



DON'T LET THE IRD NAIL YOU

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Overseas superannuation schemes

Some clients have worked overseas and contributed to superannuation schemes. These are foreign investments so the FIF rules usually apply. Some schemes may not be FIFs. Look at their legal structure. You might need to consult a local resident lawyer to get clarity. We do not discuss non FIFs here.

For the purposes of FDR and the \$50,000 **personal** exemption take into account both employer and employee contributions. This \$50,000 exemption (taken over all foreign equities) will eliminate some clients from the FIF rules.

If your client ceases to make contributions to the scheme within 4 years of getting back to New Zealand he or she will usually only be liable to pay tax on the income when they get it. There are some conditions which include:

- The scheme has to have been as an employee or a person who is mainly self employed
- The rights were acquired while the person was not an NZ resident
- The contributions have to be calculated in relation to income
- And so on. Please read S EX 42 to get the details.

If your client is a transitional resident, you might be able to cash in the scheme, within the four years transitional period, if there is a tax problem looming under the FIF rules.

FIF tax problems can arise if the S EX 42 exemption is not available. S EX 42(8) places a restriction on cashing in the policy. On 6 April 2006 the Poms changed the rules for their schemes and allowed those leaving the UK to take their pensions with them and put them in a local scheme. The law change permitted investors to take out a significant lump sum when doing so. This broke our S EX 42(8) rule. If your client has an interest in a UK superannuation scheme, which is an interest in a FIF, check to see if there is a restriction on transferring it to another pension scheme. If yes, no problem. If there's no restriction, the scheme is an interest in a FIF. Use the market value of the investment at 6 April 2006 as the value of contributions up to that date and not the actual contributions made.

Australian schemes are exempt from the FIF rules if contributions have to be paid to:

- An Australian approved deposit fund
- Exempt public sector super scheme
- Australian regulated superannuation fund
- Australian retirement savings scheme

All exempt schemes are, of course, taxable on the income, when they are distributed.

DTAs need to be checked. Some schemes will reduce the client's right to NZ superannuation.

If your client elects to pay the pension into a special account controlled by WINZ, no tax is payable because WINZ keeps the money and then tops up payments to National Super level and your client gets taxed this way. The exemptions for non resident annuities and pensions are contained in S EX 43. If your client's scheme is not a superannuation scheme, check this section. Ref S CW 28(2) for the meaning of overseas pension.

FBT will not apply to LTC owners

A Bill introduced to Parliament in September will change the law effective from 1 April 2011. FBT will not apply to working owners of an LTC. Until this time, it seemed working owners were employees and therefore FBT applied. Get all your working and other owners of LTCs to keep log books. A private/business apportionment will be required. A reimbursement at IRD mileage rates will be limited to 5,000 km per year

LTC and ICA

When you switch to LTC, your ICA becomes nil and retained earnings may be distributed tax free to shareholders. The shareholders have no extra tax to pay.

LTC shareholder count being changed

The Taxation (Annual Rates, Returns filing, and Remedial Matters) Bill contains an amendment to the definition of a relative for LTC purposes. In the definition of relative in YA 1 an extra clause has been added. It provides a special definition of relative for a Look-through company. A clause (bb) has been inserted. It leaves out clause (v), in the definition of a relative, so that a family trust will be treated as a separate person for the shareholder count purposes. The law is effective from the date of enactment.

Employee or self-employed?

IRD is looking at a new guideline for sorting out who is an employee for tax purposes.

They are proposing a series of tests including: Intention of the parties, control, independence, fundamental and integration tests. Deadline for comment is 25 Nov 2011.

LTC can avoid some ACC

ACC levies apply to the PAYE salary only in an LTC. Compare this with a non LTC which distributes all the profit to the shareholders every year. For the higher risk occupations paying a salary in an LTC and leaving a profit estimated around 20% (based on IRD comments on Penny and Hooper) could save significant ACC premiums. It could also reduce ACC's compensation payments, if your client had to make a claim.