

SPECIAL EDITION**November 2008****Inside this issue:**

UOMI Test Case

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UOMI Test Case

The Adjudication Unit of the IRD has recently made a number of determinations involving the deductibility of Use of Money Interest (“UOMI”) for individual taxpayers. Use of Money interest is charged by the IRD on overdue tax, and the current rate is 14.24%.

The IRD’s view is that individuals, whether in business or not, will not be allowed a deduction for use of money interest where this arises out of a reassessment of tax that leads to a tax shortfall, which in turn triggers the liability for use of money interest to the IRD. This is a somewhat new approach, and could affect significant numbers of individual taxpayers and qualifying companies. It appears as though this will become official IRD policy. It is most certainly a departure from the previous policy which effectively allowed such a deduction for all taxpayers in business.

Previously the IRD approach was to allow a deduction for UOMI where there was an appropriate nexus between the liability for UOMI and the income earning activities of the taxpayer in question. Generally for individuals in business, such as partners in a law firm, a deduction for UOMI was allowed.

However the IRD’s view, as propounded by IRD’s Adjudication Unit, is that the traditional view of UOMI being deductible is incorrect, as deductibility cannot be approached on the basis that one looks to the purpose for which the capital (to which the UOMI relates) is used.

The effect of this is that the IRD’s approach is that no nexus can ever be established in cases where the Commissioner re-assesses an individual’s tax return and UOMI interest results. Accordingly individuals in business will be denied any claim for a deduction for UOMI by IRD. The IRD are promoting this view notwithstanding comments made by the Adjudication Unit that in their view it is “*not clear how practical or workable such an approach is...*”.

We consider the decision to be incorrect, and that individuals in business can generally establish a direct nexus to the income earning process, thereby entitling them to a deduction for UOMI.

We have been approached by a number of concerned clients in order to facilitate the filing of a ‘test case’ challenge in the Taxation Review Authority. In terms of the provisions of section 138Q of the Tax Administration Act 1994, the IRD are able to designate a particular challenge as a test case if the issue or issues in one case can be determinative in a number of other challenges. If there are sufficient taxpayers involved, the legal costs can be spread so that they do not become prohibitive but ultimately it will depend on the amounts at stake for particular taxpayers.

We may consider taking this further and seeking a test case status if the numbers warrant such an action. Accordingly, we would be interested in hearing from individuals in business or companies that are within the QC or LAQC regime which have received notification from IRD of the denial of a deduction for UOMI. If you or any of your clients would be interested in participating, please contact Tim Chemaly or Keith Turner at nsaTax Ltd as soon as possible.

Timothy Chemaly