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nsaTax Golf Day 2008

The 2008 nsaTax Golf Day was held on 29 February. Thank you to all those people who attended for making the day a great success.

Congratulations to the winning team from Alliot NZ Limited (pictured right).



We are planning to do it again next year!

Foreign Investment Fund Reference Guide

With the end of the 2007/2008 tax year upon us, your clients will soon be gearing up to have their tax returns prepared. If they have overseas investments, their taxable income from those investments may need to be calculated under the 'foreign investment fund' ("FIF") rules.

For clients holding shares in foreign companies, this means that their income may need to be calculated under the new 'fair dividend rate' method. Or they may be able to use another method that may give them a better result. It is essential to ensure that the income is calculated under the correct method. Any mistakes could be costly if they need to be corrected at a later date.

You will first need to find out whether your client has any of the types of investments to which the FIF rules might apply. To find out, you will need to ask your client a few questions:

Questions to ask your client:

1. Do you hold any shares in a foreign company?
2. Do you hold any units in a foreign unit trust?
3. Do you have an interest in a life insurance policy that was issued by a foreign life insurance company?
4. Do you have an interest in a foreign superannuation scheme?
5. Do you receive a pension or annuity from a foreign life insurance policy?

If your client answers 'yes' to any of these questions then their assessable income from the investment(s) may need to be calculated under the 'Foreign Investment Fund' rules. However each category of foreign investment has certain exemptions which may or may not apply.

Our "FOREIGN INVESTMENT FUND REFERENCE GUIDE" has:

- A flowchart for each type of investment to determine whether the FIF rules apply,
- An explanation of the exemptions available;
- A guide to which methods can be used to calculate the income if the FIF rules do apply;
- An explanation of the calculation methods;

nsaTax Limited

Level 6, 3 City Road, Auckland
PO Box 3697, Auckland 1140, New Zealand
phone 09 309 6505 | fax 09 309 6506
www.nsatax.co.nz

Directors:

Phillip Walker

Philip Bell

Bruce Watt

Graeme Carruthers

Keith Turner

Associate:

Lisa Murphy

- Examples of the calculation methods.

Our FIF Guide is available to be purchased for \$350 +GST. To obtain a copy, please contact Nicki Watson.

Gavin Stewart**IRD Audits Property Sales**

The Government signalled in the 2007 Budget that the IRD was getting further resources to help enforce the existing law relating to property sales.

In the meantime we understand the IRD has been visiting Councils and the like gathering information. Letters are being sent to clients who have sold properties over the years. By the tone of the letter the IRD is not 100% certain of the background. This may be due to such things as to what capacity a person is holding property e.g. as a trustee or personally or it may simply be a clever fishing expedition.

The letter starts off by saying:

"The Department has information which indicates that income may have been omitted from your tax returns."

No details of the property or properties in question are given. The letter then goes on to invite a voluntary disclosure.

Responses to such a letter need to be carefully considered and it is vital that clients are aware of their obligations and fully understand the tax laws as they relate to property sales. The first response is the most important. Not all property sales are taxable.

Phil Walker**Turning the Spotlight (or in this case the binoculars) on Takapuna IRD**

A recent article in Law Talk highlighted problems with the Inland Revenue Takapuna Service Centre where taxpayers encountered difficulties in getting GST input credits paid by Inland Revenue where such input credits were due and payable to the taxpayers concerned. The article suggested a deliberate flouting of the GST laws by Takapuna staff, and discussed the adverse cash flow effects this was having on taxpayers, especially small businesses.

A recent TRA decision has documented further problems at Takapuna. In a Taxation Review Authority case TRA 15/2007, decided in December 2007, Judge Willy was called upon to resolve a taxation dispute between a medical doctor and the Commissioner. The doctor was audited by Inland Revenue after what he claims was an altercation with his neighbour, who happened to work as an investigator for the IRD. This was disputed by the IRD, who admitted that the investigator had initiated the audit, but denied the altercation. The doctor also alleged that he had been threatened by the investigator and that the investigator had spied on the practitioner and

Directors:

Phillip Walker

Philip Bell

Bruce Watt

Graeme Carruthers

Keith Turner

Associate:

Lisa Murphy

his family, using binoculars to observe them. A complaint to the Commissioner by the doctor about this conduct was dismissed by the Commissioner. Judge Willy however on the evidence presented in the case found that the investigator, following a “personal disagreement” with the doctor, (disputant), had “conducted distasteful personal surveillance on the disputant and his family”.

During the course of the audit, the doctor was questioned by an IRD solicitor, an IRD team leader and an IRD investigator. As a result of questioning by the IRD team, they formed the view that the doctor had knowingly or fraudulently failed to make a full and true disclosure of material facts to the Commissioner and which facts the Commissioner felt were necessary to determine the amount of GST payable by the doctor. Accordingly the Commissioner reopened GST return periods that were time barred, some being 10 years old.

Judge Willy held that the Commissioner’s reliance on the doctor’s apparent contradictions or inability to recollect events some 10 years before to draw conclusions regarding the doctor’s credibility were part of an ‘unfair stratagem’. This was so according to the Judge because the solicitor withheld information in his possession that the doctor was unable to recall, and had also failed to give the doctor fair warning of the issues to be canvassed at the questioning.

The solicitor also came into some sharp criticism from the judge for;

- ‘shading’ the answers give by the doctor at the questioning;
- making errors in the re-opening procedure that could only be excused by a “junior clerk employed in processing paper”.

The moral of the story; be kind to your neighbours, especially if they show a liking for binoculars. They could be attached to your local Inland Revenue office.

Accrual of Accounting Fees

A case recently heard by the Taxation Review Authority (“TRA”) regarding the deductibility of accrued accounting fees will be of interest to the majority of our clients.

A standard practice for many businesses is to accrue for accounting fees in the income year to which those fees relate, e.g. accrue for accounting fees in the 2007 financial accounts when those accounts are prepared in the 2008 or later income years. In the current case, the disputant did just that. On 31 March 2003 the disputant accrued \$2,285.00 as an estimate of accounting fees to prepare the accounts for that income year. A deduction was claimed in 2003 but the services were not performed until the 2004 income year when an invoice was raised.

The TRA ruled that a deduction is allocated to the income year in which the expense is incurred. Key principles relating to the meaning of “incurred” as established from case law are that expenditure is incurred when a taxpayer is “definitively committed” to it and is not merely “impending threatened or expected”. There must be an existing obligation to pay at balance date. The TRA held even though there was a statutory obligation to complete the accounts there was no such obligation to pay the accountant until the work has been

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Lisa Murphy

performed. Any practice to take a deduction before the work was performed was not correct.

It was noted by the TRA however that it could be possible to argue that a pre-commitment for accounting services created at balance date, could create a debt incurred in an earlier year.

Consequently, the issue of an engagement letter and acceptance by the client in the income year in question will not give rise to a deductible expense for accounting services performed in a later income year. However, does a commitment in that engagement to pay interim fees create a legal obligation at balance date? Arguably not as again the services have not been performed at that point.

We therefore consider the practice of accruing for such fees should discontinue and a deduction taken in the year the service is actually performed.

Lisa Murphy