

June 2011**Inside this issue:**

LTCs – Are you ready

IRD audit activity

Risk review letters

GST & holiday homes

LTC CALCULATOR

Having trouble determining
the owners basis of your
LTC?

Contact us now for a copy
of our LTC calculator

nsaTax@nsaTax.co.nz
or call Lara 09 309 6505

Directors:

Phillip Walker

Philip Bell

Bruce Watt

Graeme Carruthers

Lisa Murphy

Look Through Companies – Are you ready?

I recently presented (yet another) series of seminars on LTCs in preparation for the looming election deadline.

What seemed reasonably clear from the seminars was that whilst most attendees had a reasonable grasp of the theory, not many had had the time or opportunity to actually sit down and nut through many of the calculations required.

I posed the following question during my seminars “*What issues do we need to consider before entering the LTC regime?*” The answer to that is simple. EVERYTHING!

As advisors, you need to have considered what the cost is of entering the regime (if any), what the consequences are of being in the regime (including the effect of the owners basis and loss limitation rules), and what the consequences of exiting the LTC regime are.

Do not think you can simply file an election on or before 30 September this year thinking “she’ll be right”. If, when you come to do the calculations and give effect to the election, you find that entering the LTC regime wasn’t such a good idea because, for example, if the loss limitation rule applies, you cannot “reverse” that election as you could do for QCs and LAQCs. One can only elect out of the LTC regime on a prospective basis i.e. from the beginning of the next financial year. Once you are in, you are in, and there is no going back. Your clients will not thank you for your advice (but they may thank your PI insurer for paying their costs and tax liability that resulted).

We have a team of experts ready to assist – there is no excuse for not being ready...

Phil Bell**IRD Audit Activity**

Many of you will be aware of the increased audit activity by IRD in relation to land run by the PCP (the Property Compliance ~~Police~~ Program), numerous “risk review” letters to high wealth individuals by which IRD are reviewing activities of the entire group, “risk review” letters received by a number of CA firms (apparently payment of our NZICA fees does not give us immunity from IRD audits), and more recently, a Foreign Investment Fund (“FIF”) review project run out of IRD Takapuna.

We have been harping on about FIFs for quite some time now, but it’s fair to say the response has been somewhat underwhelming and there has been little in the way of enquiry from clients. That is set to change as the IRD have a long list of taxpayers whom they believe hold interests in FIFs (the focus being primarily on foreign superannuation schemes and pension funds).

The FIF regime is an incredibly complex set of rules, with many grey areas, and not everything you hear from the IRD should be believed. After 12 months of debating certain aspects of the FIF regime with the IRD, it would appear that the IRD are now leaning towards our

GST Simplification!!

Confused by the new GST rules regarding change of use adjustments or zero rating of land sales?

Contact one of our experts to discuss

nsaTax@nsaTax.co.nz
or 09 309 6505

Directors:

Phillip Walker

Philip Bell

Bruce Watt

Graeme Carruthers

Lisa Murphy

interpretations and we understand a further policy statement will be forthcoming shortly.

See further below in relation to how you should respond to such requests for information.

Phil Bell

Risk Review Letters

A risk review letter is to be distinguished from a formal audit notification letter, and can be seen as a “friendly” warning that the IRD have identified what they perceive to be a tax risk, and seek more information rather than commencing an audit. The IRD works on the premise that the mere raising of an issue may prompt a voluntary disclosure and that this may render a full audit unnecessary.

We see the receipt of a risk review letter as an opportunity for taxpayers to reconsider tax positions taken in past returns with a view to taking steps to rectify matters before a formal audit commences.

In some cases this will indeed mean that a voluntary disclosure needs to be made forthwith so that a full pre-audit notification shortfall penalty reduction can be obtained. Any failure to consider making a voluntary disclosure during this window of opportunity may prove to be extremely costly, and is unlikely to endear a practitioner to their client. In other cases there may be no advantage in making a voluntary disclosure and the taxpayer may be better off to provide as little information as possible.

Each case needs to be considered on its merits. You should carefully consider these issues as soon as your client gets such a letter.

Tim Chemaly

GST and Holiday Homes

From 1 April 2011 the GST Act has narrowed the definition of a dwelling and expanded the definition of a commercial dwelling, but it seems there is still a grey area between the two. The narrower dwelling definition only includes for an individual, premises occupied as their principal place of residence. Holiday homes will not generally satisfy this narrower definition. If a property does not qualify as a dwelling, then any supplies of accommodation in the property will no longer be exempt from GST.

However, for GST to apply there must be a taxable activity. An essential element is the intention to make supplies to another person for consideration. If a holiday home owner were to charge for short stays in the property, there could be a taxable activity, and GST becomes an issue if the value of supplies exceeds the \$60,000 registration threshold. Note that where a property is supplied to an associated person such as a trust making a property available to a beneficiary, there is a deemed supply at market value for GST purposes and this must be factored in when considering the registration threshold.

If there is no intention to make supplies for consideration, GST shouldn't be an issue. But clients with holiday homes they periodically rent out should check to make sure they don't inadvertently drag the property into the GST net.

Gavin Stewart