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NEWSLETTER

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TAX & BALANCE DATE MILESTONES

The calendar milestones of Christmas & New Year have gone. Holidays are over and key dates in the business and tax year loom. These dates are reminders to plan for the 2009 accounting year end and year ahead.

Each year we send out an **Annual Questionnaire**. The questions are designed to prompt you to think about key business areas. Please pay particular attention to: bad debts, fixed assets, holiday pay, inventory and work in progress. Some key areas require action **before** your balance date arrives.

Bad Debts: In order to claim a tax deduction, bad debts must be written out of your ledger before the year end, and assuming all practical efforts have been taken to collect the debt.

Fixed Assets: Fixed Assets should be reviewed. Where a fixed asset is no longer in use and not intended for use in the future, it should be scrapped unless the cost of disposal outweighs the value of the asset. Once this action is taken, the asset can be written out of your ledger and a tax deduction obtained.

Inventory & Work in Progress (WIP): At balance date, a stocktake should be undertaken & inventory & WIP (based on labour cost). An exemption may be available for taxpayers with a turnover of less than \$1.3m who estimate the value of their closing stock at less than \$5,000. These thresholds increase next year.

Holiday Pay: Holiday and bonus payments made within 63 days of your balance date are deductible in the 2008/09 year where the payments are related to the 2008/09 financial year.

Subvention Payments: 31 March is a critical date for completion of subvention payments between commonly owned companies for the 2008 year.

Qualifying Company Election Paperwork: Certain election paperwork for companies wishing to enter or exit the regime must be lodged with the IRD before year end.

90 DAY TRIAL PERIOD

Effective from 1 March 2009, the Government has passed legislation granting employers the right to dismiss an employee

within the first 90 days of employment with no right to lodge a personal grievance against the employer.

The Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people, without financial risk to the employer if the employment relationship does not work out. In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that "By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves" and that "The 90 day trial will provide real opportunities for people at the margins of the labour market".

As with any legislation, it is not as simple as it sounds. The probation period provisions only apply where the employer employs "fewer than 20 employees"... "at the beginning of the day on which the employment agreement is entered into". However, in some cases the point at which an employment agreement is entered into can be unclear. For example, is the agreement entered into when the offer is made and accepted orally or when the agreement is signed by the first or second party to affix their signature?

In addition, in order for the 90 day period to be in effect the legislation requires a trial period provision to be written into the employee's employment agreement. However, some employers in small businesses still do not enter into written employment agreements with their staff, even though they have been a legal requirement since 2000. If the agreement and trial provision are not in writing there is no protection under this legislation.

The requirement for an employer to employ fewer than 20 staff for this protection to apply may lead to debate. Small private businesses often include family members as employees, although they might not be actively involved in the business in the same way as other employees. This provision appears to be based on a 'headcount' methodology as opposed to full time equivalent staff. Hence, the cleaner who comes in for 2 hours each day will be included in the headcount, as will job sharing part-time workers. The method of counting staff will become critical as once the employer hits the 20 staff threshold, further employees will not be subject to the provisions.

If an employee is not dismissed within the 90 day period the employer will be subject to the normal provisions to justify a dismissal and will have no protection from this section of the Act. This will be strictly applied.

The changes to the Act do not protect the employer from a grievance for unjustified action. That means that if the employer changes the employee's role or reduces their pay, the full procedural requirements still apply.

KIWISAVER COMPARING SALARIES

Changes introduced by the last Government which prohibited an employer from paying employees on KiwiSaver at a different rate than those who were not receiving KiwiSaver were to come into effect on 1 April 2009. Consequently, KiwiSaver members were in essence to receive a higher rate of pay. The National Government has repealed this move and employers are now free to look at the total remuneration for each person.

NEW THRESHOLDS FOR SMEs

New compliance thresholds were introduced in the July 2008 Tax Bill to provide some concessions for SMEs. Some of those thresholds have been adjusted further & new measures introduced by the new Government as part of its relief package for small to medium sized businesses, generally with effect from 1 April 2009. These concessions are meant to assist SMEs to reduce compliance costs. These changes are set out in the following table.

Area of Compliance	Threshold	
	Original	New
PAYE – Taxpayer able to file once a month if total PAYE / SSCWT deductions below this level	\$100,000	\$500,000
FBT - Taxpayer able to file FBT returns annually if PAYE / SSCWT deductions below this level	\$100,000	\$500,000
Use of Money interest safe harbour – residual income tax threshold below which use of money interest will not be charged	\$35,000	\$50,000
GST registration – GST registration required for turnover above this level	\$40,000	\$60,000
GST 6 monthly filing – 6-monthly filing allowed for turnover below this level	\$250,000	\$500,000
GST payments basis – Payments basis allowed for turnover below this level	\$1.3M	\$2M
Low value trading stock valuation – No stock revaluation required if estimated closing stock is below this level	\$5,000	\$10,000
IRD use of money interest rate – Reduction of the interest rates on overpaid & underpaid tax. (This change effective from 1 March 2009)	14.24% underpaid 6.66% overpaid	9.73% 4.23%
Legal fees – Total level of expenditure under which full amount is deductible irrespective of whether item is of a capital or revenue nature.	\$0.00	\$10,000

BEING A TRUSTEE BRINGS RESPONSIBILITIES

IT'S flattering to be invited to be a trustee. However, it is alarming when things go wrong.

If you want to accept an invitation to be a trustee, be prepared to do the job properly, or run the risk of some sleepless nights. This applies particularly to the common family trust.

On becoming a trustee, you should:-

- Get control of the family trust immediately. Trustees are required to do this. It is not enough to just sign pieces of paper as requested.
- Look through the trust deed and be sure you understand it. You will have to refer back to it on occasions. It tells you what you are supposed to do.
- Be very familiar with your responsibilities under the trust deed. If these responsibilities are not met, you could be held accountable to the beneficiaries.

Then:

- Read all minutes, particularly those over the last few years.
- Minute all decisions and get them signed by all trustees before acting on them.
- The nature of a payment to settlors (those who formed the trust) needs to be specified in the minute. It might be reduction of debt or a distribution of income, for example.
- Get a copy of the most recent financial statements and make sure you are happy with them and understand them. Take action now, if you are concerned or do not understand.

Conclusion

As a trustee, it is your responsibility to have control. You cannot delegate this.

Change of Trustee

Any change in the trustees of a trust can have taxation and other implications. When contemplating such a change, it is essential your advisor is made aware to ensure there is proper notification to the appropriate parties.

SNIPPETS

The Taxation (Urgent Measures and Annual Rates) Act introduces changes to personal income tax rates, which take effect from 1 April 2009.

The changes are as follows:-

Date applicable	Threshold (\$)	Rate (%)
<i>Now</i>	0 – 14,000	12.5
	14,001 – 40,000	21
	40,001 – 70,000	33
	70,001 +	39
<i>From 01/04/2009</i>	0 – 14,000	12.5
	14,001 – 48,000	21
	48,001 – 70,000	33
	70,001 +	38
<i>From 01/04/2010</i>	0 – 14,000	12.5
	14,001 – 50,000	21
	50,001 – 70,000	33
	70,001 +	37
<i>From 01/04/2011</i>	0 – 14,000	12.5
	14,001 – 50,000	20
	50,001 – 70,000	33
	70,001 +	37

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