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Staff Announcement

It is with much regret that we advise you of the resignation of Keith Turner from his role as Director and employee of nsaTax. Keith has resigned to pursue other career opportunities and we wish him well in his future endeavours. It is obviously disappointing that after almost eight years of service Keith leaves us. However, life continues here at nsaTax and we do not foresee any changes to our ongoing business relationships.

On a positive note, we welcome the return of Amanda Martin from maternity leave (she's come back for a rest...). Amanda will be working Mondays, Tuesdays and Fridays. We have also secured the services of a bright young tax solicitor. More details on that next month.

Clients Returning From Overseas

Obviously the world is a very different place now than it was say two years ago. The "R" word is constantly talked about and there are numerous tax issues arising from the state of the world economy.

We have seen a marked increase in the number of professionals returning to NZ from overseas. There are often many tax issues which need to be considered, hopefully before tax residency is obtained.

We are running a seminar in May to look at the relevant issues in detail however here a just a few questions to ask clients returning from overseas:

1. *Question:* When did you arrive in NZ and have you been tax resident in NZ in the past?

Issue: Need to determine if the client is tax resident in New Zealand and if so do they qualify for the transitional resident exemption. If the exemption applies, most foreign sourced income is exempt for four years.

2. *Question:* Have you been granted an employee share option?

Issue: Exercising these options, once tax resident, will create a tax liability on the difference between the option price and the market value. It makes no difference when the options were granted. The income may be exempt by virtue of the transitional resident exemption.

3. *Question:* Have you received a distribution from a trust?

Issue: If your client ceased tax residency and regained residency within five years, any distributions received from a trust during that period of non residency may be taxable in NZ.

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4. Question: Do you hold shares in foreign companies?

Issue: The foreign investment fund or controlled foreign company rules may apply. There are various options for calculating what income is subject to tax in New Zealand.

5. Question: Do you have an interest in foreign pension, life insurance policies or superannuation schemes?

Issue: Such interests may create tax obligations in New Zealand. There are some exemptions which may apply.

These are just a few questions to ask. There are many more, some of these issues are extremely complex and nonetheless need to be addressed and resolved. There are planning opportunities which may lessen the tax burden.

In extreme cases we have seen clients turn around and leave New Zealand once some of these issues are discussed. The critical issue is to ask the correct questions so you can give the correct advice.

Phil Walker**Tax Bill Measures Give Some Relief to SMEs**

The Government announced last week under some urgency that the Taxation (Business Tax Measures Bill) would be introduced to provide a package of assistance measures to small and medium businesses. The aim is to assist businesses to manage cash flows given tight economic conditions currently being faced by them. The main changes are:

- The 5% "uplift" rate that businesses pay on provisional tax instalments will be removed for the 2008-09 and 2009-10 income years, resulting in better tax cash flows for the next two years.
- Raising the provisional tax use of money interest ("UOMI") safe harbour thresholds for individuals from \$35,000 to \$50,000 (based on annual residual income tax).
- The GST payments threshold will be raised to \$2 million of GST turnover from \$1.3 million, so more businesses will have the cash-flow advantage of only having to pay GST when payment from invoices has been received.
- The GST registration threshold will be raised from \$40,000 to \$60,000 of GST turnover, allowing businesses earning less than \$60,000 to de-register if they wish.
- Businesses with business-related legal expenditure of \$10,000 or less will be able to fully deduct the expense in the year it was incurred, whether it is capital in nature or not. This is provided that

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the legal advisor is a person who holds a practising certificate issued by the New Zealand Law Society or an Australian equivalent. A deduction is available from the 2009-2010 income year.

- Low value trading stock threshold — increasing the exemption for adjustments from \$5,000 to \$10,000 (based on the value of trading stock).
- The PAYE once-a-month filing and payment threshold will be raised from \$100,000 to \$500,000, allowing more employers to file PAYE returns and pay PAYE once instead of twice a month.
- The FBT annual filing threshold will be raised from \$100,000 to \$500,000, allowing more employers to file FBT returns and pay FBT annually rather than quarterly. In addition, the value of minor fringe benefits that can be provided to employees without attracting FBT will be raised to \$300 per quarter per employee, and to \$22,500 a year per employer. This means fewer businesses will be required to return FBT on certain minor benefits provided to employees.

In respect of provisional tax instalments, provisional taxpayers with March balance dates will see an immediate impact on their next provisional tax instalment. Currently for companies now subject to the 30% tax rate, provisional tax obligations for the 2009 income year are based on 95% of the immediately preceding income year 's residual income tax ("RIT") or 100% of the year before the immediately preceding year provided it is not the final instalment .

Thus assuming a company has filed its 2008 return of income and has RIT of \$100k, provisional tax instalments for the 2009 income year will be based on 95% of 2008 RIT, that is approximately \$32k per instalment.

The next provisional tax instalment for a March balance date is due on 7 May 2009. The new legislation will apply to this instalment as it falls after 1 April 2009 when the changes are to take place.

If the 2008 return has been filed with RIT of \$100k as in the above example, then the instalment due on 7 May 2009 will be based on 90% of 2008 RIT and not 95%. This will mean that the final instalment of 2009 provisional tax will reduce, not only due to the reduction in the safe harbour percentage but also because the first two instalments would have been paid based on a higher safe harbour calculation.

If you require any assistance with calculating provisional tax instalments in line with the announced changes then please contact us.

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Year End Tax Planning

As the balance date (31 March) for many taxpayers is fast approaching, we thought it an opportune time to remind you all of year end procedures and issues which need to be considered prior to or as part of year end accounts. These are as follows:

QCs/LAQCs

Election into the Qualifying Company ("QC") regime (other than in the case of new companies) usually involves a lead in time of up to one year. Where an election is made, it generally takes effect from the first day of the following income year. Given the proximity to 31 March, there is currently a very short lead in time for electing into the QC regime. Forms must be filed prior to the end of the current tax year unless this is a new company in the first year of trading

You need to be mindful of the advantages and disadvantages of electing into the QC regime. Disadvantages such as forfeiture of losses, shareholders having to guarantee the income tax debt of the company and the calculation and potential payment of Qualifying Company Election Tax ("QCET") need careful consideration.

If it is intended that the company become a LAQC, review to ascertain whether it is appropriate for it to become one. Check to ensure that there is only one share class, there are no existing losses on entry to the regime, and that the level of QCET would not be too high.

Where a company is already a QC, review to ensure that it is appropriate for it to continue as a one.

Generally, an election out of the QC regime is effective from the first day of the income year in which that election is made, unless a later income year is specified in the notice. There may be circumstances where it is appropriate to elect out the QC regime, for instance, where the company has struck financial difficulties during the year and may no longer be in a position whereby it can meet its tax liabilities. As the QC regime requires shareholders to guarantee the tax debt, it may be appropriate in such cases to elect out of the QC regime.

Consolidation Regime

Where the company is part of a wholly owned group of companies, consider whether it is appropriate to enter into the consolidation regime for tax purposes with effect from the start of the next tax year. Forms for this must be filed within 63 working days of the start of the income year.

Subvention Payments & Loss Offsets

You should ensure that prior year group loss offsets, subvention payments and subvention agreements are completed and lodged with the IRD prior to year end. Loss offsets and subvention payments relating to the year ending 31 March 2008 are due on or before 31 March 2009.

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You should also ensure that shareholding continuity has in fact been maintained in relation to the carry forward and grouping of losses. 49% continuity must be maintained in the loss company from the time the loss is incurred until the time the loss is utilised. For grouping, commonality of 66% is required. That is, the same group of persons must own 66% in both companies at all times during the continuity period.

Retentions

Retentions on building contracts are generally taxable in the year the contractor becomes legally entitled to receive them. Therefore if retentions are outstanding at year end, they usually do not form part of your income for tax purposes for that year, and are therefore only taxed when they become due. This can result in a significant deferral of income.

Bad Debts

Taxpayers and clients should be reviewing their debtor's ledger to determine which debts are bad. These debts need to be written off prior to year end to enable a tax deduction to be claimed. Just because a bad debt is actually written off, this does not mean taxpayers can no longer pursue recovery of that debt.

Repairs and Maintenance

Generally no deductions are allowed for a repairs and maintenance reserve. It may be worthwhile undertaking repairs and maintenance prior to 31 March to obtain a full deduction. Deciding whether expenditure on an asset is deductible as repairs and maintenance or should be capitalised is often a difficult decision. Please contact us if you require any assistance in this area.

Fixed Assets and Depreciation

You should remind clients to do a "stock take" of fixed assets at year end with a view to determining whether the fixed assets listed on the depreciation schedules actually exist. Where assets are no longer being used application can be made to the IRD to write off the book value in that year. Where assets have been disposed of or simply no longer exist, a loss on disposal can also be claimed.

Trading Stock

Taxpayers should be undertaking a valuation of trading stock at year end. Trading stock is generally valued at the lower of cost or market selling value (if lower).

For valuation of small amounts of trading stock, taxpayers are no longer required to value their closing stock or include any change in the value if:

- Their turnover is \$1.3m or less for the year; and
- They reasonably estimate their trading stock on hand at balance date is less than \$5,000.

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They may simply use the same figure for closing stock as the opening stock. This method of valuation is optional. You should consider the accounting implications, if any, of not correctly recording closing stock in the financial statements.

If there are any general stock provisions then these are not deductible for tax purposes. However, a line by line valuation writing down stock below cost is acceptable if market selling value is lower than cost. General write down provisions should therefore be reviewed to determine if a deduction can be taken on a line by line basis.

Imputation Credit Account

The imputation year finishes on 31 March for all companies irrespective of what their actual balance date is. You should be reminding clients to review their imputation credit account ("ICA") balance to ensure that it is either a nil or credit balance at year end. If the ICA is in debit balance this will create a 10% imputation penalty, which is not treated as a "tax payment" for income tax purposes.

If there is a debit balance you will need to consider bringing forward tax payments such as terminal tax due on 7 April 2009 to 31 March 2009 or earlier.

Change in Company Tax Rate – Implications for Paying Out Retained Earnings

The company tax rate has now reduced from 33% to 30%.

However, due to the implementation of a transitional period, a company will be able to allocate imputation credits at a maximum tax credit ratio of 33/67 on retained earnings that have been taxed at 33%. For retained earnings taxed at 30% the new ratio of 30/70 must be used. If the company has 2008 retained earnings that are fully imputed at the 33% rate, these earnings must be distributed by 31 March 2010 if you wish to attach imputation credits at the rate of 33%. Otherwise from 1 April 2010 the company can only impute those retained earnings at 30%, for non resident shareholders this may be preferred but for resident shareholders an extra tax cost will arise.

Please note that when the 33/67 tax credit ratio is used to pay a dividend to a company shareholder, the tax credit available as a credit against the taxable income of the company is limited to 30% being the company's tax rate. The full 33% amount will however be credited to the company shareholder's ICA to enable distribution to the ultimate natural person or trust shareholders.

The transitional period will run from the beginning of a company's 2009 income year to the end of its 2010 imputation year (being 31 March 2010).

Resident Withholding Tax ("RWT") Rate

Please remember that the RWT rate on dividends has not changed – it remains at 33%. This means that, if dividends are imputed at the new 30/70 ratio, a further 3% of RWT will need to be deducted from

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the dividend payment to bring the total tax component up to 33% (some exclusions apply, e.g. where the dividend is between a “group” of companies or the recipient holds a valid certificate of exemption). In these cases the company will need to register with the IRD to become an RWT payer.

Amanda Lo**Seminars**

Our new round of seminars are scheduled to run over May and June.

They are being held in Auckland, North Shore and Tauranga. The dates and topics along with the registration form will be sent out shortly and will also be available on our website. Alternatively, please email seminars@nsatax.co.nz to be added to our seminar distribution list.

Lara Hartmann