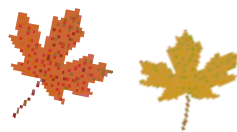




*Nairn Fisher*  
CHARTERED ACCOUNTANTS

Traditional values, modern thinking...



July 2010

Welcome to the Winter edition of the Natter. It is our busiest time of the year but our work flow management system keeps us all on track providing you with a timely turn around of your annual work.

Congratulations to Kristy who produced a baby boy, Alex, in June and will be on maternity leave for a few months. Andrea is back on deck after her maternity leave, and we are all starting to look forward to some longer days and sunshine.

This is the time of the year when we see most of you personally, when discussing your annual accounts.

We try to cover most issues with you, but please do not hesitate to ask us about any matters that you wish to know more about, as you think of them.

We are particularly involved in:

- ◆ Planning for the tax rate budget changes
- ◆ Issues with the new GST rate from October
- ◆ Budgeting and management reporting
- ◆ Future planning for succession and retirement

### Xero - SmartPayroll

At Nairn Fisher we try to keep up-to-date with the latest software solutions and we aim to provide professional and cost effective accounting services to you our clients.

We are now using two new online software solutions - Xero and SmartPayroll.

Xero provides you with a view of your financial information in real-time. There's no need to buy expensive software and install upgrades. Xero is available on your PC or Mac in the office, at home or on popular mobile devices - anywhere, anytime. The beauty of Xero is that you can invite a number of trusted people such as us, your accountants, to collaborate online. No more transfer of data that can be corrupted or is out-of-date.

SmartPayroll has made paying wages even easier with no software to install or upgrade, easy to use, safe and secure, also PC and Mac friendly. In many businesses one touch pay is all it takes, and never miss a PAYE filing date or payment again.

To find out more, or to try Xero or SmartPayroll in your business, please contact Julie Box on DDI 07 343 1189.

### Salaries in the IRD Spotlight .....

In one of the biggest tax decisions in years, the Court of Appeal has found in favour of the IRD in their case against two Christchurch surgeons. The surgeons were found to have avoided tax through the use of their family trusts.

The surgeons both set up substantially trust-owned companies to buy their practices, whilst dramatically reducing their salaries. The effect was, in the court's judgment, to avoid paying tax in the top 39% tax bracket on salaries, with the rest of the income left in the business to be taxed at the 33% corporate rate.

Tax experts have warned that the ruling could have wide consequences, as the tax structure being used by the surgeons is very common. But it is equally worth noting that the facts of the case were key to the ruling; as Judge Randerson noted: "the .... salaries were adopted at levels so far below ordinary commercial expectations that, in the absence of legitimate reasons for doing so, there is a strong implication of tax avoidance."

#### Key findings were:

- 1) The quantum of the salaries were unrealistic for the size and type of business; and
- 2) The taxpayers control over the salaries were high due to the correlation with their personal effort; and
- 3) The use of the Trust structure had the effect of diverting or splitting income generated by the personal exertions of individuals, thereby reducing tax paid.

#### What Does This Mean For You?

If you own a business through a trust, you should ensure that:

- 1) Your salary is set each year with 'fair market' considerations taken into account; and
- 2) You receive up-to-date advice on 'fair market' from your Chartered Accountant and with reference to any relevant industry information; and
- 3) The rationale for any decision is clear, documented and defensible.

Whilst, it is expected that the decision will be appealed to the Supreme Court, the IRD has signaled with this case and prior litigation that it intends to pursue taxpayers who appear to be using trust structures in this way. Additionally, the Government has come out strongly in favour of the IRD's audit and investigation ramp-up.



## **Scary Stuff ..... IRD Now Coming After Foreign Investments**

### **- IRD Press Release -**

The IRD are set to open a proverbial can of worms for some clients; they have announced in a press release, issued on 01 July 2010, that they are now targeting New Zealand tax residents who have undeclared foreign income and investments. The IRD states it is particularly targeting the non-disclosure of offshore bank accounts, the use of foreign credit / debit cards, overseas life insurance policies and superannuation funds.

### **Paying Tax Overseas?**

Many new (and some not so new) migrants mistakenly believe that if they pay tax in their country, or if they do not bring the funds to New Zealand, there is no further requirement to declare the income in New Zealand, or indeed to even mention it to their New Zealand accountant. However, once a person becomes a New Zealand tax resident they are liable to tax in New Zealand on their worldwide income, unless an exemption applies. A person may receive a four year reprieve under the transitional resident's exemption (if they became resident after April 2006), however this is subject to certain requirements and does not apply in all cases. They will be subject to the usual rules after the four year period.

### **Potential New Zealand Tax Problems**

Unfortunately, it is the more complex regimes in the Tax Act that apply to foreign investments. For example, some of the implications could arise where:

- You have a foreign bank account, credit card or mortgage.
- You have Investments in foreign shares, unit trusts and equities.
- You have a foreign superannuation scheme or life insurance policy.
- You have a controlling interest in a foreign company.
- You have settled a foreign trust.
- You have received a distribution from a foreign trust.

### **How Far Is The IRD's Reach?**

The IRD's reach is wider than ever before. The press release notes that the IRD are receiving better information about international transactions involving New Zealand tax residents, and they point to the recent Tax Information Exchange Agreements it has negotiated with offshore finance centres / low tax jurisdictions. It also appears they have access to information regarding New Zealand tax residents using foreign credit and debit cards.

The IRD is able to access overseas tax returns (in the case of treaty partners), information held by banks, financial institutions or any other person such as nominees or trustees who are acting as agent or in a fiduciary capacity, information regarding the legal / beneficial ownership of companies, property, partnerships, foundations, collective investment vehicles or similar, and information on settlors, trustees, protectors and beneficiaries.

### **Next Steps**

Please contact us if you think you may be affected by any of the above examples, and we can assist in reviewing your position to determine whether there are areas of potential risk.



It takes both sunshine and rain to make a rainbow."



"Never test the depth of the water with both feet"