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Stephen Larsen and Co

TAXTIME

Trustees Liability

The legal position of a trustee is that they are personally liable for trust transactions.

Often, the trust deed has a limitation of liability clause that is included to effectively provide a trustee (usually an independent trustee) with protection against claims by a beneficiary. The trustee, however, may not be protected when transacting with third parties if a limitation of liability clause is not included in a third party contract.

Just as often, the trustee has a right of indemnification from the trust funds under the terms of the trust deed. Again, the trustee can seek reimbursement only to the extent of the trust assets.

Where a trustee transacts with a third party (even if in good faith), and believes that his liability is limited to the trust assets (which may not be adequate), he leaves himself open to being personally sued in the Courts.

Likewise, trustees are also personally liable for any GST or income tax payable to the IRD by the trust. If the trust funds are exhausted, the trustee may not only be not reimbursed but will also end up with a liability for tax.

In the context of income tax, usually the liability is more likely to arise from accrual income than in the normal course of business. For example, a bank could be owed a debt by the trust that the trust is now unable to repay. The bank may write-off that debt and not be able to seek remedy from the independent trustee due to a limitation of liability clause in the bank documentation. However, the debt written-off may become taxable income resulting in tax to pay. The IRD can recover the tax by suing the trustees personally.

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Tax and Election Day Earnings

2011 is election year and a number of people will be employed by the electoral office. Election day workers are employed on a casual basis immediately before, on or after polling day. They are taxed through the PAYE system at a flat rate. If you are one of these people, you need to complete an IR330. Your tax code will be EDW.

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Directors Liability

There are personal risks when a person acts as a company director. It is possible for a director to be held personally liable to the company, the shareholders or to a third party.

A person may become a deemed director if he or she exercises powers as a director or is unwittingly treated as one by being involved with that company or by sitting at the board table (e.g. a shareholder who is not a director). Sometimes a person is only a nominee director but he is still acting as a director and therefore has responsibilities and may be liable for his actions.

It is important for directors (and deemed or nominee directors) to be aware of their obligations. One such obligation is the request to maintain a Directors' Interests Register. Directors must disclose any interest they have in a transaction of the company on the Interest Register.

An interest includes situations where the director is a:

- Party to a transaction in which he or she will derive financial benefit from a transaction with the company;
- Director, officer or trustee of an entity deriving financial benefit from a company transaction; or
- Parent, child or spouse of the party deriving such financial benefit from a transaction of the company.

Regardless of whether or not the interest is disclosed, the company can void the transaction at any time up to three months after the disclosure is made to all the shareholders in the event where the company does not receive fair value for a transaction in which the director had an interest. If a disclosure of the interest is not made, the director could be liable for a fine of up to $10,000. However, the transaction cannot be voided where the company receives fair value.

Where a person is asked to accept a role as a director, it is advisable to require both:

- an indemnity; and
- insurance

from a company before that person accepts a directorship.

An indemnity typically provides that a director will be reimbursed by the company in respect of liability to any person, other than the company or a related company (as defined by the Companies Act 1993), for any act or omission in his or her capacity as company director. However, an indemnity can only be provided by a company if it is permitted by the company's constitution and will not cover all the acts of the director, for example criminal acts or breach of his fiduciary duties as the law does not allow it.

In case of insurance, the company may provide this only if its constitution allows it and the required board resolutions and certificates are signed.

Trustees Liability

(Continued from page 1.)

Where that trustee is a family friend, lawyer or accountant, the trustee cannot escape from the tax liability by simply resigning because they are liable for any tax that results from income arising in the year that they were trustees. In the above example, if the trustees had resigned in the year before the bank wrote-off the debt, they may not have been personally liable for tax. The resigning trustees should ensure that the IRD is advised that they are no longer a trustee.

Information for Exporters affected by the *Rena* Grounding

The IRD is aware that persons may be concerned about impacts, or potential impacts, of the *Rena* disaster on businesses, especially on exporters.

In particular, they understand that some exporters of goods intended to be exported on the *Rena* may not now be able to export those goods within the 28-day period required under section 11(1) of the Goods and Services Tax Act 1985 (GST Act) in order to zero-rate that supply for GST purposes.

Normally, a person who does not export the goods within 28 days of the time of supply, will be liable to output tax at the standard rate of 15%. However, section 11(5) of the GST Act allows the Commissioner to extend that 28-day period. As a consequence of the grounding of the *Rena*, the Commissioner has extended the period for goods entered for export on board the *Rena* to allow those exporters affected by the grounding a further 60 days to make alternative arrangements to export their goods and still be able to zero-rate that supply for GST purposes.

All existing and any new information relating to the tax implications of the grounding will be updated to the IRD's website: http://www.ird.govt.nz/news-updates/campaign-rena-grounding.html

Cash Deals aren't Tax-Free Income

The government uses taxpayers' money to pay for services we all need, such as healthcare, education, roads, environmental protection and recreation.

While most people pay the right amount of tax, some people think they don't have to pay tax if they are paid in cash. By not declaring all their income, people who do non-taxed "cashies" are taking unfair advantage of honest businesses and cheating those who pay the right amount of tax.

If you deal in cash, you should keep good records of all your business transactions and include these in your returns.

To help you keep accurate business records, it's a good idea to bank all the cash you receive. Inland Revenue has some helpful tips on keeping business records.

Because it's easy for cash to be spent on small or immediate purchases before you record the cash payment, it could be a good idea to encourage your customers to make a direct credit or Internet banking payment rather than paying in cash.

If you haven't declared cash income, you can make a voluntary disclosure. Inland Revenue offers incentives, including reduced penalties, if you let them know you haven't returned all your income before they find out.

To find out how to make a voluntary disclosure, go to www.ird.govt.nz (keywords: voluntary disclosure) or see the article in the September Business Tax Update.

If you have information about tax evasion and fraud

The entire community is affected when businesses cheat on their taxes. If you have concerns about those getting an unfair advantage, you can file an anonymous report with Inland Revenue — just use the secure online form.

Remember to provide as much detail as possible when you fill out the form.

Where does your tax money go?

If you ever wondered how your own tax dollars are spent, you can read up more about how the government spent our taxes in 2009–10 or check out the simple calculator that shows you just where your tax dollars go. Enter your income (without commas) and the site calculates where your tax dollars go (these are indicative figures only).

Use-Of-Money Interest (UOMI)

Prior to the Taxation (Tax Administration and Remedial Matters) Act 2011, UOMI had only been an expense when you had business income. Now, if you're charged or have received UOMI, it's an expense whether or not you have business income. You will need to:

- claim UOMI as an expense in the year you pay it
- show UOMI as income in the year you receive it.

This is effective from the 1997-98 and later income years subject to certain rules.

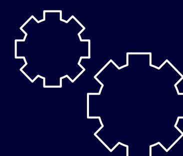
question time >>

Q: Do I have to pay FBT?

A: It depends on your business

As an employer, you have to pay tax on any benefits you give your employees. This is called fringe benefit tax. These benefits are generally not cash and can include:

- Motor vehicles
- Free, subsidized or discounted goods and services
- Low-interest loans



GST SOLUTIONS

Are you finding it a hassle to do your own GST Returns? We have a solution for you. We can save you time and money and a lot of stress by doing your GST returns for you. Our services includes sending you a reminder letter when you GST return is due so that you can get your records to us in time and ensure your GST Return is filed on time in order to have you avoid being charged late penalties. Contact us today for more information.

WEB SOLUTIONS

Have you check out our website lately? We have a variety of really useful calculators which you can download free of charge. These calculators are designed to help you manage and grow your business better by applying proven principles to your business.

PROHUB SOLUTIONS

Do you require a CRM system in your business? We have developed our own CRM system called PROHUB CCM. This system is designed around the all important concept of ensuring every sales lead is recorded and then every lead is properly followed up until the sale has been made. Contact us today for more information on how this program could help your business prosper.

Can I Depreciate My Commercial Building Fit-Out?

With the removal of depreciation on all buildings for income years starting on or after 1 April 2011, a transitional concession was introduced for commercial buildings whereby a pool of depreciable fit out can be created by including as the pool item, 15% of the depreciated value of the building.

This allows for taxpayers who have in the past not chosen to separate out the building fit out from the rest of the building a one off concession now that it is no longer possible to depreciate the building.

The fit out pool can be depreciated at 2% per annum. New fit out will not form part of the pool, but can be claimed separately.

Unfortunately, it is not as simple as taking the closing adjusted tax value of a building and applying the 15% concession to that amount. The taxpayer must also deduct the closing fit out adjusted tax value.

The fit out adjusted tax value applies to commercial fit out which relates to the building if the fit out was acquired after the building was originally acquired and a deduction has been taken for depreciation loss for that fit out.

Thus, where a building was purchased containing fit out and no adjustment was made upon purchase to split fit out from the building but significant amounts of fit out have been acquired since purchase and have been separately depreciated, it is possible that little or no amount may arise when determining the future commercial fit out pool.

It is also important to note that the concession only applies where a person has never claimed an amount of depreciation loss for commercial fit out as a separate item of depreciable property that is which was acquired at the same time as the building and relates to the building. Thus, even if only one item of fit out was separated from the building at purchase and was separately depreciated, the concession will not apply to that building. Knowledge of purchase dates may become particularly important as a result.

- From WHK Sharp-As Tax

Quick Quote

The economy depends about as much on economists as the weather does on weather forecasters. ~ Jean Paul Kauffman

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TAX AND BUSINESS ACCOUNTANTS

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Tax Time Newsletter. Items herein are general comments only and do not constitute nor convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Tax Time Newsletter is issued as a helpful guide to our clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.

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