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Tax Time

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- Accounting for GST in prices and business systems
- Avoiding the common property tax mistakes
- Tax Snippets

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It all comes down to your Will

Ordinary Wills

In these modern times, most people have wills for personal possessions such as antiques, jewellery etc, since Family Trusts are quite prevalent and they often own real property such as land, buildings, shares etc.

A Family Trust is not terminated at the death of the person who created it (usually the settlor as defined for tax purposes) and therefore its assets do not form part of the estate of the deceased individual. However, there are still many people from the older generation, i.e. parents of adult children who own substantial assets in their own names and have wills following the old tradition of leaving their estate to their children.

Although there is no estate duty or inheritance tax in New Zealand, consideration needs to be given to the position of the bequeathers.

It is very likely that the adult children would themselves have family trusts of their own and a gifting programme to gift away the value of their home and other assets. The annual gifting is only $27,000 per person and it would take a long time for a couple to gift the value of their home.

Instead of increasing the amount that the adult children have to gift, parents may want to update their wills, whereby they leave their estate to their children's family trusts rather than the children themselves. The children will benefit from the inheritance as they are more likely than not beneficiaries of their own trusts.

Parents may have concerns about the spouse/partner of a child in which case the adult child can set up their own personal trust to receive the bequest which has nothing to do with the spouse. If the relationship breaks down then the inherited asset will not form part of the relationship property as it is not personally owned by the adult child but is in a separate asset.

Living Wills

Living wills are quite different from ordinary wills. A living will is a directive by a person on how they wish to be treated medically should they become mentally impaired in the future.

It allows a person, while they have their mental competence, to make a healthcare choice on the procedure to follow, should they become mentally incapacitated.

Doctors recognise the clinical usefulness of such wills as they are ethically obliged to provide the necessities of life even where a patient is:

- In a persistent coma, or
- Suffering from an incurable and progressive state of illness and is in the final stage, or
- Never expected to recover from a severe injury and is on a life-support system.

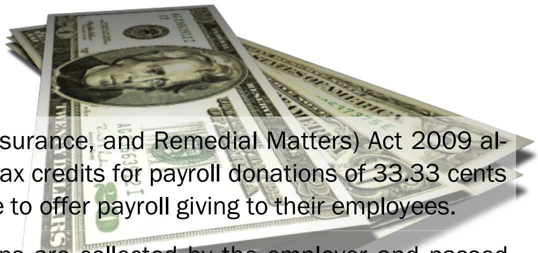
A living will cannot be used to demand euthanasia, as this is not legal, but it can be used to refuse medical treatment in a situation where a person has lost his or her decision-making capacity, as our Bill of Rights allows this.

Lawyers have to ensure that the person making a living will -

- Is fully informed of the process,
- Has full mental competence and
- Has not been affected by undue influence or pressure

Once the living will is made, it is important that the person's doctor, partner and close family members have a copy of it.

Payroll Giving



A new initiative coming out of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 allows employees to donate to donee organisations and receive immediate tax credits for payroll donations of 33.33 cents for each dollar they donate. From 6 January 2010, employers could choose to offer payroll giving to their employees.

1. Only employers who file both their employer monthly schedule (EMS/IR348) and employer deduction form (EDF/IR345) using ir-File could offer payroll giving to their employees.
2. If a tax agent is registered for Online Services then it can file EMS/IR348s and EDF/IR345s electronically for itself and its clients.
3. Payroll giving is voluntary. Employers can choose to offer it to their employees, who can in turn choose to donate using the offered payroll giving scheme.
4. Donations are collected by the employer and passed directly to the employee's chosen donee organisation.
5. Donations can only be made to approved donee organisations. A list of these donee organisations is available on the Inland Revenue website.
6. If employees choose to donate through payroll giving, they can't claim additional tax credits for these donations using the tax credit form IR526.
7. The IR526 will still be available for people who donate to donee organisations directly and not through a payroll giving scheme.

When someone makes a combination of donations, some by payroll giving and some straight to an approved donee organisation, the IR526 can be used to claim tax credits for the non-payroll giving donations (ie, those made straight to the approved donee organisation).

Tax Consequences of Term Deposit Withdrawals

The Inland Revenue Department's ("IRD") draft ruling looks at deductibility of interest paid on the early withdrawal of a term deposit ("TD"), and takes a very different view to the one previously adopted.

The new ruling applies where a person has money on TD, subject to the financial arrangement rules and:

- The TD contract provides that the rate of interest payable will be reduced in the event of the withdrawal, in part or in full, of the principal sum before the contractual maturity date.
- They withdraw the whole or part of the TD before such date.
- The application of the reduced rate of interest requires the repayment of interest already derived by the depositor or the set-off of interest owed against the principal sum ultimately repaid to the depositor.

The IRD now says that if the depositor withdraws the full amount of the TD before the contractual maturity date, a base price adjustment is required, and if the base price adjustment gives rise to a negative amount, that amount is expenditure and an automatic deduction will be allowed to the extent the amount arises from interest income derived under the financial arrangement in earlier income years.

If the depositor withdraws only part of the TD before maturity, a base price adjustment is not required. Therefore, depositors who are not cash basis persons, or have elected to adopt a spreading method, are allowed an adjustment in the year of variation for the repaid interest. Cash basis persons may only deduct the repaid interest at the time it is incurred if there is a sufficient relationship between the repayment of the interest and earning of assessable income. The IRD's view is that the relationship between the repayment and interest income earned is insufficient to gain deductibility. Instead, any positive base price adjustment upon maturity will be reduced by the amount of interest repaid in the year of partial withdrawal.

How it affects you

In general if you have funds in a TD for a fixed term and you decide to break part of that TD, and you have to repay some of the interest you have earned in earlier years, those costs will not be deductible, but it may reduce your income upon maturity. If you break the full amount of the TD and have to repay some interest you will be able to claim that expense, provided you have previously returned the interest income. This is a draft statement at present but it is likely to be adopted..

- From WHK Sharp-As Tax

Accounting for GST in prices and business systems

When GST increases to 15% on 1 October 2010 you will need to decide whether to alter the prices you charge for goods and services to cover all GST-inclusive prices.

You'll also need to ensure your business is ready to account for the new 15% GST rate on all sales and income, as well as purchases and expenses, from 1 October 2010.

If you use software to account for GST, check that you can change the rate or calculation, or get an update from your software provider to do this.

Businesses who account for GST on a payments or hybrid basis will also need to be able to identify invoices that have been issued or received but not yet paid. This is so they can calculate the GST rate change adjustment in the taxable period that includes 30 September 2010.

Existing contracts

The Goods and Services Tax Act 1985 (GST Act) allows for prices in existing contracts to be increased by the amount of the increase in GST.

Time of supply rules

There are no special rules regarding the time to account for GST and which rate to use when there is a change in GST. The general time of supply rule applies for most transactions when there is a rate change, i.e., a supply is considered to take place at the earlier of the time an invoice is issued or the time any payment is received by the supplier. When to account for the GST depends on the accounting basis your client uses:

- For the invoice basis they can claim GST when they receive an invoice or make a payment (whichever comes first) and account for GST when they issue an invoice or receive a payment (whichever comes first).
- For the payments (or cash) basis they account for GST or claim GST to the extent to which they make or receive a payment.
- For the hybrid basis they account for GST on their sales (income) using the invoice basis and claim GST on their expenses (purchases) using the payments basis.

Although the general time of supply rule applies for the majority of transactions, the GST Act provides special time of supply rules for some specific transactions.

The examples below provide more information for hire purchases, lay-bys, progress payments and rental or hire agreements. Find out more about time of supply information for other special supplies at www.ird.govt.nz (keywords: special supplies).

Hire purchases

GST is accounted for in the taxable period that includes the date on which the hire purchase agreement was entered into.

If the hire purchase agreement is signed ...

- on or before 30 September 2010, GST is 12.5%
- on or after 1 October 2010, GST is 15%

Lay-bys

GST is accounted for in the taxable period that includes the date that ownership of the goods pass, which will generally be when the final payment is made.

If the final payment is made ...

- on or before 30 September 2010, GST is 12.5%
- on or after 1 October 2010, GST is 15%

Progress payments

GST is accounted for in the taxable period that includes whichever is the earlier of when the:

- payment is due, or
- payment is received, or
- invoice is issued.

This will mean that if, in relation to a taxable supply, any of the above situations occurred on or before 30 September 2010, GST will be charged at 12.5%. Otherwise GST will be charged at 15%.

Rental or hire agreements

The total GST amount needs to be accounted for in the taxable period that includes whichever is the earlier of when the date the payment is due or the payment is received for each instalment.

For a rental instalment on commercial premises this will mean if the payment is due or received on or:

- before 30 September 2010, GST is 12.5%
- after 1 October 2010, GST is 15%.

Avoiding the common property tax mistakes

If you have income from property transactions, you'll be interested in the IRD's new guide 'Tax and your property transactions' (IR 361).

The new guide works through some of the tax rules where mistakes are commonly made. These include:

- property dealing or speculation
- claiming a loss from a property dealing or speculation
- unplanned rental income implications
- special tax rules for businesses in property-related activities
- living in a property owned by your LAQC, partnership or trust
- GST on apartment and property purchases and sales
- depreciation recovered on rental properties
- recognising what type of property investor you are for tax purposes
- know what type of tax, e.g. income tax, GST, provisional tax to pay.

It will help you to understand some of the basic concepts involved and recognise when you should seek advice from a tax agent.

Tax and your property transactions (IR 361) is available on the IRD's website at www.ird.govt.nz (keyword: IR361).

Tax Snippets

Allocation of beneficiary income in Trusts

From the 2010 income year, the period within which a trustee must allocate income to the beneficiaries has been extended from the six month period following the year-end. Trustees will now have the option of choosing the later of:

the end of the six month period after balance date; or

when the trustee files or is required to file the trust's tax return to allocate beneficiary income.

The above option may not be available to trustees where the Trust deed has a clause limiting the beneficiary income allocation period to within six months of balance date.

Transfer dates for share purchases

It is interesting to note that the transfer date of shares may not be the date the shares are sold.

Legally, the shares are owned by the party whose name is registered in the company's share register. For example, if both parties have agreed on a settlement, sign an unconditional agreement of sale and purchase, sign and deliver the share transfer to the registered office, the legal ownership will still not pass onto the purchaser until the purchaser's name is registered on the company's share register.

However, for tax purposes, the effective date of transfer is the settlement date.

Cash basis holder

Until 31 March 2009, only a natural person had the cash basis status for accruals, subject to certain rules and thresholds being met. However, from the 2010 income year, the cash basis status is no longer limited to individuals but also extended to trusts and companies meeting the same thresholds.

Pay your tax by credit or debit card…

The IRD have extended their services and you can now use a credit or debit card to make all online payments to the Inland Revenue

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