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Keeping A Watch On Those Qualifying Companies

Qualifying companies and loss attributing qualifying companies require careful monitoring to ensure that they do not inadvertently breach any of the conditions of a QC or LAQC which cause the status to be revoked.

A breach of the rules can easily occur and can have significant financial costs for the shareholders. If an event occurs that causes the company to cease to be a QC/LAQC, the cessation is effective from the start of the income year and can affect transactions that may have taken place before the breach.

Some examples of the things to look out for include:

- Has a shareholder died? A new election must be made by the holder of the deceased's shares within 12 months after the date of death. If you find out about the death more than 12 months afterwards, it's too late to make a new election.
- Has there been a change in shareholding? A new shareholder must make an election within 63 days for the company to maintain QC/LAQC status.
- Has there been a change in the trustees of a trust that is a shareholder? The new trustees must make a new election within 63 days. Note that in the case of a trust shareholder, all of the trustees must elect as well as a natural person sui juris beneficiary, if there is one, or if not, someone on behalf of the beneficiaries.
- Has a beneficiary of a shareholder trust become sui juris? If there was no sui juris beneficiary at the time of the election, and a beneficiary becomes sui juris, the beneficiary needs to make an election within 63 days.
- Has a majority shareholder elected on behalf of a minority shareholder? If the minority shareholder's interest increases to 50% or more, or the majority shareholder's interest drops below 50%, a new election will be required within 63 days.
- Has the company derived foreign non-dividend income of more than \$10,000? This would revoke the QC/LAQC status.
- Have dividends paid to a trust shareholder been all passed out to beneficiaries?

Any breach during the year revokes the QC/LAQC status from the beginning of the year, and the company can only be elected back in from the start of the following year at the earliest. A failure to re-elect in time means that any dividends paid during the year the breach occurs, even before the event that caused the breach, would become taxable. In the case of an LAQC, losses for the year a company ceases to be an LAQC would be able to be carried forward, but would be forfeited on becoming a QC again.

Therefore it is very important to keep a close watch on any changes in the ownership of a qualifying company.

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**Final Call On Dividends With 33% Imputation Credits....
Or Should You Wait?**

If a company has imputation credits available for tax paid at 33%, then 31 March 2010 is the final date for a company to pay a dividend with imputation credits attached at 33%. For dividends paid after 31 March 2010, imputation credits can be attached at a maximum of 30%, with an extra 3% RWT on the dividend payable. If the dividend is paid by 31 March 2010 to a shareholder who is on the 38% tax rate, they will incur an additional 5% tax on the dividend.

To muddy the waters, the recent speculation about a drop in personal tax rates could impact on a decision whether to pay a dividend by 31 March 2010. If the top personal tax rate decreases to 35% or less, the shareholder would be in a better tax position if they were paid the dividend after the tax rate has dropped and with only 30% imputation credits attached, compared to being paid the dividend by 31 March 2010 with 33% of imputation credits, and incurring the extra 5% tax in the shareholders hands.

As certainty about the tax rate changes is unlikely before the May 2010 budget, it is a bit of a gamble as to whether to pay dividends with 33% imputation credits by 31 March 2010 or wait until the tax rate changes are in effect and then pay the dividends with 30% imputation credits.

Hopefully between now and 31 March 2010 clearer indications may come from the Government, so if a company is considering paying a dividend just to get the benefit of the higher imputation credits it should think about whether to take the gamble and defer the dividend until after personal tax rates drop. But be prepared just in case the company decides at the last minute to pay the dividend by 31 March 2010 rather than holding off.

Gavin Stewart**Seminars**

Our new round of seminars are scheduled to run over April and May. These are being held in Auckland, North Shore, Hamilton and Tauranga. The registration form with all the details is attached and is also available on our website (www.nsatax.co.nz). Please note there is a special seminar being held in Auckland and the North Shore called "Things To Do Before 31 March". Some of you may have already received a flyer about this seminar.

Lara Hartmann