

No where to run?

June 2014

Over the past couple of years we have been progressively reporting on the increase in the number of Double Tax Agreements ("DTA's") New Zealand has been entering into along with Tax Information Exchange Agreements ("TIEA's").

The TIEA's are of particular interest as they are largely with tax haven countries.

TIEA's are in force with 11 jurisdictions (Cayman Islands, Cook Islands, Curacao, Gibraltar, Guernsey, Isle of Man, Jersey, Netherland Antilles, Niue, Samoa, Sint Maarten).

A careful reading of the list leads to an easy conclusion that the target taxpayers are British migrants, Pacific Islands activities and Vanuatu where it is

well known both New Zealand and Australian taxpayers have used its tax haven and secrecy laws to avoid taxation obligations.

The Cook Islands TIEA had appeal because of the amount of money invested in the OM-IP/Man investment products.

Under a TIEA Inland Revenue can request information from investment companies, banks and indeed any other useful source of information.

New Zealand is currently negotiating TIEA's with Antigua and Barbuda, Aruba, Grenada, Macao, Monaco, Montserrat, Nauru, St Lucia and Seychelles.

The new weapon

The new weapon in the Inland Revenue armoury is the Convention on Mutual Administrative Assistance in Tax Matters ("the Convention").

This Convention was first signed in 1988 and ratified by 5 countries in 1995.

New Zealand signed the Convention on 21 November 2013 and it came into force on 1 March 2014.

Under the Convention member tax authorities are authorised to:

1. Request information from other members

2. Send the requested information
3. Send information that may be of interest to another member to that member without being asked for it
4. Collect unpaid tax from a person in a members country for another member
5. Serve documents on a person in a members country for another member

There are now 54 countries that are members of the Convention and a significant number of these New Zealand does not have a DTA or TIEA with (and neither are they now needed).

So, if a person owes tax in New Zealand and leaves the country, Inland Revenue can now write to contact the country they are in, tell them the person is there, has not complied with our laws and they may like to look into the persons compliance there and ask them to collect the New Zealand tax.

Sound far fetched? Not at all, Inland Revenue is already enjoying its new found powers and is seeking unpaid taxes from member countries.

The power of the Convention cannot be under estimated!

On-the-Spot Services

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All \$60.00 plus GST

(per issue raised)



Trust basics

If you are a trustee it is useful to keep in mind the basic “rules” for being a trustee. Judges know these rules and will judge a trustee by them.

The four fundamental duties of a trustee are to:

1. know and understand the trust deed and adhere to its terms
2. act for the beneficiaries (not the settlor (often known as “the client”))
3. ensure that the trust property (the assets) can be identified at any given time and is protected
4. act in good faith (which means to not act in self-interest or to profit from the trust)

Each trustee of a trust has these duties. A key practical aspect of these duties is for trustees (and especially professionals acting as trustees) to be actively involved in decision making and contractual transactions.

Paying Tax

We received mail today from Nelson. It took 6 days to be delivered!

This is a prime example of the difficulty some of your clients may face from 1 October 2014.

From this date Inland Revenue will require cheque payments to arrive no later than the due date for payment. If not penalties and interest will apply.

This is potentially a significant practical change to the application of the law.

From 1 October 2014 cheque payments will also no longer be able to be made at Westpac.

Trusts still in the Courts

We have said it before, indeed we started making predictions more than 10-years ago, that there would be increased litigation in New Zealand in relation to trusts. There are now decisions regularly coming out of the Courts. These decisions require consideration by trustees and advisers.

Know who you are dealing with

In a recent decision in the High Court, the purchaser of land was unable to secure settlement from a trust.

One trustee had entered into an Agreement to sell a house owned in trust. The second trustees did not sign the Agreement and did not agree with the sale.

When time came to settle the transaction failed and the purchasers sought settlement.

The High Court held that there was no contract and so the vendor trustees did not have to settle.

One wonders if the trustees who entered into the contract or the lawyers who failed to pick up on the ownership will face a claim for losses.

The names were on the title! All owners must sign an Agreement unless it is signed by an authorised person.

Know what you are dealing with

In another decision in the High Court, trustees who thought that an advance to a trust was not a loan but later found out that it was and as a result had to sell their house to repay the money.

They incurred costs and stress fighting the case and so sued their lawyer for negligence.

The High Court has held that the lawyers were negligent in not determining and documenting the nature of the advance.

The lawyers were ordered to pay the

trustees costs and damages for the stress caused.

The trustees still lost their house however.

These types of cases often arise out of relationship breakdowns.

In a second case, the trustees of the parents trust argued that an advance to the trustees of the children's trust was a loan after the children's marriage broke down and the parent's trust called in the advance.

The daughter-in-law trustee of the children's trust argued that the advance was a settlement as she understood it was part of her husband's “inheritance”.

The Court was satisfied that there was sufficient evidence to support the advance being a loan but the cost of the disagreement was high.

Both these cases highlight the importance of documentation. While loans do not have to be subject to a Deed of Debt; a properly documented loan has the potential to save significant “grief” in the event of a dispute.

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.