

## Is it worth it?

The recent (2nd) conviction of high-profile tax adviser Brent Gilchrist for tax fraud has highlighted a raising of the tax stakes. Gilchrist was sentenced to a term of home detention and his co-offender (who was convicted on additional matters) to jail.

The taxpayer client who participated in the fraud also received a term of home detention and the participant in the co-offenders "additional matter" was sentenced to a jail term.

The judge described Gilchrist as an aggressive tax adviser willing to create false paper trails to mislead Inland Revenue, to create false invoices to mislead a bank and had a propensity to destroy documents.

The scheme involved the provision of fictitious invoices to enable the avoidance of tax and was not dissimilar to the Rowley and Skinner scheme and was described by the Judge as a scheme with no sophistication or tax skill.

A common thread with both schemes was the use of Vanuatu as a conduit for the funds.

New Zealand has entered into an information exchange agreement with the Government of Vanuatu which will take effect soon and the tax authorities in the United Kingdom, United States and Australia have recently agreed to share data on those involved with tax havens.

Inland Revenue has already received information from those Countries about New Zealand taxpayers who have been identified.

Inland Revenue has also had significant success in identifying taxpayers who have foreign credit cards and bank accounts.

Many of these people are SME operators amongst whom the activity appears to be quite widespread.

If you have a client who has participated in a scheme that may be tax avoidance or tax evasion you may wish to revisit the scheme with the client with a view

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to making a voluntary disclosure to Inland Revenue before it locates the scheme.

### More convictions

The tax compliance environment has changed dramatically in recent years.

Fraud is not the easiest crime to prove but Inland Revenue is getting better at it and is more willing to try.

Justice Kos was critical of Inland Revenue for not prosecuting clients who participated in the Rowley and Skinner scheme and its confidence is growing.

Around the same time as the Gilchrist case came to its conclusion a Wellington supermarket owner was sentenced to home detention for filing false GST return.

Also an Auckland company director was sentenced to jail for aiding and abetting two companies claim tax refunds to which they were not entitled and a Napier businessman was found guilty of aiding and abetting his companies to knowingly fail to pay PAYE to Inland Revenue.

Further prosecutions can be expected.

**Is it worth really it?**

### On-the-Spot Services

#### Phonetax

0508 Phonetax

0508 746 638

#### Fax-A-Tax

0508 Faxatax

0508 329 282

#### Webtax

[webtax@paradise.net.nz](mailto:webtax@paradise.net.nz)

All \$60.00 plus GST

(per issue raised)



## Rules of Engagement

# Penny & Hooper

We all have letters of engagement. They are intended to set out who is responsible for what and at what cost.

The other side of the power of the engagement letter was tested recently in the High Court where a client was refusing to pay for work undertaken by a firm of Accountants.

In the District Court the Accountants had been successful in obtaining judgment against the client. The client had unsuccessfully argued that the work was outside the scope to the firms "standard" engagement letter.

In the High Court the judge initially agreed with the District Court and found that the terms of the "standard" engagement letter had been "varied" by verbal agreement.

After the appeal was over the client located an unsigned engagement letter sent to him by the Accountants covering the disputed work.

The High Court then recalled its decision and reduced the fee by the cost of the disputed work on the basis it was never agreed too.

This case highlights how important it is to be clear what work will be done and at what cost (the firm increased its charge-out rates without telling the client so the Courts reduced the fee to the old rates).

Neither party really won because of the costs of the 3 hearings but the principles are important.

Inland Revenue has commenced its "promise" to undertake audits of taxpayers it identified as potentially falling outside the "Penny and Hooper" principles and so may be subject to a tax avoidance allegation and reconstruction.

To recap:

- The issue is personal services providers who structure other than as a sole trader and then don't remunerate themselves in a manner that reflects their value to the business
- The Supreme Court held such activity to be tax avoidance
- Inland Revenue gave a 'window of opportunity' to make voluntary disclosures
- If a voluntary disclosure was made it only needed to be for 2 years (or 3 if a tax return was filed after 24 November 2011)
- There would be no shortfall penalties
- The 'window' closed on 31 March 2013

Identified taxpayers have been served with a notification of audit. The audit period is 4-years with an initial Penny and Hooper emphasis but could extend to a full audit.

The notification of audit approach is significant as it means that any voluntary disclosure only attracts a 40% reduction in

penalties (plus perhaps the 50% 'good behavior' discount).

If no voluntary disclosure is made after notification but before commencement then no discount will be available.

If you have a client who has been selected for audit careful consideration should be given to making a voluntary disclosure.

If you have a client that falls within the "Penny and Hooper" principles but has not received an audit letter a voluntary disclosure could be considered as the audit selection and notification's are being progressively rolled out.

We also remind you that Inland Revenue's expectation is that all tax returns filed from 24 November 2011 comply with the Penny and Hooper principles even though tax rates have reduced.

### 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.