



It hasn't been the best of years for trustees in the Courts.

This year:

1. Trustees were replaced for not acting in the best interests of a trust
2. A trustee that was removed by the Appointer was unsuccessful in trying to remain a trustee as he was considered antagonistic and was ordered to pay costs
3. A lawyer trustee was held liable for half of a trusts GST but as he had paid it all he had to try and recover the other half from his fellow trustee who has absconded
4. An executor of an estate who was the son of the deceased

was removed on the basis he had a conflict of interest

5. A trust was found to be buying and selling "family homes" for profit and had to pay tax on the gains
6. Trust assets were held to be able to be taken into account when assessing eligibility for social welfare benefits
7. Gifts of more than \$27,000 per couple were held to be a deprivation of assets and so the gifts added back for rest home care subsidy purposes
8. Settlement of company shares on a trust was ineffective to avoid Child Support
9. A lawyer was held liable for losses by "knowingly assisting" a trustee to deprive a trust of assets
10. Trustees (including the accountant) were held liable to replace assets and lost income where they failed to make court ordered payments to a beneficiary and deprived the trust of both income and assets.

A feature of many of these cases is that the "independent" trustees have either taken a "hands-off" approach to their role and/or have lost sight of their duties as trustee.

In particular, they have seen the "client" (usually the settler and co-



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trustee) as the person they have a duty to rather than acting in a balanced and objective way in the decision making process.

Take the final case above. The Court expressly considered that the trustees thought that a court order was unfair to the "client" and that his former spouse was unreasonable. They then set out to deprive the beneficiary of entitlements.

In legal terms such action is "dishonest" - not in a criminal sense but in a fiduciary sense which is "simply not acting as an honest person should".

A Court will not endorse such actions.

On-the-Spot Services

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All \$60.00 plus GST

(per issue raised)

Happy Holidays

We will be recuperating from
21 December 2013 to 21
January 2014 - hope you are
able to also

LTC's - wolf in sheep's clothing!

We don't like them, never have and think that their usefulness is limited. The tax risk is high. Not only that, the law is poorly written, complex and far from taxpayer friendly.

Firstly, the LTC is a company and it is the LTC that earns the income and incurs the costs and owns the assets and owes the liabilities.

The shareholders are then treated as doing and being entitled to a thing that the company does is entitled to for tax purposes.

This means that they are entitled to all income, deductions and taxable events for tax purposes.

For this reason Inland Revenue accepts that shareholders who sell their home to an LTC and buy

a new home can take a deduction for the LTC's interest costs in buying the home.

Most LTC's are however insolvent and owe the shareholders money.

If a LTC is liquidated and doesn't repay the shareholder loan there is a debt remission and the shareholder will be taxed.

There is of course no deduction for the loss so in effect the shareholder is paying tax for losing money.

Inland Revenue's view is that capitalising the debt is a tax avoidance arrangement.

Revocation of LTC status should then be considered before liquidation.

We are happy to advise on this.

Tax relief for RAM investors

Inland Revenue has released its position on the reassessment of investors with Ross Asset Management and is to be applauded for its speed and approach.

In essence, as the investments fell with the FDR calculation the annual value for making the income calculation will be reduced by a fixed percentage with a corresponding reduction in the management fee deduction.

Investors should make their calculations and apply for a reassessment of the 2008 to 2013 income years.

Where investors returned interest or dividends they can also seek a reassessment but Inland Revenue will need to determine whether the amounts have been received and so are taxable under ordinary principles.

We recommend that requests for reassessment be made ASAP.

We can assist if required.



The old chestnut!

With the crazy season upon us the perennial question arises as to the application of 50% entertainment limitation to gift baskets.

If you give gift baskets containing food and drink to clients this Christmas the cost will be 100% deductible unless you eat or drink some of the contents which will limit the deduction to 50%.

If you give the same gift to staff the same applies but you will have to consider whether fringe benefit tax should be paid.

PRIVACY NOTICE

Under the Privacy Act 1993 you are entitled to access information held by us about you. You also have the right to request us to correct any information we hold about you and you have the right to tell us to remove your name from our mailing list - just let us know!

ON THE SPOT ADVICE

Our telephone/fax/email consultation service is available to enable practitioners to deal with any questions as they arise.

TAX OPINIONS

Providing fully researched opinions on the taxation effect of transactions.

TAX AUDITS

Reviewing tax compliance requirements (FBT, GST, PAYE etc) to identify any deficiencies prior to any visit from tax inspectors.

TAX DISPUTES

Preparation of responses to disputes with Inland Revenue.