BULLÔT & RANKINE ALERT

TAX + BUSINESS NEWSLETTER

Bullôt & Rankine
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Risk and Reward

A Wake Up Call for Mum and Dad Trustees

Trust times are a changing

A wake up call is coming for mum and dad trustees with an overhaul of trust regulation likely to create a compliance regime similar to that for governing companies.

Next month, a paper to be issued by the Law Commission could review options to significantly tighten compliance procedures for trusts including: creating a register of trusts, appointing a trusts ombudsman paid for by an annual levy on trusts, detailing in a dedicated statute the duties of trustees and making it easier for beneficiaries to remove non-performing trustees.

In line with the Companies Act which sets out company directors' duties, the trust statute could include both civil and criminal penalties for trustees (often mum and dad) who fail in their duties and could give more power to trust beneficiaries. There may be as many as 500,000 trusts in New Zealand resulting in a growing worry that a large number may be mismanaged or, in some cases, not managed at all.

The Concerns

Poor trust administration may lead to serious problems for both trustees and beneficiaries evidenced by the following examples:

1. Annual gifting of Settlors' loans not completed.
If loans resulting from assets transferred to the trust are not forgiven, trust assets will not be fully protected, defeating the primary purpose of the trust.

2. Trust minutes not completed.
Trustees should authorise by a signed minute adoption of the annual financial statements and tax returns, distributions to beneficiaries, borrowing of funds, the purchase and sale of assets, investment strategy and other important transactions. Failure to do so may lead to disputes between trustees and beneficiaries, causing expensive legal litigation.

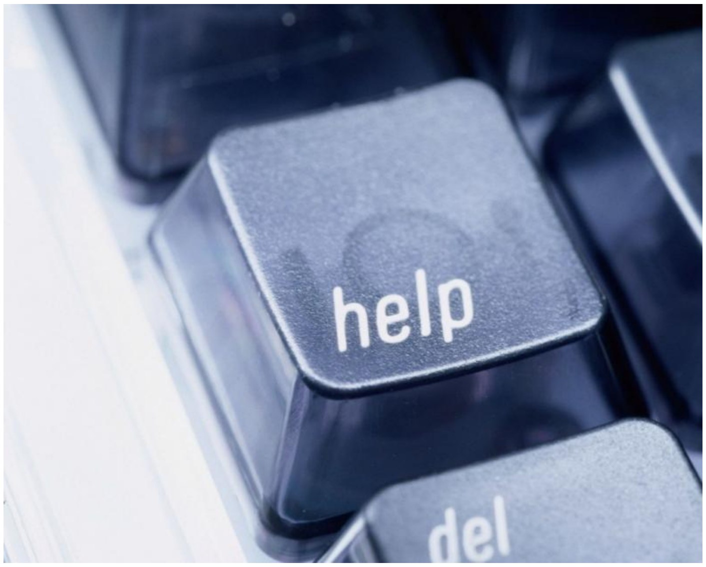
3. Lease documentation not on file and current.
Trustees may own property that is leased to a trading company. If up to date lease documentation is not on file the leasing arrangement could be challenged by Inland Revenue or a disgruntled beneficiary.

4. Registers regarding Trustees, Beneficiaries, significant events and gifting programmes not properly maintained.
If these registers are not accurately maintained, problems may arise in establishing the true position of the trust, especially when attempting to wind it up and distribute assets to beneficiaries.

1. No Settlors' Memorandum of Wishes.
This document provides trustees with a blueprint for governance of the trust to fulfill the intent of the settlors who established the trust. Without this memorandum in place, trustees may misinterpret the trust's purpose.

Cont...

Cambiano i dischi, ma la musica e sempore quella.
They keep changing the record, but the music is still the same. - old Italian saying



Trust Administration The Way Forward

There is a clear need for family trusts to be comprehensively reviewed.

Our firm has developed a trust risk review process which we strongly recommend we action for all client trusts. The review will address all of the above concerns and provide a 'warrant of fitness' of trust documentation and administration. We recognise the need to put in place a formal structure to ensure your trust cannot be challenged by any other party.

To put your minds at rest we will be in touch soon to discuss the review of your family trust.

Tax Talk

The Budget 2010 – The Dust Has Settled

The 2010 Budget contained the most far reaching changes to the New Zealand tax system since GST was introduced in 1986. We comment below on some of the major tax policy changes announced in the budget and subsequent updates:

Goods and Services Tax – Up it Goes

On 1 October 2010 GST will increase to 15% which will produce both challenges and opportunities for businesses. Gone is the simple tax fraction of $1/9^{th}$. As of 1 October to calculate the GST component of the GST inclusive price, you'll need to multiply by 3 then divide by 23 or alternatively simply divide by 7.66666.

There are many transitional issues that may affect your calculation of GST payable as a result of the rate increase. Here are the big ones:

1. Every business that is registered on the payments (cash) basis will need to make a GST rate increase change adjustment based on the difference between creditors and debtors in the 30 September GST return. For this reason, it's very important that you keep accurate records of what's owing to your business from customers (debtors) and what your business owes to suppliers (creditors) as at that date.
2. If your GST return period straddles 1 October, for example you file a two monthly return for the period September – October, you'll need to complete a GST transitional return (GST 104A).
3. Whether land sales attract GST at 12.5% or 15% will depend on whether the time of supply has been triggered prior to 1 October 2010. If you have a land transaction that may span 1 October, you'll need specific advice from us.
4. Whether payments received under construction contracts will attract GST at 12.5% or 15% once again will depend on the time of supply. Please contact us.
5. If you sell goods on layby, as long as a binding contract was in place prior to 20 May 2010 (budget night), payments received prior to 1 October 2010 can be accounted for at the old rate of 12.5%, but must be accounted for in the 30th September GST return. All remaining layby sales, where the goods are uplifted after 30 September, will attract the 15% GST rate.

GST
We Can Make the Change Easier for You

If we are preparing your GST returns we will take care of any transitional adjustments and returns and advise you of any additional information we may need. We're expecting an influx of client queries around the GST rate increase in October, so we'll be requesting your GST records much earlier.

If you are preparing your own GST returns we suggest that we check your calculations to ensure any transitional adjustments have been correctly applied.

Our firm has developed a GST Rate Increase Action Plan to help clients successfully manage the GST rate change. Send us an email or give us a call if you would like our help in ensuring a smooth transition.

Inland Revenue Audit Activity Beefed Up

The Government has budgeted for increased funding of $119 million to Inland Revenue to facilitate additional auditing of taxpayers and their businesses.

In a recent announcement the IRD have said their audit activity will target the 'hidden cash economy'. We will comment further on this issue in our next newsletter, including methods the IRD may use to assess whether taxpayers are accurately returning their taxable income.

Personal and Company Tax Rates
Down They Go

Personal income tax rates have been reduced from 1 October 2010, summarised in the following table:

Current and New Tax Rates

Taxable Income	2009/2010	2010/2011*	2011/2012
0 – 14,000	12.5%	11.5%	10.5%
14,001 – 48,000	21.0%	19.25%	17.5%
48,001 – 70,000	33.0%	31.5%	30.0%
Over 70,000	38.0%	35.5%	33.0%

* In 2010/2011 the rates are composite rates

The Company income tax rate decreases from 30% to 28% effective from the start of the 2011/2012 tax year i.e. 1 April 2011 for most companies.

Building Depreciation and 20% Depreciation Uplift on New Plant and Equipment Out They Go

The Budget legislation removes the deductibility of depreciation charged on buildings with an estimated useful life of fifty years or more, effective from the start of the 2011/2012 tax year, e.g. 1 April 2011 for most entities.

Having said that, a recent joint Treasury and IRD discussion paper indicates that the law will be changed to clarify that fit-outs associated with commercial, industrial, recreational and certain short-term accommodation (for example motels, hotels, rest homes and hospitals) will be able to be separately depreciated. This reflects the sentiment that the value of fittings in commercial premises tends to depreciate far more quickly.

The 20% depreciation loading on complying new fixed assets e.g. plant and equipment, furniture and fittings and motor vehicles, has been removed from Budget night, 20 May 2010.

Every problem has in it the seeds of its own solution. If you haven't got any problems, you don't get any seeds.
– Norman Vincent Peale

LAQCs – The Jury is Still Out

The budget proposed the following changes to the tax treatment of LAQCs:

- That LAQCs will be treated as a limited partnership resulting in shareholders effectively becoming partners
- Income generated by LAQCs will flow through to shareholders and be taxed in their hands at their marginal tax rate
- Tough loss limitations rules will apply

The Budget's rather contentious proposed LAQC regime changes have been the subject of numerous submissions (including from the New Zealand Institute of Chartered Accountants). The Government is in the process of considering these submissions and we will not be in a position to advise you until the legislation has been finalised, which may be some months away. Rest assured we will be in touch as soon as we have some clarity.

Smart and Simple Price Increase Strategy

Whilst there are early signs of our economy improving, a good number of our business clients are still feeling the prolonged effects of what has been a deep recession. Having said all that, it's timely to remind clients of how innovative and positive small business can truly be. Very recently one of our clients received this letter from their cleaning company.

'Dear Sue

It has been our pleasure to have cleaned your home for the past two years and we thank you for that opportunity. In that time we have resisted any thoughts of raising charges. However, with the overwhelming rise in a number of our running costs, we have been forced to reconsider and as of 30th August we will be increasing our fee by $5.00 per clean.

We trust you will understand and we look forward to continue doing the best job for you and your home.

Regards, the team at Select Cleaning.'

Notice that the company did not even mention GST. In fact, the price increase is significantly more than the increase in the GST rate. The letter is so fair and honest and up front. There's no arguing with that logic.

Business Perspective

New Employment Relations Bill

Changes recently introduced in Parliament are being described as the biggest labour reform in 20 years.

The proposed changes include:

- Removal of fixed breaks, allowing flexibility
- Extension of the optional 90-day trial for new employees to all employers
- The end of compensation for dismissal where the employer makes 'minor or technical' mistakes
- Letting employees request cash instead of the fourth week's leave
- Allowing transfer of public holidays to other days by agreement

Whilst unions are up in arms about the changes, business leaders are describing them as 'thoughtful, moderate, pragmatic and, above all, fair'.

Trimming the Fat, not the Muscle

A leading human resources survey of Australasian employers and employees sends a serious message to businesses.

Those employers who have 'cut into the muscle' and made too many redundancies are now facing a skills shortage which is likely to worsen during economic recovery.

The survey noted that a huge 84% of employers believed they had made too many redundancies and two thirds said their teams were now under resourced.

Employers also reported that almost half of their new recruits were not of good quality.

'The effects of a poor hire go way beyond the cost of back-filling the role. A bad hire will damage the team and have a negative lasting effect on existing high performers'.

'Employers will face a battle to retain talent against a backdrop of fierce competition and greater movement among employees' the survey suggests.

So... trim only the fat and look after the muscle in your business.

Source: Rebecca Stevenson *Skills shortage after redundancies* Business Day 2010

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