is that while a taxpayer may receive the benefit of making a GST claim upon purchasing such land, they must ultimately pay GST on its sale, a change of use, or deregistration. This

has caught out many a taxpayer, especially those who purchased rural land when it was relatively cheap in the early 90's and sold it at the peak of the property cycle a few years ago.

Another GST issue that often arises is in relation to the misapplication of the "going concern" rules. The common mistakes are that the purchasing entity is not in existence at the material times or that property sold does not constitute a taxable activity that is capable of separate operation. The consequences for the purchaser of mistakenly assuming that a transaction is a going concern can be severe as it will usually result in an incomplete settlement of the purchase under the agreement of sale and purchase which will result in penalty interest being applied and the purchaser being liable for any interest or penalties imposed by the IRD for the unpaid GST.

How it affects you

Even after almost 25 years, GST continues to cause issues for many taxpayers.

The proposed change to zero-rate land transactions will alleviate many of these issues, but until then taxpayers should consult their tax adviser before making a GST claim on land or settling a transaction that purports to be a going concern as the consequences of not doing so could be severe.

- From WHK Sharp-As Tax

The Hidden Economy of e-Commerce

The IRD's compliance focus document outlines the issues they're focusing on for 2010-11, one of these being the hidden economy. This is where businesses may take part in activities or schemes to deliberately evade their tax obligations. They have profiled one of the hidden economy industries "e-Commerce" and explained about what they're doing and how you can ensure you are compliant.

e-Commerce covers any business that is run through an online selling site, or an existing business that makes additional sales through a website. If you use websites such as Trade Me, e-Bay or Etsy.com to sell goods or services as part of your business, you must include this income on your tax return.

The IRD's current activity

They've begun a data-matching programme focusing on individuals (who appear to be operating a business) and businesses who sell goods or services through online selling sites. Data-matching allows them to identify individuals or businesses who are avoiding their tax obligations.

People or businesses identified through data-matching may not be including income from online trading on their tax

returns or paying GST or income tax on it. People who have been identified as not accounting for income from online trading will be contacted by letter or phone and may be audited.

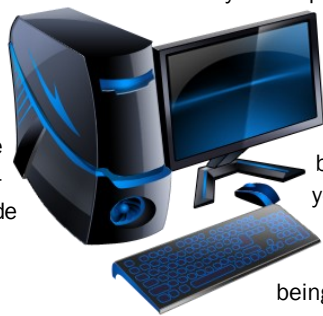
What you can do

If you're operating a business you must pay tax on any income from online trading. If you haven't been doing this you can make a voluntary disclosure.

Once you advise the IRD of anything that may be wrong with their tax returns, they'll work with you to correct it as soon as possible. The benefits of making a voluntary disclosure are greater if a full and complete disclosure is made before being notified of a pending tax audit.

Future focus

They're also researching income from online gambling sites and virtual worlds. If you conduct business in these areas, please be reminded that you must include this income on your tax return.



New Employer Obligations for Overseas Workers

Changes in legislation late last year mean employers need to check carefully that prospective employees are entitled to work in New Zealand.

These new obligations, included in the Immigration Act 2009, came into effect on 29 November 2010. While the Act continues the principle that a non-New Zealand citizen mustn't be employed if they're not entitled to work in New Zealand, the Tax code declaration (IR 330) will no longer be a "reasonable excuse" for employing a non-New Zealand citizen. Employers now need to show they have taken "reasonable precautions and exercised due diligence" to check job applicants are entitled to work for them.

To help you meet the new law, the Department of Labour is making it easier to check whether people from overseas are entitled to work in New Zealand.

VisaView is a free online service employers can use to quickly

and easily find out the work entitlement of non-New Zealand citizens, including any specific work conditions such as whether the individual can only work for a specific employer or just part-time.

VisaView also helps employers keep track of their enquiries so they can demonstrate they've taken "reasonable precautions and exercised due diligence" when hiring new employees, as required by the new legislation. It's also been extended so New Zealand passport holders can prove their entitlement to work. Almost three-quarters of New Zealanders aged between 16 and 65 hold or have held a passport. Extending VisaView to offer a passport validation has made a significant difference for employers concerned about asking New Zealanders to show they are citizens, and therefore entitled to work here.

For more information on VisaView, go to www.immigration.govt.nz/visaview

International Tax – top 10 tax misconceptions for individuals

International tax compliance can be complex and difficult. To help you get it right, the IRD have compiled the following list of commonly misunderstood tax facts relating to individuals:

1. New Zealand residents aren't just taxed on the income they earn in New Zealand, they're also taxed on their worldwide income.
2. If you leave the country but maintain a permanent place of abode here, you're still a New Zealand resident for tax purposes.
3. Foreign income including investments (even if deposited in an offshore account or left on a foreign credit card) is taxable in New Zealand even if it's not repatriated to New Zealand.
4. Equally, the fact that withholding tax may have been deducted on foreign income doesn't mean that this income is no longer taxable in New Zealand.
5. A foreign tax credit may be available but only where the tax involved is not subsequently refunded (even in a later income year), it's substantially similar to income tax and can't exceed the tax otherwise payable on the underlying income in New

Zealand.

6. Not all overseas pension payments are tax-free, certain ones may be fully taxable in New Zealand.
7. Special taxing regimes (controlled foreign company and foreign investment fund rules) apply to gains on certain foreign shareholdings, retirement schemes and life insurance investments.
8. Additional disclosures are required in respect of controlled foreign companies and foreign investment funds.
9. Allowances that may be treated as tax-free in other countries (for example, living-away-from home allowances) are generally fully taxable in New Zealand.
10. The temporary tax exemption on foreign income for transitional residents expires after 48 months and there's no entitlement to Working for Families Tax Credits during the period of the exemption.

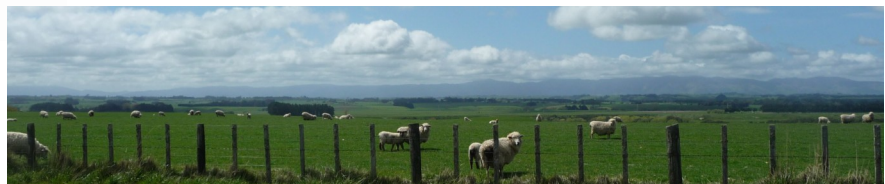
It's important to keep the above in mind if you are an individual with international investments. New Zealand has a large migrant population as well as ex-pat executives, many of whom come from countries with quite different tax systems.

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