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**IMPORTANT DISCLAIMER**

The information contained herein is of a general nature only. Not all of the information will be of interest to all clients; however we hope there is some content that is of benefit to you. If this information requires more detailed explanation, or should you require information on topics not covered by this newsletter, please contact our office. The information in the report is confidential to clients and staff of this firm. While every effort has been made to ensure accuracy, no liability is accepted for errors of fact or of opinion herein.

### QUALIFYING COMPANY (QC) AND LOSS ATTRIBUTING QUALIFYING COMPANY (LAQC) CHANGES

Our June Richards Woodhouse Update outlined reforms announced in the budget to the QC/LAQC regime. Since releasing this article the Government has received and considered submissions on the proposed reforms. Legislation has now been drafted and it is expected to become law before Christmas. This draft legislation is significant. If you have an interest in a QC/LAQC there are changes that require your consideration.

**What is a Qualifying Company (QC)?**

A QC is a company that has made a QC election to the IRD.

Under the QC regime:

- Shareholder continuity rules to maintain tax losses and imputation credits do not apply.
- In certain circumstances dividends can be paid tax free to shareholders.
- Shareholders are liable for the company's income tax.

**What is a Loss Attributing Qualifying Company (LAQC)?**

A LAQC is a company that has made a LAQC election to IRD. In addition to the QC points above, were a LAQC to make a loss, this loss is allocated to the shareholders.

**What are the changes?**

Key changes contained in the draft legislation are:

- From the start of the 2012 income year (for a company with a March balance date this is 1 April 2011) companies will no longer be able to enter the QC regime.
- The QC regime will continue for companies currently in it, however, any LAQCs will default to QCs. This will mean from the start of the 2012 income year LAQC losses can no longer be attributed to shareholders. These losses will remain in the company to be offset against future company income.

- The creation of a new "Look Through Company" (LTC) structure for tax purposes. Election is required to become a LTC. This LTC regime has the following income tax implications:

- ◇ All of the company profit or loss will flow through to shareholders in accordance with their shareholding in the company.
- ◇ A shareholder can offset LTC losses against other income subject to loss limitation rules. In simple terms, where there is no equity, there will be no loss offset allowed.
- ◇ Shareholders will be responsible for paying tax on their share of the company profit attributed to them.
- ◇ Shareholders become jointly and severally liable for the company PAYE.
- ◇ Tax implications may arise when a shareholder sells part or all of their shareholding in the company.

- The creation of a transitional period whereby current QC/LAQCs can transfer to either a LTC, Limited Partnership or sole trader business structure at no tax cost. To elect to change business structure an election must be made within six months after the start of the 2012 income year. For a company with a March balance date the election needs to be made before 30 September 2011.

**Comment**

QC/LAQCs that do nothing will continue in the modified QC regime.

The draft legislation does however provide a window of opportunity for existing QC/LAQCs to transfer to another business structure at no tax cost. If you are considering using this opportunity it is essential the right structure is chosen as each business structure has its own advantages and disadvantages.

If you are a shareholder in a QC/LAQC or would like further information about the above changes please contact your Richards Woodhouse advisor.

## GIFT DUTY TO BE REPEALED

Our June Richards Woodhouse Update contained an article about gift duty. As a general rule gift duty is payable when a person gifts more than \$27,000 a year.

On 23 November 2010 legislation was introduced to Parliament to repeal gift duty with effect from 1 October 2011. This means any gift made after 1 October 2011 will not be subject to this duty.

Gift duty has been around since 1885. It is estimated to cost around \$70 million per year to administer (this includes IRD and private sector administration cost) whilst raising just over \$1.5 million a year in revenue.

If you currently have a gifting programme in place (for example you make an annual gift to a family trust) you may wish to contact Richards Woodhouse or your legal advisor to discuss how the repeal of this duty will impact this programme.

## LEASES

Recently we have received a number of queries regarding leases. The following information is designed to highlight some of the issues that arise.

There are a number of considerations to determine the type of lease you may have and depending on the lease type there are income tax and GST issues that arise. The type of lease needs to be clarified at the time the lease is entered into.

Leases for income tax purposes are referred to as finance or operating leases. This type of lease impacts on income tax by way of depreciation, interest and operating lease payments claimed as tax deductible expenses.

For GST purposes, leases are hire purchase agreements, agreements to hire or just leases. 'Finance lease' and 'operating lease' are terms not used in the Goods and Services Tax Act.

### GST TREATMENT

The type of lease for GST purposes determines when supplies are made and the GST claim that can be made for that supply. Supplies made under a hire purchase agreement are deemed to occur at the time the agreement is entered into. The lessee claims a GST input tax credit and the lessor pays GST output tax on the full supply at the time the agreement is made. A hire purchase agreement includes finance leases of a retail nature under which the lessee has the right to purchase the leased asset. Hire purchase agreements cannot be agreements to hire.

Supplies made under an agreement to hire are deemed to be made period by period e.g. monthly. An operating lease is an agreement to hire. The GST is returned and claimed over the term of lease by the supplier and lessee. An agreement to hire excludes a hire purchase agreement and is a lease under which

ownership of the asset does not pass to the lessee.

Where supplies are made under a lease and the ownership will pass to the lessee we go back to the general GST supply rules. This means the time of supply occurs at the earlier of the date the invoice is issued or the date on which payment is made. The lessee and lessor claim or return GST at the beginning of the lease.

### INCOME TAX TREATMENT

Under a finance lease, the lessee is able to claim depreciation on the lease asset and the interest component of the lease payment as tax deductible expenses.

A lease is a finance lease when any of the following criteria is met:

- the lease provides for the lease asset to transfer to the lessee at the end of the lease; or
- the lessee has an option to purchase the lease asset for substantially less than market value; or
- the term of the lease is for more than 75% of the lease asset's estimated useful life.

Where an operating lease is in place the tax deduction will be for the payments, e.g. monthly, over the term of the lease. A lump sum prepayment is not automatically available as a deduction. The total lease payments are required to be spread on a straight line basis over the lease term.

### LEASE SECURITY

If you are a lessor, you should consider taking a registered specific security (charge) over your equipment to protect the asset in the event that the lessee is in financial stress.



## Changes to Employment Law effective from 1 April 2011

### 90 Day Trial Periods

The changes to the law will allow this provision to be applied to all businesses, not just those with less than 20 staff.

The following conditions must be met:

- This must be the first time you have employed this person.
- The trial period provision must be written in the employment agreement.
- The trial period must begin on the first day of work, it is best practice to ensure that the agreement has been signed and dated prior to the employee starting work.
- An employer, if requested, must provide a written statement for the reason/s for dismissal.

### Cashing up of Annual Leave

An employee can request, and an employer can agree, to cash up one week's annual leave entitlement. (The entitlement year is the period of 12 months continuous service beginning on the anniversary of the employee's employment.)

An employee may make more than one request, provided that the total of the requests does not equal more than one week per year.

The request may not be backdated for those employees who have a lot of holidays owing from previous years.

The first request cannot be made until the commencement of the entitlement year after 1 April 2011. *i.e. An employee who started work on 1 June may not make a request to cash up their holiday until 1 June 2011. Likewise an employee who started work on 1 February would not be able to request cashing up until 1 February 2012.*

### Rules

Requesting cashing up annual leave must not be a term and condition of the employment agreement.

When negotiating salary or wages for an employment agreement, the payment of cashed up holidays must not be raised.

The employee's request must be:

- In writing
- Informed and voluntary

The employer must:

- Consider the request within a reasonable time
- Reply in writing.

The employer must keep a record of all cashed up annual leave during each entitlement year, the date and the amount paid.

## GST CHANGES

A number of GST changes are expected to become legislation before Christmas. **Land transactions** will be affected.

The Government has introduced new GST rules which widen the net of zero-rated transactions in relation to land sales.

From 1 April 2011, sales of land and buildings which include commercial leases will be compulsory zero-rated if:

- Vendor and purchaser are both GST registered; and
- Purchaser's intention is to use such to make taxable supplies.

If the purchaser's intention is other than making taxable supplies then GST will apply to the transaction.

If the purchaser misleads the vendor by providing incorrect information, then the vendor won't be penalised (providing that they make a reasonable attempt to enquire). The IRD will follow the asset so it is the purchaser that will be penalised.

## ACC

Layton Matheson has taken over the role of dealing with ACC queries within Richards Woodhouse.

ACC Levies are frequently "over-looked" as a compulsory liability. Failure to be aware of ACC levies can lead to unexpected invoices with abrupt payment deadlines that create cash flow issues especially for those businesses subject to fluctuations in either its profitability or wage payments.

If you are self-employed, file monthly PAYE returns or distribute company profits via shareholder salaries then you will be invoiced by ACC once your income tax returns have been filed with Inland Revenue. Be aware if you are part-time, do not have any taxable income and you are not paying ACC levies, you will not be entitled to any loss of income compensation.

If you don't understand your ACC responsibilities or levies, or the options available, and your expected entitlement should you have to make an ACC claim then please do not hesitate to telephone Layton.

*Richards Woodhouse December 2010 and will  
would like to take this re-open at 8.30am on  
opportunity to wish you Thursday 13 January  
a very Merry 2011.*

*Christmas and a Happy  
New Year.*

*Our office will be closed  
from 11am Thursday 23*



## PRESCRIBED INVESTOR RATES

With the recent change in personal income tax rates, now is a good time to check that you have provided your fund manager with your correct Prescribed Investor Rate (PIR) as you are not entitled to a credit if you have used a too higher rate.

From 1 October 2010, there are four rates: 0%, 10.5%, 17.5% and 28% for individuals. The rate that is applicable to you is dependent on your income for the previous two income years (i.e. for the 2011 year, it will be your income from the 2009 and 2010 financial years).

If, in **either** of the previous two income years your taxable income was under \$14,000 and when combined with your PIE income the result is under \$48,000 then your prescribed investor rate should be 10.5%

If, in **either** of the previous two income years, your taxable income was between \$14,000 and \$48,000 and when combined with your PIE income the result is:

- Under \$70,000, then your PIR would be 17.5%
- Over \$70,000, then your PIR would be 28%

If, in **both** of the previous two income years your taxable income was over \$48,000 then your prescribed investor rate should be 28%

For joint investment, the investment should be split and each partner should give the portfolio manager their correct PIR and IRD number.



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## STAFF UPDATES

Since our last update, **Cara Kilpatrick** has left our office — **Layton Matheson** has now taken over dealing with ACC queries.

After 10 years at Richards Woodhouse, **Jayn Baker** will be embarking on a new career as a Foster Parent Social Worker for the Open Home Foundation. We are sad to see her go, and wish her well on her endeavours.

We would like to take this opportunity to congratulate one of our young accountants, **Hamish Tomlinson**, who recently completed the New Zealand Institute of Chartered Accountants (NZICA) Professional Competence exams, which will allow him to become a Chartered Accountant. Hamish has worked at Richards Woodhouse for seven years and has gained a wide range of experience including becoming our senior Auditor and mentor to junior staff. Hamish keeps himself busy in his leisure time at the gym and restoring his passion...his 1976 Valiant Utility. We are very pleased for Hamish and wish him the best for his bright career ahead and with his restoration project!

We are very pleased to announce that **Bridgette Pretty**, our Practice Manager and one of our senior accountants, has just been awarded a Certified Practising Accountant (CPA) Australia, NZ Branch, Scholarship to attend the 2011 Leadership NZ Program. After a challenging process, Bridgette is the only person in NZ to be awarded this scholarship which sends Bridgette on Leadership and Management block courses around NZ next year. This is an outstanding achievement, congratulations to Bridgette, we are very proud of you!

CPA is a similar organisation to the NZICA but covers a broader range of accounting disciplines including commercial, management, financial and chartered accounting, all areas that Bridgette has had experience in. Although Bridgette is a fully fledged Nelsonian, she obtained her CPA qualifications while working and studying in Australia.

Our "Movember" men in the office from left to right: *Sharna Goundar, Hamish Tomlinson, Tony Cuccurullo, Adrian Stacey, Daniel Ewers and Brendon Grundy.*

\$410 dollars was donated by Richards Woodhouse to the Summit Rescue Helicopter local fund from money raised at our GST rate change seminar held in September.

