

C O R P O R A T E S C O N T A C T

NUMBER TWENTY FIVE ~ MARCH 2005

Message from Group Manager

We are already well into the calendar year, and only days away from the return filing deadline for many companies. I thought I would raise two issues in this edition—Corporates' use of the anti-avoidance provision, and voluntary disclosures.

Tax avoidance

Recently, a comment was made that Corporates appears to be invoking the anti-avoidance provisions too frequently. In view of that comment, I have reviewed the position. Over the last two years, including cases still in the dispute phase, anti-avoidance has been raised 28 times, 13 were accepted by the taxpayers concerned; ongoing consideration is under way in nine cases; four cases were reviewed internally and not proceeded with; two are currently under internal consideration. To put this into perspective, over the same two-year period we have cleared out 700 cases. These numbers exclude the work being performed in the bank audits, where the provision is also being used.

Before Corporates invokes the anti-avoidance provision the matter is considered thoroughly by senior Corporates staff such as the Chief Advisor (International Audit), Senior Tax Counsel and Principal Advisors. Extensive internal legal advice is taken and, depending on the complexity of the case, external legal advice may also be received.

Voluntary disclosures

I am pleased to report that we continue to receive voluntary disclosures. As at the end of December 2004, six months through the financial year, we had processed 85 cases with \$22.5 million tax involved. There is a prescribed process for making such disclosures – more information can be found on our website www.ird.govt.nz/resources/file/eb2d57014ab7997/ir280.pdf Taxpayers are reminded that there are savings to be made by making disclosures prior to being notified of an audit, and lesser savings prior to commencement of audit.

I am happy to receive any comments you may have on these issues or any other matters you wish to raise. You can contact me on 04 802 6022 or email spyros.papageorgiou@ird.govt.nz

Spyros Papageorgiou
Group Manager
Corporates

End-of-year requirements

2004 income tax returns

For those of you with a tax agent taking care of your income tax returns, Thursday 31 March 2005 is the last day for 2004 returns to be filed under Inland Revenue's extension of time arrangements. *Annual imputation returns (IR 4J)* for the 2004 year must be filed with your income tax return, otherwise any applicable income tax refunds may be withheld.

We suggest you aim to file these before Easter, by 24 March 2005.

If the 2004 return cannot be filed by 31 March your tax agent should advise us in writing with the reasons and the estimated date of filing. For "D" status they must write to the Team Leader, Business Services of the respective Sector by Wednesday 23 March 2005.

Remember, if you are a client of a tax agent, with a balance date between March and September (inclusive), any end-of-year income tax for the year ended 31 March 2004 is due on Tuesday 7 April 2005.

Imputation credit account balance (ICA)

With 31 March approaching now is a good time to check your imputation account balance. If you have a debit as at 31 March you will be required to pay further income tax and also be subject to imputation penalty tax, late payment penalty, and use-of-money interest charges.

These can be avoided by making a payment to income tax by 31 March, sufficient to clear the ICA debit balance. Remember, if your due date for terminal tax is 7 April, any payments made on this date will apply to the following imputation year. If you have a debit balance in respect of the 2005 imputation year it may be worth considering paying your 2004 terminal tax early.

Fringe benefit tax (FBT)

Tuesday 31 May is the due date for filing and paying both the fourth quarter (including multi-rate calculations for all 49 percent calculations) and annual returns.

Annual reconciliations

Please also remember that the following yearly reconciliation statements for the financial year to 31 March 2005 are due by Tuesday 31 May 2005:

- *Resident withholding tax on interest (IR 15S)*
- *Resident withholding tax on specified dividends (IR 17S)*
- *Non-resident withholding tax (IR 67S).*

The correct address for mailing all forms is:

Inland Revenue
Southern Processing Centre
PO Box 3753
Christchurch

End-of-year issues for employers

All wages and salaries paid or credited to staff on or by 31 March 2005 must be included in the ir-File for March 2005 or for the 2005 financial year. The last payment date for large employers is Tuesday 5 April 2005, and for small employers Wednesday 20 April 2005. Remember your *Employer monthly schedules (IR 348 or ir-File)* and *Payment remittance forms (IR 345 or IR 346)* are also due to be filed on these days.

All figures held for the 2005 year will affect your ACC calculations as well as the summary of earnings for your employees. You can check your gross and/or PAYE year-to-date figures by phoning INFOexpress on 0800 257 777, your Business Services Account Manager, or our enquiry line on 0800 443 773.

Resident withholding tax exemption certificates

Applications for the 2005 year for "limited" exemptions can be processed from Friday 1 April 2005.

Signing tax returns

It is a legal requirement that all tax returns must be signed.

When a tax return is filed in writing to Inland Revenue, the paper return we receive must be signed.

When a tax return (excluding employer monthly schedules) is filed electronically, for example through E-File or online, a signed hard copy of the return must be kept. This is part of the terms of reference you agree to in writing when you register for E-File.

Sending an unsigned return to Inland Revenue may cause delays while we request a signed return to be provided. Until a signed return has been received, it is deemed that no return has been filed.

There may also be other consequences of sending an unsigned tax return to Inland Revenue. If a signed return has not been received by the due date, a late filing penalty could be imposed. Also, the time bar provisions of the Tax Administration Act 1994 apply from the end of the income year in which a tax return has been provided. If a signed return has not been received, the time-barred period will not have commenced.

The best way to avoid any unnecessary problems is to ensure that all tax returns have been signed before they are sent to Inland Revenue.

Don't forget to disclose

It's important to answer every question before you file your *Income tax return – Companies (IR 4)* – including the disclosures section.

The disclosures section, Questions 32 to 37 in the 2004 return, includes questions on the company's activities above payments to non-residents; repurchasing, redeeming or cancelling shares; and foreign-sourced dividends.

We've noticed a number of corporate taxpayers have not completed this section in the past. This year Corporates will be actively monitoring the filing of IR 4s to ensure the disclosures section has been completed.

So, don't forget to disclose and ensure you file a full and complete return.

A reminder about filing requirements for *Foreign dividend withholding payment (FDWP) returns (IR 4F)*

A reminder to those companies which qualify as New Zealand resident companies receiving dividends from foreign companies that there's a quarterly filing requirement of the *Foreign dividend withholding payment (FDWP) return (IR 4F)*.

This requirement is for companies only. Anyone other than a company who receives dividends from foreign companies must include them in their income tax return.

We have noticed a recent trend that corporate taxpayers have not filed an IR 4F, even though they have received dividends during a quarter. These returns must be filed for each quarter that foreign dividends are received, irrespective of whether FDWP (net of underlying foreign tax credits, conduit relief etc) is actually payable. Section 80 of the Tax Administration Act 1994 provides the legislative authority for requiring companies to file an IR 4F.

The two specific instructions issued by Inland Revenue are:

- all New Zealand resident companies receiving dividends from foreign companies must complete an IR 4F
- the IR 4F must be completed and filed by the due date even if there is no FDWP amount payable.

The filing requirement also includes the completion of Sections 1 to 3 on the back of the IR 4F return.

The correct address for mailing all forms is

Inland Revenue
Southern Processing Centre
PO Box 3753
Christchurch

Online services

Traditionally, Inland Revenue has discouraged customers from sending enquiries by email as information in the message was at risk of interception. But now, thanks to a selection of secure internet-based services, you can send us information and receive our reply online without risk.

Inland Revenue agrees to receive certain electronic correspondence through its **Send and Receive Mail** service from users who have completed the registration process. By registering for this service both you, as the user, and Inland Revenue, as the provider, agree to correspond with each other electronically.

You cannot, however, send any notice or correspondence disputing or objecting to an assessment or determination made by Inland Revenue. If you want to dispute an assessment or determination, please read our booklet *Disputing an assessment (IR 776)* which you can view on our website.

For more information on registering for the **Send and Receive Mail** service and how to apply for a user ID and password please visit our website www.ird.govt.nz/online-services/service-name/services-s/online-send-receive-mail.html

Retention of records by electronic means

With the increasing use by Corporates customers of electronic means to transact business and store records, we'd like to remind you of the Commissioner's policy in this area.

Those who undertake business or other income earning activities are required to keep in New Zealand sufficient records in English to enable the Commissioner to readily ascertain the amounts of tax payable by that person. Such records are generally required to be retained for a period of seven years and failure to do so is an offence against the Tax Administration Act.

The *Standard Practice Statement GNL 430 – Retention of Business Records By Electronic Means* (see *Tax Information Bulletin* Vol 15, No 12, December 2003) discusses the practices that the Commissioner considers will ensure that information will be readily ascertainable and meet the requirements of the Electronic Transactions Act 2002 and the Electronic Transactions Regulations 2003 (No.288).

In summary:

- Business records may be kept in either paper-based or electronic form. Where records are held in electronic form, it is important they are kept in a manner that allows Inland Revenue to readily ascertain the amount of tax payable.
- If information is transferred from paper-based and other non-electronic records into electronic form or microfilm for record retention purposes, the electronic or microfilm record when reproduced in printed form must be identical in format and in all other respects to the original record.
- If business records are originally in electronic form, persons should be able to demonstrate that their electronic record systems are secure from both unauthorised access and data alterations. An electronic copy must be readily accessible and capable of being retrieved and produced as a legible hard copy or supplied to Inland Revenue in electronic form upon request.

More entitlements for working New Zealanders under *Working for Families*

Working for Families is a package of initiatives designed to make it easier to work and raise a family. Announced in the 2004 Budget, *Working for Families* will mean more money for thousands of families, and will help ensure people are better off working.

Jointly delivered by Work and Income and Inland Revenue, *Working for Families* involves:

- increases to family assistance to boost family incomes
- changes to the accommodation supplement to make housing more affordable
- increases to childcare assistance to provide extra help with pre-school and out-of-school childcare costs.

In April 2005, family assistance rates will go up by \$25 per week for the first child and \$15 per week for each subsequent child in a family. Further increases will happen in 2006 and 2007.

Also from April 2005, accommodation supplement maximum rates will increase in some areas, while childcare assistance rates will increase in October 2005.

Income limits for accommodation supplement, childcare assistance and family support have also changed, meaning people on higher incomes can now qualify for these entitlements.

Families who are already receiving one of these entitlements will automatically get any increase they are entitled to. However, you may have staff who are now eligible and we're committed to ensuring you have all the information you need to create awareness of the changes to entitlements and obligations.

Staff can find out if they are eligible and how to apply by visiting the *Working for Families* website www.workingforfamilies.govt.nz. We can also send *Working for Families* information out to your organisation. Please contact Camille Dentice on 04 803 1484 or camille.dentice@ird.govt.nz with a name and contact details of the relevant person in your organisation if you would like more *Working for Families* information for staff.

Transfer pricing update

The Corporates Segment continues to maintain a strong focus on transfer pricing—generally considered to be the most important issue facing companies operating in the international arena.

In recognition of the increased volume of transfer pricing work, both advisory and audit-related, two further National Advisors (Transfer Pricing) have been appointed. Mike Spelman and Kriti Velji have recently joined Keith Edwards in our Auckland Corporates Office—together they comprise our specialist transfer pricing team.

Responsibilities in terms of our Corporates taxpayers have been assigned as follows:

- Keith Edwards
 - Financial Sector
 - Advance pricing agreements
 - Complex technical issuesTelephone: 09 367 1340
- Mike Spelman
 - Resources Sector
 - Services SectorTelephone: 09 367 1327
- Kriti Velji
 - Crown Sector
 - Manufacturing SectorTelephone: 09 367 1479

The International Audit Unit is headed by John Nash who, as Chief Advisor (International Audit), has overall responsibility for strategic management of transfer pricing matters. John is also our designated competent authority in terms of resolving double taxation issues that may arise where transfer pricing adjustments are made either by Inland Revenue or one of our tax treaty partners. He may be contacted by telephone at 04 802 7290.

We continue to recommend that you maintain and regularly update documentation supporting your pricing of cross-border associated party transactions. If you require assistance from Inland Revenue on any transfer pricing issue, please contact one of our National Advisors, as above.