



Christmas Break

Our offices will be closed from 5pm Friday 18 December until 8.30am Monday 11 January 2010.

We wish everyone a safe and happy holiday.

Sue Nisbett, Tony, Peter, Andrea, Annette, Brenda, Catherine, Gabriela, Geraldine, Raelene, Sue Holmes



Do you pay wages? – You need to read this

Please be aware that when paying any Statutory Holidays, Sick Leave, Bereavement or Lieu days where an employee does not work a set number of hours for that day you must pay these out as the “Relevant Daily Pay” rate as per the current Labour Department Legislation. This is calculated on the last four weeks wages divided by the days and hours worked.

Terminating Employees just prior to the Christmas Period

If the total Annual Leave and Holiday Pay would cover the weeks where the Public Holidays occur they are entitled to be paid for this as Statutory Holidays.

Women are so reasonable

After being married for 44 years, I took a careful look at my wife one day and said, ‘Honey, 44 years ago we had a cheap apartment, a cheap car, slept on a sofa bed and watched a 10-inch black and white TV, but I got to sleep every night with a hot 25-year-old gal. Now I have a \$500,000 home, a \$45,000 car, nice big bed and a plasma screen TV, but I’m sleeping with a 65-year-old woman. It seems to me that you’re not holding up your side of things.’

My wife is a very reasonable woman. She told me to go out and find a hot 25-year-old gal and she would make sure that I would once again be living in a cheap apartment, driving a cheap car, sleeping on a sofa bed and watching a 10-inch black and white TV.

Aren’t older woman great? They really know how to solve your mid-life crises.



Payroll Giving Law Enacted

Payroll Giving is a new tax concept that will apply from January 2010. It is a process whereby employees can make a regular charitable donation through pay deductions, rather than as cash donations to collectors etc. There is no overall tax advantage but the one advantage is that receipts are not required, and of course no year-end claim is necessary. The good news for employers is that they are not forced to establish a payroll giving system if they do not want to.



IRD Lays its Cards on the Table

The IRD has released a report that sets out the areas of its compliance focus for the 2009-10 year. The report reflects the IRD's intention to be open and transparent about the compliance matters that are of concern to the Department. The IRD believes this will enable people and businesses to better understand areas that will be targeted and hence result in better overall compliance by taxpayers.

Small and Medium Enterprises (SMEs)

There are 665,000 businesses in New Zealand with an individual turnover of less than \$100 Million. It is not surprising that given the current economic times the IRD intends to focus on helping businesses avoid getting into debt with the IRD, and if they do, intervene earlier with direct contact. The IRD also intends to enter into agreements with tax authorities in other jurisdictions to recover unpaid tax from New Zealanders living overseas. New Zealand's "hidden economy" will also be pursued with attention focused on the following specific areas:

- GST fraud involving the use of fictitious identities and false documents
- Agricultural and horticultural contractors – they will continue to be targeted as has been the case for a number of year
- Illegal activity in the form of organised crime and complex fraud, which is expected to increase

- E-commerce involving online sales transactions
- Income from property transactions focusing on property traders
- Income from offshore investments
- Artificial losses that may be exaggerated or artificially generated

With respect to property transactions the IRD has identified that many taxpayers are unaware of the obligation to pay tax on certain transactions, rather than deliberate non-compliance. The IRD intends to increase awareness through its "IRD Guides", online property related tools, advertising, revenue alerts, and working with intermediaries and interest groups such as real estate agents, so that these groups can pass information on to the taxpayer.

Employers

The IRD intends to focus on employers who are not registered for PAYE that should be and ensure that employers file their PAYE returns electronically if required, and that their returns are filed on time.

Individuals & Families

The IRD administers a number of different programmes, two of which are Working for Families and Child Support. Problem areas that will be targeted include families that receive too much family support, whether accidentally or deliberately, and people who try to avoid paying Child Support.

Fines and Penalties

It is a common occurrence for businesses to pay fines. Many businesses view fines as a part of doing business. The question is whether these fines are deductible for tax purposes.

The IRD's view is that fines and penalties, even if incurred to derive income, are not deductible because:

- The infringement for which the fine or penalty is imposed forms part of criminal proceedings
- The fine is imposed by a court or another body
- The fine is imposed on the taxpayer, its employees or third party contractors
- The taxpayer intended to break the law
- The fine is imposed in respect of a strict liability offence

Income Protection Insurance – the Deductibility is in the Detail

It is well known that premiums on income protection insurance policies are a deductible expense. However, the scope of what is considered income protection insurance is narrower than most people think, and the decision to claim the premium paid is often mistaken.

The most common error is mistaking personal sickness or accident insurance for income protection insurance. In reality there is a definite line between the two, and different tax treatment is needed for each.

Income protection insurance policies are subject to tax in the sense that the premiums are deductible and receipts are assessable. Premiums paid under personal sickness or accident insurance policies, on the other hand, are not deductible and receipts are not assessable. The specific details of the policy must be analysed before the decision in relation to deduction is made.



If the benefit payable under an insurance policy is tied to a person's pre-disability income it is likely the policy will qualify as an income protection policy. There may be a minimum or maximum benefit payable; this will not affect the policy being classed as income protection policy. However, if a policy provides that the recipient will receive a fixed amount upon injury, it is unlikely to qualify as an income protection policy. For example, a self employed person earns \$60,000 per year and, to protect his income in the event of injury, acquires insurance for that amount.

This will not qualify as income protection insurance as the benefit is not calculated with reference to earnings or profits lost as a result of the injury. It is not enough that at the time the policy was drafted the payment was based on the insured person's earnings, or that the payment will change in line with the Consumer Price Index (CPI).

A common error is for a policy to be referred to as income protection, even by an insurance company, even though it does not meet the requirement above, leading to deductions being incorrectly claimed. To rely on the title of the policy alone is no sufficient to determine if the premiums are deductible. It is the detail within the policy that determines the nature of the insurance. If you are claiming deductions for income protection insurance it may be worth checking the policy benefit rises and falls in line with changes in your income.

Mileage Rate for Business Use of Motor Vehicles

The IRD mileage rate used to calculate motor vehicle expenditure for both self-employed persons and employee reimbursements has increased to 70 cents/km. The previous mileage rates were 62 cents/km for the first 3,000km, then 19 cents for each kilometre thereafter. Even though the new rate was only published in May 2009, it is effective from the 2008/09 income year, i.e, from 1 April 2008 for taxpayers with a March balance date.



The IRD mileage rate is based on information collected from a survey on the running costs of a range of vehicles with petrol. And diesel engines of various sizes. It includes the cost of repairs and maintenance, fuel and other running costs. The IRD has said that changes to petrol prices only have a marginal effect on the overall mileage rate. The rate applies regardless of the size of the engine or whether the vehicle uses petrol or diesel

Who you associate with has new meaning!

How well do you know him?

We live in a very modern society where couples (married, unioned, or de facto) don't always share all their intimate secrets –



of a financial kind.

Take then the internet dater who moves in with her partner who just happens to have shares in a property development that she doesn't know about. After moving in she buys a rental property in her LAQC.

Before the law change it didn't matter because the companies weren't associated but now they are, so if the LAQC sells the new rental within 10 years of acquisition any gain is taxable.

If you do know then you need to know!

We think that the nastiest implication as far land is concerned is, firstly, the widening of the effect of section CB15. This provision taxes gains on land sales where the land was acquired from an associated person who would have been taxable if they had sold it.

For example, a developer (via a company) does a subdivision and decides he wants to keep a section

and build his family home. He sells the section he wants to himself and his wife. They then build the home of their dreams and live in it. 15 years later it's too big as the kids have flown the coop so they sell up and buy a smaller place.

The gain on sale is taxable.

Ah you say, but there is exclusion for the family home.

Well... yes there is... but the exclusion does not apply to land subject to section CB15!

Under the old definitions it was quite easy to arrange for the section and house to be owned by an entity not associated with the developer – but not anymore.

The second nasty is for builders. If an associate of a builder improves a rental property they have owned for 10 years, they need to hold it for another 10 years otherwise they pay tax on the total gain on sale of the rental.

This is because the 10 year rule for proving a gain is capital starts from the completion of any improvements to land by a builder rather than from the date of acquisition. Associates of tax payers in the business of erecting buildings and their advisers should then take even greater care.

Legal Expenditure: Capital v. Revenue

There is no specific provision which governs the deductibility of legal fees. The question of whether legal fees are deductible relies on the general deductibility provisions and limitations on deductibility. Broadly, the deductibility provisions require an expense to be incurred in running a business or deriving gross income and not be capital in nature. A general rule of thumb that is often followed is to determine the purpose for which legal fees were incurred and follow the treatment of that underlying purpose.

For example, if a person acquires a rental property and that rental property represents a capital asset, the legal fees incurred to acquire the property will be capital in nature and non-deductible (although a portion may be depreciable).

Recognising that the deductibility of legal fees can be a complex issue, however legislation has recently been enacted, providing that where a taxpayer incurs legal fees of less than \$10,000, the legal fees will be deductible irrespective of whether they are capital in nature.