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taxassessment

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Winter 2018

Things are Heating Up!

Hi Everyone

In this edition of taxassessment we want to remind you of the proposals by the government to ring fence rental losses - forewarned is forearmed. Unfortunately, we are all going to have to get our heads around the new Anti-Money Laundering Rules (AML) – hopefully the discussion below will be enough to get everyone started, but you do have to read it... and Common Reporting Standards (CRS) is nearly upon us – equally as boring as AML, but hopefully we have written it in such a way that you will not fall asleep. There are a couple of interesting questions we have been asked that we wanted to share with you, and IRD has now introduced cheap and cheerful Binding Rulings! Happy reading.

Murray and Roger

'Put a Ring Around it'

It may only be a discussion document at this point, but these things have a funny old way of being up for discussion one minute, and in the statute books the next. The basic tenet of these proposals is that rental losses will no longer be able to be used to reduce other income (wages, salaries, businesses) from the 2020 income year.

Of course, rental losses will not be forfeited under the proposals – they will just be carried forward until the portfolio of rental properties starts to turn a profit. In other words, this is largely a timing issue but it is one that will largely affect cash flow for those property investors.

IRD has been banging on for years about linking economic loss with income tax deductions. Their view appears to be that if you have genuinely suffered some sort of cash loss, then as long as that loss is tax-deductible, there should be some tax relief. Not so with the current proposals it seems. With the removal of the depreciation deduction on property structures, most rental property losses are now cash losses which need to be funded personally or by the bank. Denying property investors an income tax deduction for genuine cash losses appears to be at odds with IRD's stated policy.

Setting up clever structures using trusts, companies or partnerships will not circumvent these proposed rules. Trusts do not work anyway because trust losses cannot be distributed to beneficiaries. Those wanting to use companies or partnerships who borrow money to invest, need to be aware that if the entity is land rich (over 50% of the assets are residential properties) your capital investment will be deemed to be 'interest', and therefore if there is no return on that investment, the interest cost will result in a loss, which will of course be ring fenced.

The proposals do not include a main home or land held on revenue account nor assets which are subject to the mixed use asset rules.

In our opinion, the removal of the depreciation deduction on building structures a few years ago largely remedied the problem suggested by IRD because it removed those from the market who genuinely could not afford to self-fund their rental portfolios. These proposals, in our view, go too far, do not accord with stated IRD policy, and are therefore unnecessary.

AML – Aston Martin Limited

For as long as we can remember AML meant, Aston Martin Ltd. The new model for accountants comes out on 1 October this year. This means if you act as, or you arrange for people to act as a nominee director, shareholder or trustee, or if you ONLY provide a registered office or a business address, AML needs to be on your radar. Likewise, if you manage client funds, accounts, or other securities in the ordinary course of your business, you also need to comply with the new AML rules.

Complying with the new rules means appointing a compliance officer (probably you) carrying out a risk assessment, and developing a compliance program. And then every two years someone is going to come around and audit you.

According to the government, we accountants are often used by criminals to hold and move assets and funds anonymously!!

From 1 October 2018 our AML compliance program will set out how we are going to detect and manage these risks. And on an ongoing basis we are going to have to verify the identity of our clients before we provide services. This may include asking for information about where money came from.

Some of the information we are going to need to seek will include the client's name, birthdate and address, perhaps obtain a copy of their passport, drivers licence or bank card together with a bank statement and perhaps a utility bill in order to verify the person's address.

In addition, we are going to have to provide the Police Financial Intelligence Unit with information if a client wants to conduct a transaction that is $10,000 or more in cash, or an international wire transfer of $1,000 or more. And if we identify any suspicious activities we must also report them.

For those of you who need some help we can assist you with the preparation of the risk assessment and compliance program including tailored templates and documents for your practice.

All of this to buy a new Aston Martin. Personally we wouldn't bother – just get a Merc instead!

Questions You have Asked

Q 1. Our client company has a 30 November 2017 balance date. For the year ended 30 November 2016, the company had no provisional tax obligations. For 30 November 2017 the company's RIT was $42,000. Does the company have a UOMI obligation for the 30 November 2017 year?

A 1. Section 120KE of the Tax Administration Act 1994 outlines the "safe harbour threshold" which allows taxpayers with relatively low residual income tax to be free from use-of-money interest charged by Inland Revenue. Prior to the 2017 income year this threshold was only available to individual taxpayers and had a residual income tax limit of $50,000.

Changes to section 120KE were made on 1 April 2017 with effect for the 2017/18 income year. These changes increased the monetary threshold to $60,000 while also extending the provision to be available to all taxpayers including companies. It is a requirement of "safe harbour" that all provisional tax payments under the standard uplift method have been made on time and in full. However, as this is the first year the company has made a profit it would not have been required to pay provisional tax and as such is excluded from section 120KE.

Section YE 1 (6) of the Income Tax Act 2007 refers to an early balance date. If a taxpayer has an early balance date (between 1 October and 31 March) the balance date for tax is deemed to be the following 31 March. Therefore with a balance date of 30 November 2017 the tax year will be 2017/18. This means that the changes to the "safe harbour" apply to the company and it will not be liable for use-of-money interest on the $42,000 residual income tax.

Q 2. Our NZ tax resident client receives a pension from Canada. It appears to have a withholding tax deducted and paid to Revenue Canada. Our understanding is that in most cases, foreign pensions paid to NZ tax residents are normally only taxable here.

A 2. The Double Tax Agreement between Canada and New Zealand states that the pension received by your client is taxable in Canada. This is extremely unusual as you suggest. This is why it is important to review the relevant DTA, if New Zealand has one with that particular country. From the DTA it appears that the Canadians deduct 15% withholding tax from the payments as a final tax in Canada. This is provided for in Article 17 of the DTA.

As your client is a New Zealand tax resident, the pension annuity is taxable in full here. However, because Canada has the first right to tax the pension, the 15% withholding tax deducted in Canada is available to be claimed in New Zealand subject to the normal foreign tax limitation rules.

<u>New Mileage Rates from 1 April 2017</u>

Keeping with the car theme. The following are the rates per kilometre that will apply for the 2017/2018 income year:

Vehicle type	First 14,000 kms	After 14,000 kms
Petrol or diesel	76 cents	26 cents
Petrol hybrid	76 cents	18 cents
Electric	76 cents	9 cents

CRS Common Reporting Standards

We have had a number of you ask us questions about the new CRS reporting requirements. The questions have all been in respect of trusts. However, CRS can apply to companies, partnerships as well, but not to individuals.

In most cases for New Zealand trusts that have New Zealand trustees and appointors who control the trust, there will not be anything to do under CRS.

If a trust has a 'reportable person' who is a non-resident or controls the trust, all the trust has to do is to register with IRD that the trust is a NZ Financial Institution (NZFI), and disclose those individuals involved. Obviously, that includes their name, address, TIN's, DOB etc. There might also be a need to advise IRD of the value of the investment involved, or if you've closed an account etc. Whilst it's a bit late now, this disclosure was meant to have been made by 30 June.

If a trust has a managed investment fund, you need to understand how much discretion the fund manager has. For instance, if the fund manager has the ability to buy and sell and invest in any way they like without needing to revert to the trustees, the trust is likely to be an NZFI. But that may still not be a concern if there is no non-resident 'reportable person'.

However, if the trustees limit the discretion the fund manager has then in most cases the trust will not be an NZFI. So, by way of example, if the trustees say that the fund manager can invest in only New Zealand listed shares, and those companies must be in the top 50 New Zealand companies, because the fund manager does not have the discretion to invest where they like, the trust will not be a NZFI.

We suspect that in 99% of cases, most of us will have very minimal CRS obligations. However, if you are not sure about a particular client, please send us an email setting out the facts, and we should be able to arrange an answer for you relatively painlessly.

Binding Rulings – Are Back

Well in truth they never went away. Included in the June 2018 tax bill is a new "Short Process Binding Ruling" that you can use if your annual gross income for the prior tax year is $5m or less; and you want a ruling on a tax matter that is expected to be less than $1m of tax.

The application process is easier than a standard binding ruling application in that you do not have to state the taxation laws, and the propositions of law etc.

IRD has said that the fees they will charge are going to be at a lower rate than is currently charged for a standard binding ruling of $280 and $140 plus GST per hour.

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Importantly, the scope of the binding rulings will be expanded to include specific fact situations like; whether a person had the purpose/intention of selling property when they acquired it; whether a person is a New Zealand tax resident; financial arrangement questions.

At a practical level, this is likely to encourage more of our SME type clients to seek confirmation of the tax positions they are taking. Personally, we would like to see them bring back non-binding rulings!