NEWS

graham and dobson
CHARTERED ACCOUNTANTS

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SNIPPETS

IRD NO LONGER TO ACCEPT CHEQUES

The Inland Revenue, having increasingly adopted digital systems, will no longer accept payment by cheque from 1 March 2020. This will include cheques dated after 1 March 2020. This may mean a significant change for some people – however there are a number of other secure ways to pay:

Through your bank: Talk to your bank about their online banking facilities including one-off automatic payments.
Through Inland Revenue: Register and login to myIR – you can pay by direct debit or use your debit or credit card in myIR.
In person: Drop in and pay your taxes over the counter at Westpac by cash or eftpos. This facility is only available at Westpac branches.
By fees-free transfer: This service is available if paying from overseas.

FIVE SIMPLE WAYS TO PREVENT IDENTITY FRAUD

Identity fraud, the use by one person of another person's information without authorisation, to commit a crime or to deceive or defraud another, is big business. Your name, date of birth, place of birth and a number attached to your name such as an IRD number are powerful pieces of information that can unlock a lot about you. There are a number of simple ways to protect yourself:

1. Always check your bank statements to keep an eye out for suspicious purchases
2. Use two-factor authentication requiring not only a password and username but also a code using your mobile phone.
3. Keep the information you put on social media to a minimum.
4. Make your password a phrase – a string of four or more words is just as strong as a mix of numbers, letters and symbols.
5. Get a credit check to alert you if someone is using your details to get loans or credit – see *https://www.govt.nz/browse/consumer-rights-and-complaints/* debt and-credit-records.

BEWARE OF TAX RELATED SCAMS

The Inland Revenue will never send you an email requesting you to confirm, update or disclose confidential details through an unsecure channel such as an email. If you receive a suspicious communication by email, do not respond to it or follow any links. Forward it to *phishing@ird.govt.nz*

THE NAIT FACTS

Everyone knows that all cattle sent for slaughter are required to have a NAIT tag and many farmers will also be aware that animals arriving at the works without a tag result in a per animal $13 fine. However, what is not generally realised, is that there are downstream implications of an untagged cattle beast.

Due to market access requirements, all products from an untagged animal must be excluded from the EU and China. The implication of this market restriction results in the loss of $75 to $110 (depending on cattle class) in carcass value per animal.

US TAX RULINGS!

You may think New Zealand's tax rules are difficult to follow. The following unusual, yet permitted, deductions in the United States may change your mind.

An American citizen was prescribed regular swimming to treat his arthritis and so had a swimming pool installed on his property. The associated expenses were subsequently approved by the IRS as tax deductible medical expenses! A similar US provision allowed tax deduction for the cost of a clarinet and lessons, on the basis of an orthodontist's recommendation that playing the instrument would help correct a child's overbite.

An American TV personality once claimed the cost of formal dresses in her tax return. They were permitted as a legitimate business expense because she explained the dresses could only be worn on TV, and not for personal use, because they were so tight she could not sit down!!

Contents

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RESIDENTIAL BRIGHT LINE TEST

The Income Tax Act 2007 has long contained provisions to tax the sale of property (or other assets) acquired with the intention of disposal. However, 'intention' is a subjective concept and this has been difficult for the Inland Revenue to police. Hence the brightline test (Section CB6A) was introduced as a means to tax profits made on property purchased and sold within a short space of time.

The brightline test applies to land which a person first acquired an interest in on or after 1 October 2015. Typically, a person acquires an interest in land when a Sale and Purchase Agreement (S&P) is executed. This is important because if this occurred before 1 October 2015, the brightline test does not apply. When the brightline test was first introduced it applied if the period between the change of title to the purchaser and the date they subsequently entered into a S&P to sell was less than two years. If the change in title was not registered, it is measured from the date the person first acquires an interest in the land (e.g. the date of the S&P).

When the current coalition government took office, the two year period was extended to five years. The extended five year period applies if the owner first acquired an interest in the land on or after 29 March 2018. Again, this is important because the shorter period of two years applies if a person acquired their interest in their land between 1 October 2015 and 28 March 2018.

The provision captures a broad array of residential land, including land with a consent to erect a dwelling, and bare land zoned for residential purposes. However, the test does not apply to the 'main home', farmland and property used predominantly as business premises. Properties acquired by way of inheritance are exempt, while roll-over relief applies to transfers under a relationship property settlement.

In most cases, people will apply the 'main home' exemption. To do so the person must have lived in it for most of the period of ownership. If the house is in a trust, the main home exemption is basically only available if a beneficiary and the trust's principal settlor lived in it. The 'main home' exclusion can only be used twice in the two year period prior to a disposal and cannot be used if a person has a regular pattern of buying and selling residential land.

Because the section has been drafted narrowly, it can apply unfairly. For example, if an investment property owned by an individual for 20 years is transferred to their family trust on 30 March 2018, for brightline purposes 30 March 2018 becomes the acquisition date to the trust and a sale within five years will be taxable, even though 'family' has owned it for over 20 years.

Comment:
The brightline provisions are straight forward at first glance, but the devil is in the detail and deciphering the exemptions and timing requirements can be complex.

KIWI ACCESS CARD

For some years young adults who did not possess any other form of photographic ID such as a driver's licence or passport could use the 18+ card. This card remains approved, as photographic evidence of age document under the Sale and Supply of Alcohol Act 2012, as it verifies the named person is over 18 year.

In January of this year, Hospitality NZ launched a revamped proof of identity card, Kiwi Access Card. It contains additional security features. Both cards provide confirmation of an individual's name, date of birth, what they should look like and are valid for a period of ten years. Both the new Kiwi Access Card and the 18+ card can be now used as part of the Anti-Money Laundering identity verification process.

THE NEW TRUSTS ACT

The Trusts Act 2019 (Act), which having received the Royal Assent on 30 July 2019 comes into force on 30 January 2021, will reshape and modernise the landscape of trust law in New Zealand.

The Act applies to new and most existing trusts. New Trusts should be drafted in accordance with the Act and existing trusts have an 18 months' transitional period to conform to the Act.

Changes in rights and obligations
While there are a range of changes across a number of areas of trust law, there are some key changes that settlors and trustees should be aware of, including the codifying of mandatory and default duties on trustees. The most notable being:

- **Mandatory duties**:

The five mandatory duties cannot be excluded or modified by the trust deed and impose on all trustees a duty to know the terms of the trust, a duty to act in accordance with those terms, a duty to act honestly and in good faith, a duty to act for the benefit of beneficiaries and a duty to exercise the trustee's powers for proper purposes.

- **Default duties**:

The ten default duties apply unless expressly excluded by the trust deed and include a duty to invest prudently, a duty not to exercise power for their own benefit, a duty to avoid conflict of interest and a duty to act unanimously.

- **Record retention requirements**:

The Act prescribes a specific list of documents that trustees must retain. Further, trustees are required to keep core trust documents for the duration of the trustee's trusteeship and must pass on the documents to replacement trustees to ensure trust records are retained for the lifetime of the trust. It is advisable for trustees to review their trust records to ensure they are complete.

- **Obligation to give certain information to beneficiaries**

The Act favours keeping beneficiaries informed and clearly outlines the basic trust information that is to be provided to every beneficiary. The process of disclosing information also includes a requirement on trustees to notify all those who are qualifying beneficiaries. Trustees may only refuse to provide information to beneficiaries after considering both their general obligation to provide such information and a series of factors as to the nature of that information and the practicalities of restricting that information. It also may be advisable to consider the list of persons who are discretionary beneficiaries of your trust as it may be appropriate to amend the trust deed to remove discretionary beneficiaries who are unlikely to benefit.

- **Restrictions around the use of trustee exemption and indemnity clauses**:

The Act will prevent trustees from taking advantage of an indemnity under the trust deed in certain circumstances. A trustee will not be protected from liability if they operate the trust in a manner that is grossly negligent. The consequence of this change is that trustees will need to take more care when administering trusts as they cannot rely on the usual blanket indemnity in the trust deed to protect them against claims made by beneficiaries.

- **Changes to the Perpetuity Period**:

Trusts (other than charitable trusts) currently can only specify a maximum period of 80 years. Under the Act the maximum duration of a trust will be extended to 125 years. The effect of this change is that family trusts will be able to continue for longer and be used as a succession planning vehicle for more generations.

- **Changes to the Ability to Delegate Powers:**

The Act outlines that powers trustees can and cannot generally delegate and the circumstances in which trustees can delegate all of their powers.

Comment:
If you have a family trust or are a trustee of a family trust, we recommend that you use the next 15 months to review your existing trust in light of these changes and seek advice on how the new obligations may impact you.

SAVING THE MINIMUM IN KIWSAVER?

It appears Kiwis' expectations of their KiwiSaver funds available upon retirement are significantly greater than what their KiwiSaver is actually likely to deliver. Putting the minimum 3 per cent contribution into KiwiSaver will provide an income in retirement that is less than half of most people's current income – and that is including New Zealand Superannuation – so says research from a new KiwiSaver provider Koura KiwiSaver. The research zeroed in on under 45 year olds of which there are 1.8 million members out of the nearly 3 million Kiwis in KiwiSaver

For a person earning $80,000 pa with a take-home income of $1159 per week after tax, a 3 per cent contribution into KiwiSaver would give them around $614 per week including the Super: this is well short of the 70 per cent of salary pre-retirement recommended for a comfortable retirement.

The Financial Services Council believes there is still a considerable way to go with opportunities for government, the financial services industry and consumer savers to work together and make KiwiSaver fit-for-purpose for all Kiwisavers. A jump to contribute 10% of your salary too great? One means of closing the retirement gap recently suggested by the Financial Services Council would be to allow Kiwisavers an option to increase the proportion of their salaries they put into KiwiSaver in increments of 0.25 per cent a year, which would allow them to slowly build up their savings habit.

Koura is the third KiwiSaver scheme to launch this year and it enters an already crowded market with at least 25 other providers. This scheme's core difference from other providers is that it aims to assesses people's risk appetite and then will put together an individualised portfolio. It is also set up to give people an indication of how much money they could have if the markets do well – and if they do not do so well! – and what kind of weekly income that could give a person.

ONE OF THE MOST EXTRAORDINARY ACHIEVEMENTS IN THE HISTORY OF CARTOGRAPHY

In the wake of the successful Tuia - Encounters 250 commemorations, the human story behind the creation of James Cook's famous chart makes 'First Map' good reading. First Map author, Tessa Duder, steers a middle course around controversy, bringing to light the courage, dogged perseverance and extraordinary skills Cook possessed as a seafarer, surveyor and cartographer. Since James Cook's six month circumnavigation of the uncharted islands of New Zealand during the summer of 1769-70 and the publication by the Admiralty in 1773 of Cook's chart, there have been more than 2,300 shipwrecks recorded on the New Zealand coastline.

This figure does not include many small trading vessels nor the loss of waka in pre-European times – such losses are recorded in Maori oral traditions.

These vessels came to grief despite their masters having more navigational aids than Cook, more efficient rigs, weather forecasts, permanently installed coastal lighthouses, buoys, beacons and, always to hand, their all-important charts.

The narrative of First Map pieces the map of New Zealand together as the narrative on HMB Endeavour unfolds and leaves readers in wonder that Cook, the 39 year old family man, father of three young children with another on the way, left England in a small ship with only a compass, a sextant to measure latitude, a primitive wooden log to measure miles sailed, a lead line to measure depth and vigilant sailors as lookouts to achieve the accurate fixing of the position of the three islands of New Zealand so isolated in a vast ocean. The inside of the dust cover is a copy of the first map held in the British Museum and it is remarkably close to modern day maps.

Perfect Eyesight