

C&F LEGAL LTD



Merry Christmas!

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The team at C & F Legal wish all our clients a safe and happy Christmas.
Our last working day for the year will be Friday, 24 December 2010 and we will reopen again on
Wednesday, 5 January 2011.

If you have any urgent matters that need attending to over the Christmas break then you will be able to contact us, Rick Farr on 021 777 443, Kathy Carr on 021 861 035, Tracy Sawtell on 021 946 106, David Ballantyne on 021 545 805 and Pauline Scott on 027 440 5244. Have a wonderful holiday season!

Abolition of Gift Duty

With effect from 1 October 2011 gift duty is going to be abolished.

The relevant legislation is the Taxation (Tax Administration & Remedial Matters) Bill which had its first reading in parliament on 7 December 2010 and has now been referred to the Finance & Expenditure Select Committee.

According to the IRD Regulatory Impact Statement, the abolition of gift duty will reduce Government revenue by only \$1 million per year, as opposed to saving the private sector approximately \$70 million per year (i.e. the costs that are incurred by the private sector in administering gifting programmes).

What this will mean is that after 1 October 2011 anyone will be able to gift money or assets to a family trust (or another person) all at one time.

While this may make it much easier and cheaper to transfer assets to trusts, the policy direction indicated in the Regulatory Impact Statement is that Government agencies will be looking more closely and over a wider period of time at anyone divesting their assets to a family trust.

For example, the current regulations applying to long-term residential care subsidy refer to a gifting period that commences 5 years before the date of a means assessment, and this is what has been generally relied on in asset planning exercises.

However, there is also regulation that enables the Ministry of Social Development discretion in considering assets that applicants have divested prior to that time, and it is therefore expected that this discretion will be much more widely used.

The upshot of that is that it may no longer be effective to have your assets in trust in order to qualify for a long-term residential care subsidy.

At this stage it is unclear whether or not there will be any benefit in having completed your gifting programme (or part of it) prior to 1 October 2011 when the new legislation becomes effective.

Generally speaking however, legislation should not be retrospective, so our advice is that all current gifting programmes should be maintained up until 1 October 2011 if one of the objectives of your asset planning strategy is to maintain eligibility for long-term residential care subsidy.

Trusts Continue to be Worthwhile

While it appears that the abolition of gift duty will have some consequences in diminishing the advantages of your family trust (particularly in the eligibility for rest home care subsidy area), there are still many reasons why a well managed family trust continues to be a benefit:

Creditor Protection: The Regulatory Impact Statement from the IRD indicates that the clawback provisions under the Insolvency Act 2006 (2 years) and the Companies Act 1993 (6 months) are considered to be adequate even under the new regime, and therefore having assets transferred to trusts prior to these time periods should continue to provide useful creditor protection.

Protection for Vulnerable Family Members: A trust structure provides vulnerable family members with the benefit of your wealth, while placing it in the hands of trustees who can manage it for them.

Relationship Property Claims: If you are concerned about relationship property claims from the future spouses of your children, then a trust gives you the option to provide for your children through the trust, rather than leave them money directly under your Will which could be come the subject of such a claim.

Future Relationships: People coming out of a marriage breakup keen to protect their assets from any such situation in the future can benefit from placing these assets immediately into a family trust.

Tax Planning: Despite the alignment of the top personal tax rate and the trust tax rate at 33%, trusts still provide an avenue enabling income to be allocated to other family members on lower tax rates (e.g. students undertaking tertiary study).

In all of these cases, what will continue to be important, if not even more important, will be that the family trusts are well managed. One thing that the annual gifting programme did provide is an opportunity for us to make sure that there was evidence of the management of your family trusts, by virtue of an annual resolution along with your annual gifting documents. As has been our practice with clients who have completed their gifting programmes, we will continue to bring up your family trusts for annual review so that there is evidence of the proper management of such trusts, thereby reducing the risk that courts will see them as a "sham".

We will therefore be in touch with everyone as usual for gifting and trust management on an annual basis, before the legislation becomes effective, and after 1 October 2011 for annual review and a final one-off gift for those who have still to complete their gifting programmes.

For those people wishing to set up a new trust, this law change will make the process simpler, and after 1 October 2011 will reduce ongoing administration costs as a gifting programme will not be necessary.

Please contact Kathy Carr if you wish to discuss gifting or family trusts.



Rick



Kathy



Tracy



David



Pauline



Karen



Melanie



Sarah



Megan



Paul



Q. If Santa Claus and Mrs. Claus had a child, what would he be called?

A. A subordinate Claus!

Q. Have you heard about the lawyers' word processor?

A. No matter what font you select, everything comes out in fine print!



Welcome Paul Tunnicliff and Goodbye Melanie Lancaster

C & F Legal Limited is delighted to introduce Paul Tunnicliff who started as our new Trust Account Manager in mid December. Paul takes over from Melanie who is now leaving us (having been with us since we started, now over 5 years ago) for her Big OE, heading for London.

Some of you may remember Paul who was originally at Hunter Ralfe (where he trained Melanie), and more recently Fletcher Vautier Moore. We are therefore in very safe and experienced hands with Paul.

We wish Melanie and her partner, Sam, all the very best for an exciting and stimulating overseas experience.

3 Law Changes Effective from 1 April 2011

GST

The taxation (GST and Remedial Matters) Act 2010 was passed on 10 December 2010 and introduces some significant GST changes which include:

- Business transactions involving land will be compulsorily zero-rated (i.e. GST at 0%). This will apply for all sales and purchases of land between two GST registered persons where:
 - The purchaser is purchasing the land with the intention of using it to carry out a business.
 - The land is not intended to be used as a principal place of residence for either the purchaser or a person associated with the purchaser.
 - Land in this context will include leases.

The person selling land will be required to obtain the GST registration details from the purchaser, and a written statement (likely to be incorporated into contractual warranties) that they will be using the land for the purposes of making taxable supplies, and will not be used as a principal place of residence.

- Clarification where a named purchaser under a sale and purchase agreement nominates a different entity to take title. There are some new rules being introduced in this context, and how GST is treated will depend on which parties are GST registered and which parties pay the purchase price. It remains to be seen how these provisions interact with the compulsory zero-rating of land in some cases, so the essential thing to bear in mind if a nominee is involved is to make sure that this is dealt with in advance so that unexpected GST obligations do not arise.

QUALIFYING COMPANIES

Those of you with qualifying companies (QCs) and loss attributing qualifying companies (LAQCs) will probably be aware that legislative changes mean that (very generally speaking) LAQCs will no longer be able to distribute losses to shareholders.

The options available to QCs and LAQCs will be:

- Continue as a qualifying company without the ability to offset losses (this is the default option).
- Be taxed as an ordinary company (you will need to revoke your QC or LAQC election).
- Become a look-through company (an LTC). This is a new tax entity whose income, expenses, tax credits, rebates, gains and losses are passed on to its shareholders in accordance with their shareholdings in the company. However, owners can offset tax losses only to the extent that the losses reflect their economic loss. Therefore existing LAQCs which own property will probably cease to be loss-making going forward as a result of the removal of deductions for depreciation on buildings from 1 April 2011. This means that there are probably a large number of existing QCs or LAQCs which will not gain anything from taking this option.
- Changing to another business vehicle e.g. a limited partnership, ordinary partnership or a sole trader. Note that while the transitional rules enable this to happen without tax consequence, if there is in fact a change in ownership in assets (particularly real property) then the usual bank requirements and legal asset transfers will need to be undertaken, with the accompanying costs.

Existing LAQCs and QCs have six months after the start of their 2012 income tax year to elect whether or not to be an LTC. Therefore it is our recommendation that our clients with LAQCs or QCs consult their accountants regarding the implications of transitioning to a new structure and do not do anything until you have been fully advised on the implications.

Employment

- The 90 day trial period will be extended to cover all businesses.
- Improving personal grievance processes.
- Option to cash in up to one week of annual leave.



Providing asset secured funding for legal fees.

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Have a great summer!

