

# Tacks **FAX**



DON'T LET THE IRD NAIL YOU

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## Cheque swaps - any problem?

Cheque swaps may be unsafe in some circumstances. For example, for the purpose of the solvency test when a distribution to shareholders occurs and they agree to lend the money back to the company.

Company directors have to be able to show the company can pay its debts as they fall due the instant after a distribution. There is a small interval of time between the depositing of a dividend in the shareholder's account and the shareholder making a loan back to the company. The shareholders might renege on an agreement to lend the money back. Unlikely, but possible. Therefore you cannot rely on a cheque swap for solvency test purposes. Pedantic? Tell that to a liquidator!

## All that glitters is not gold!

The tax simplification of legal expenses may not do as much to help us as we had hoped. The new law is subject to the general permission and general limitations. General limitations include:

- Capital limitation which denies a deduction for expenditure which is of a capital nature.
- Private limitation which denies a deduction for expenditure which is of a private nature
- Exempt income limitation which denies a deduction for expenditure which has been incurred in deriving exempt income.

S DB 62 will override the Capital limitation. This means legal fees charged by someone who holds a New Zealand (or Australian equivalent) Law Society practicing certificate...can be claimed as an expense if they relate to the conveyancing costs of buying a business asset and meet the various other limitation requirements.

Legal expenses which are not expected to be tax deductible include preliminary expenses such as the cost of a sale and purchase agreement between A and A Ltd where A wants to convert his business into a limited liability company, and company formation costs.

## Dividends and 30% imputation credits.

Some accountants back date dividends. In future RWT will have to be paid by 20<sup>th</sup> of the following month on dividends declared. If you back date dividends, now is the time to stop. RWT is not an ICA credit so can be refunded to the shareholder.

Qualifying companies can back date the effective crediting date for FBT purposes of taxable not exempt dividends (assisting with overdrawn current accounts) provided they have full imputation credits attached. Also, they do not need to pay RWT.

## Do you do an ICA proof?

Do you prepare an ICA proof each year for your company clients? If not, what will happen when it comes time to wind up and you have insufficient credits in your ICA? An example of an error we have struck is a client company who received a dividend and the imputation credits attached to it were not taken into the ICA. How do you know your ICA is accurate? How far back might you need to go to find a mistake?

To do the ICA proof for the year ended 31 March 2008 or equivalent balance date, calculate the imputation credits which would be needed to clear the retained earnings. Take your imputation credit balance at balance date and add on any tax owing to get the imputation credits which would be available to pay out the retained earnings. For refunds, deduct from the imputation credit balance. Compare your calculated imputation credits with the amount required to clear retained earnings.

## Traffic fines

Fines are generally not deductible for two reasons:

1. There has to be a sufficient nexus between the fine and the deriving of income.
2. To allow fines as deductible, it could be contrary to public policy.

A logging business was fined for overloading its trucks. The fines were not deductible (Case Z6).

## How to calculate RWT on dividends

You will be aware, when you pay dividends with 30% imputation credits attached, you must top up with an RWT payment by the 20<sup>th</sup> of the following month. The calculation is a little tricky.

Apply the 30/70 ratio to the dividend to get the imputation credit.

Add this to the dividend to get the grossed up figure.

Take 33% of the grossed up figure.

Deduct the imputation credit.

The difference is the RWT payment.

Here is the formula

( tax rate × ( dividend paid + tax paid or credit attached) ) - tax paid or credit attached.

Here is an example. The dividend is \$50,000.

$(33\% \times (50000 + 21428.57)) - 21428.57 = 2142.86$

## Thresholds are bigger than promised

The increases in thresholds are higher than originally announced by the Government. Some of the big ones are:-

- Need to register for GST \$60,000. Registered clients may deregister if they wish.
- Annual FBT returns and limit for monthly filing and paying PAYE returns will be \$500,000 of wages.