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**Directors:**

Phillip Walker

Philip Bell

Bruce Watt

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Lisa Murphy

**Tax Changes for Trusts*****Extended Period to Allocate Beneficiary Income***

With application from the 2009-2010 income year, the definition of beneficiary income has been amended to extend the six month period within which a trustee must allocate income. Trustees will have until the later of the end of the six month period, or the period within which the trustee either files or is required to file a return to allocate income as beneficiary income.

Effectively this allows trustees twelve months from balance date to allocate income as beneficiary income (assuming a 31 March balance date).

Practitioners should refer to the governing trust deed to ensure the deed permits a later allocation of income – many deeds stipulate that income should be accumulated to capital if not allocated within six months of year end.

***Trusts and Prescribed Investor Rates***

As you will be aware from 1 April 2009 the personal income tax thresholds and rates changed and as a result consequential adjustments have been made to investors' rates of resident withholding tax ("RWT") and their portfolio investor rates ("PIR's").

All investors with a PIR of 19.5% at 31 March 2010 will automatically move to a new rate of 21% for 2010-2011. An Amendment Act passed in December 2009 also allows trustees to elect a PIR of 21% (in addition to the 0% and 30% rates), which is a new investor rate for trusts that has application from 1 April 2010. This may assist if the income is being distributed to beneficiaries on this lower tax rate as they receive the net income with the benefit of an appropriate tax credit.

The change in rate for trustees was initially included in the July 2008 bill that dealt with the associated person rules. In that bill trustees could elect a rate of 30% or 19.5%. However by the time this long awaited bill was finally enacted tax rates had changed and thus the 21% rate will now apply.

**Keith Turner****GST Refunds – Know Your Rights**

When a GST return is filed claiming a refund IRD may decide to withhold the refund until they investigate the return or request further information in support of the return.

In our October edition of *InBrief* we discussed instances where refunds were not being released despite the High Court decision in *Contract Pacific Limited v CIR* (2009) 24 NZTC 23,092. In that case it was decided that once the IRD had given notice to investigate a return

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and the information requested was supplied any subsequent information request must be made within 15 days. Where that period was exceeded the refund was required to be released. That case was appealed and the decision of the Court of Appeal was issued in early December. In summary, the Court of Appeal made the following findings in relation the IRD's ability to withhold GST refunds:

- The IRD must notify a person within 15 working days following the receipt of the GST return that further information is required *or* the circumstances of the return will be investigated.
- Notification outside the initial 15 day period means the refund must be released.
- If a refund is *only* withheld on the basis that further information is required. IRD have 15 working days after receiving the information to request further information, otherwise the refund must be released.
- When a refund is withheld on the basis that the return will be investigated there is no time limit for further information requests.

The upshot of this decision is that when the IRD decide to withhold a GST refund it will likely do so on the grounds that they wish to investigate the circumstances of the return opposed to simply requesting further information. This will mean that the requirement to request further information within 15 days is avoided and IRD can withhold a GST refund for as long as it takes to investigate the return. Our experience is that an investigation of a return can often take weeks or months which can place a huge a strain on businesses especially when cash flow is tight.

The good news is that the law does allow partial GST refunds to be made while the circumstances of a return are being investigated which can help ease cashflow pressures. The Courts have also stated that excessive delay by IRD are grounds for having a refund released.

If you are experiencing problems getting GST refunds released or are having a GST refund claim investigated give one of our tax consultants a call to discuss how we can assist.

**David Weaver**

**New nsaTax Director**

nsaTax are pleased to announce the appointment of Lisa Murphy as a director from 1 January 2010. Lisa has been with nsaTax for the last seven years and has been an associate since 1 January 2007.

Lisa's appointment as a director recognises the significant contribution she has made to the firm during her time with us.