

Autumn 2011

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For better business:

- Making more profit
- Minimising tax
- Accumulating wealth
- Less worry

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IMPORTANT: This is not advice. Clients should not act solely on the basis of the material contained in this newsletter. Items herein are general comments only and do not constitute or convey advice per se. Also, changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Our newsletter is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

TAIL ENDER

A group of 40 year old buddies discussed where they should meet for dinner. Finally it was agreed upon that they should meet at the Ocean View restaurant because the waitress's there had low cut blouses and were very young.

10 years later at 50 years of age, the group once again discussed where they should meet for dinner. Finally it was agreed that they should meet at the Ocean View restaurant because the food there was very good and the wine selection was good also.

10 years later at 60 years of age, the group once again discussed where they should meet for dinner. Finally it was agreed that they should meet at the Ocean View restaurant because they could eat there in peace and quiet and the restaurant had a beautiful view of the ocean.

10 years later, at 70 years of age, the group once again discussed where they should meet for dinner. Finally it was agreed that they should meet at the Ocean View restaurant because the restaurant was wheel chair accessible and they even had an elevator.

10 years later, at 80 years of age, the group once again discussed where they should meet for dinner. Finally it was agreed that they should meet at the Ocean View restaurant because they had never been there before.



EDITORIAL

In the South Island the majority of us were hoping for a better year in 2011 but it seems life is full of surprises and some not so pleasant. Our thoughts are with family, friends and clients who are affected by the earthquake last month.

In 2010 Croys experienced significant changes with Trevor retiring and also in respect to New Zealand taxation. Many of the changes that occurred in 2010 actually take effect in 2011 and as such people need to be aware of the lower tax rates for companies, abolition of gift duty, changes to working for families calculations, removal of depreciation on buildings and zero rating of land transactions involving land for GST purposes.

In December legislation was enacted to effectively remove the attribution of losses for all Loss Attributing Qualifying Companies (LAQC's) with effect 01 April 2011. The introduction of the new Look Through Company regime will in some instances replace the LAQC and transitional options need to be considered. We will be undertaking a review of all LAQC's and will be in contact with our advice.

It is likely that Trust Law will be gaining some scrutiny not only to reduce the prevalence of Trusts but looking for a greater focus on compliance to ensure trusts are not being used to avoid personal liability.

As we are now in an election year our tax system is being discussed by the main political parties. With increasing levels of debt it is likely that tax rates and other taxes will be a key election issue.

This is all very serious and important but I hope over the summer you have taken time to review your business and personal goals for the upcoming year. I keep Annah Stretton's "10 tips for business and life " on my notice board at home and I thought it was timely to include the list in this edition.

Have a great year.



Anne Marett
Editor

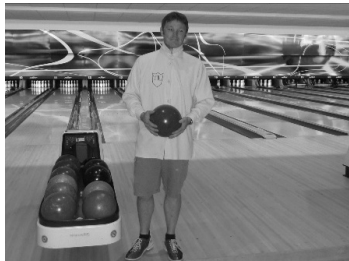
TEAM NEWS

Our team has been working hard on their personal goals this year with a number of team members participating in sporting events.

Kirsty Naish and Nicole Ferguson successfully completed the Buller half marathon and Hayley Bennett completed the full marathon in just over 4 hours.

Hugh Copland took part in the Coast to Coast for the first time in the longest day event finishing in a credible 28th position overall.

These young enthusiastic team members are an



AMAZING ANAGRAMS

PRESBYTERIAN
BEST IN PRAYER

ANIMOSITY
IS NO AMITY

ASTRONOMER
MOON STARER

ELECTION RESULTS
LIES - LET'S RECOUNT

THE EYES
THEY SEE

SNOOZE ALARMS
ALAS! NO MORE Z 'S

GEORGE BUSH
HE BUGS GORE

A DECIMAL POINT
I'M A DOT IN PLACE

THE MORSE CODE
HERE COME DOTS

THE EARTHQUAKES
THAT QUEER SHAKE

DORMITORY
DIRTY ROOM

ELEVEN PLUS TWO
TWELVE PLUS ONE

SLOT MACHINES
CASH LOST IN ME

MOTHER-IN-LAW
WOMAN HITLER

TEN TIPS FOR BUSINESS AND LIFE FROM ANNAH STRETTON



1. Study. You need to continually invest in your mind. Make time to read.

2. Find a mentor. We need people supporting us. If I was starting again I would approach people at the highest level, selecting those that I admired and wanted to spend time with. The worst thing they can do is say no.

3. Make the most of your opportunities. Investigate possibilities. They don't often roar, but whisper.

4. Be disciplined. I prioritise all the time and I know what I have to achieve each day, so I don't let stuff creep in that shouldn't. I carry a notebook in my bag, I write everything down and make lists. I don't leave things to chance. When you do this, you don't let people down.

5. Develop a great attitude – be positive. It will bring a multitude of rewards back to you.

6. Never compromise. When I am hiring a staff member or looking at a new retail site, if I can't give it 10 out of

10 ticks, I walk away. People stay in relationships or jobs that they dislike, and that will always narrow down the opportunities that will present. We need to reach for the stars every day.

7. Trust your gut instinct. If it feels wrong, it will be wrong.

8. Look after your health. Without it, you don't have anything. Generally I eat well, and I do Pilates three times a week without fail. During the winter I take flax oils and vitamins, and I think about what goes in to my body. I haven't been sick for about 16 years. It's about the balance I bring to my life – I simply never stress.

9. Communication. We have lost the art. The unpalatable stuff is not that difficult – there are ways to say 'no' with nicety.

10. Have opinions. Become informed and be interesting. Watch the news, read papers. If I do one thing in the day, I watch the 6 p.m. news. It gives me something to speak about that's outside clothing and publishing.

MARKET SALARIES - ONE FOR THE TAXPAYER



The controversy over whether a trust or company is required to pay a fair market salary to an associated employee has taken another turn recently. The High Court has overturned the Taxation Review Authority ('TRA') decision, which had determined that a self-employed anaesthetist had avoided significant income tax under a tax avoidance arrangement that included payment of a below market salary.

Background

Dr White is an anaesthetist who, in 2002, worked part-time in the public and private sectors. Additionally, she held interests in two avocado orchards with her husband (through a family trust). The couple also resided on one of the orchards.

In late 2002, Dr White ceased being self-employed and incorporated a company that employed her to provide services to private patients. The company also began leasing the avocado orchards from the family trust.

The taxpayer's salary was set at the

end of each year when the company's profit was determined. Due to the avocado orchard making unexpected losses, the company barely made any profit, and no salary was paid from the company to Dr White in the 2003 year and a salary of \$4,785 was paid in the 2004 year.

The judge in the TRA decision was of the opinion that:

Dr White had entered into an artificial, contrived and uncommercial arrangement. He also agreed with the IRD's assertion that the structure was used to significantly reduce the taxpayer's tax liability from personal exertions, while retaining full control and benefiting from the income.

The only reason someone would agree to take such a significant reduction in income was that the

income was controlled by a related entity and was still available to them or their family in some other way.

A fair market salary could have been paid by the company if the company had borrowed against future profits, in effect causing the company to incur tax losses to be carried forward to future years.

High Court Decision

The taxpayer appealed to the High Court. The High Court allowed the appeal, determining that the arrangement did not amount to tax avoidance. In contrast to the decision at the TRA, the judge found that:

At the time the arrangement was entered into, it was not expected that the company would make a loss from its business activities. The company had no money available to pay a salary as the funds had been used to pay real (not contrived) debts.

The closely-held company structure adopted by Dr White was used in a manner that was not inconsistent with the purpose that Parliament intended such companies to be used. The close-company regime specifically allows small family companies to pay tax on shareholder salaries through the provisional tax regime, and not the PAYE system. Where this is adopted, there may be

circumstances where the working shareholder does not get paid for their time due to lack of funds in the company.

The fact that the company made an unexpected loss should not make an acceptable business structure an artificial and contrived arrangement designed to avoid tax. There was no scheme to avoid tax, hence the effect of the structure minimising tax was purely incidental and therefore falls outside of the definition of tax avoidance.

The judge distinguished this case from the Court of Appeal decision in Penny and Hooper v Commissioner of Inland Revenue (2010), in which it was held that two orthopaedic surgeons operating through companies, and not receiving "commercially realistic salaries" had entered into tax avoidance arrangements. The distinguishing factor was that Dr White was not deliberately paid a reduced salary; the company simply did not have the funds to pay one.

The IRD have advised it is appealing the decision. In the meantime, this is a welcome decision as it provides guidance as to the limits in the Penny and Hooper decision. The taxpayers in the Penny and Hooper case have been given leave to appeal to the Supreme Court.

ENTERTAINMENT EXPENDITURE



Over the Christmas period, many businesses will have put on Christmas parties or presented staff with gifts to celebrate the festive season. Once the festivities are over however, there is the necessary 'evil' of tax to consider.

For those responsible for accounting or payroll, the New Year may bring Fringe Benefit Tax returns and payments to arrange (for items gifted to employees) or additional PAYE payments (if annual bonuses or other monetary remuneration has been provided to employees).

If food or beverages have been provided to staff to enjoy with other work colleagues or with clients, either at work or off-site these costs should generally be treated as "entertainment expenditure". In many cases only 50% of these costs can be claimed.

If you are in doubt as to whether the entertainment expenditure your business has incurred is partially or fully deductible, or whether FBT or PAYE may be payable, please ask for assistance.

TIPS ABOUT MEN

1. Don't imagine you can change a man - unless he's in diapers.
2. What do you do if your boyfriend walks out? You shut the door.
3. Never let your man's mind wander - it's too little to be out alone.
4. Go for younger men. You might as well - they never mature anyway.
5. Men are all the same - they just have different faces, so that you can tell them apart.
6. Women don't make fools of men - most of them are the do-it-yourself types.
7. Best way to get a man to do something - suggest they are too old for it.
8. Love is blind - but marriage is a real eye-opener.
9. The children of Israel wandered around the desert for 40 years. Even in biblical times, men wouldn't ask for directions.
10. If he asks what sort of books you're interested in, tell him cheque books.
11. Remember a sense of humour does not mean that you tell him jokes, it means that you laugh at his.

(Come on guys, you've gotta laugh!)

STRESS

A lecturer when explaining stress management to an audience, raised a glass of water and asked, "How heavy is this glass of water?"

Answers called out ranged from 20 grams to 500 grams.

The lecturer replied, "The absolute weight doesn't matter. It depends on how long you try to hold it. If I hold it for a minute, that's not a problem. If I hold it for an hour, I'll have an ache in my right arm. If I hold it for a day, you'll have to call an ambulance. In each case, it's the same weight, but the longer I hold it, the heavier it becomes."

He continued, "And that's the way it is with stress management. If we carry our burdens all the time, sooner or later, as the burden becomes increasingly heavy, we won't be able to carry on."

"As with the glass of water, you have to put it down for a while and rest before holding it again. When we're refreshed, we can carry on with the burden. So, before you return home tonight, put the burden of work down! Don't carry it home. You can pick it up tomorrow. Whatever burdens you're carrying now, let them down for a moment if you can."

So, readers, put down anything that may be a burden to you right now. Don't pick it up again until after you've rested a while.



LITTLE JOHNNIE STRIKES AGAIN!

Little Johnnie's neighbour had a baby. Unfortunately, the baby was born without ears.

When mother and new baby came home from the hospital, Johnnie's family was invited over to see the baby. Before they left their house, little Johnnie's dad had a talk with him and explained that the baby had no ears.

His dad also told him that if he so much mentioned anything about the baby's missing ears or even said the word ears, he would be in big trouble when they came back home. Little Johnnie told his dad he understood completely.

When Johnnie looked in the crib he said, "What a beautiful baby."

The mother said, "Why, thank you, Johnnie."

Johnnie said, "He has beautiful little feet, beautiful little hands, a cute little nose and really beautiful eyes. Can he see all right?"

"Yes", the mother replied, "we are so thankful; the Doctor said he will have 20/20 vision."

"That's great", said little Johnnie, "coz it would be difficult if he needed glasses."



EMPLOYMENT RELATIONS ACT: KEY AMENDMENTS



Amendments to the Employment Relations Act have been passed and come into effect on 1 April 2011. The changes reflect National's policy of easing the constraints on employers. While some of the changes are only of interest to employment law practitioners, others significantly change the employment landscape.

90-Day Trial Period

The 90-Day Trial Period for new employees, introduced by National in 2008 for employers with fewer than 20 staff, is now available to all employers. During the trial period the employer may dismiss a new employee within the first 90 days without a right to a grievance, but only if the requirements

of the legislation have been followed precisely. The trial period must be in writing at the commencement of employment, the employee must not have worked for the employer before and the employer is still obliged to be constructive and communicative in the employment relationship.

Employment Agreements

The other significant change is that the employer is now required to keep a copy of every signed employment agreement or, if the agreement is not signed, the draft agreement. This is due to the high number of personal grievance cases in which the Employment Relations Authority has had to make a decision without a written agreement available because it has been lost. Therefore, the onus has now been placed on the employer to keep a copy. This particular change comes into effect on 1 July 2011. Failure to produce a copy of the agreement can result in a penalty (fine) being imposed on the employer.

Other changes, that will have less impact on day to day employment interactions, are as follows:

Test for Justifiability

In determining whether a personal grievance is upheld or dismissed, the Employment Relations Authority must apply a test as to whether or not the employer's action(s) or dismissal of the employee was justified. The test has been changed from what "a fair and

financially worse off post settlement, however the bread winner is likely to recover more quickly.

While there are no easy fixes for this life changing event, once the decision to separate is final there are some simple guidelines that will help all concerned to navigate this process:

- Engage a suitably qualified lawyer to advise you of your relationship property rights.
- Avoid a litigious approach – focus on the future rather than the past.
- Be prepared to compromise

regardless of where the blame may lie.

- Agree to an independent advisor valuing the assets, and if possible mediating a settlement.
- Make sure that your advisors are appropriately qualified, with relationship property experience – ask for references.
- Avoid the court process if at all possible.

If your relationship has broken down, these suggestions will help minimise the trauma, allow both parties to move on with their lives and possibly even retain a cordial relationship.

EVADING STUDENT LOAN PAYMENTS?



The IRD have been contacting student loan borrowers who are living in Australia regarding their student loan repayment obligations.

Most borrowers they have contacted have been happy to enter into arrangements to repay their loans, but several people have told Inland Revenue in no uncertain terms where to go. As a consequence, the IRD is taking around 10 test cases to court in order to recover the money.

These borrowers could face civil and/or criminal charges. Civil charges would involve a claim for the amount owed, whereas criminal charges could be up to three times this amount if they are tried for evasion of a repayment obligation.

Australia is the first country in which the IRD has sought to locate repayment evaders as it is the easiest place for the IRD to get information from. Similar action could take place in other countries in the future.

THE COSTS OF RELATIONSHIP BREAKDOWNS



Each year in New Zealand a large number of relationships end as couples decide to separate. Many of these relationships will have lasted long enough for the couple to have accumulated significant wealth in the form of property, business and investment interests, and let's not forget the 'big boys' toys'. These assets are sometimes held in a complex structure of companies and trusts.

Whatever the reason for the breakdown in the relationship there will often be a high degree of acrimony and this unfortunately impacts any children of the relationship, who inevitably end up caught in the middle.

The consequences of unravelling a long relationship can be both a traumatic and expensive exercise, and may include the following:

- The effect on children and the wider family - children need to be protected so that they maintain a healthy relationship with both parents.
- The impact on friendships - whilst friends are generally supportive there is no guarantee that these friendships will survive intact.
- The financial cost of legal and other advisors - a simple business valuation may cost \$4,000 and property valuations start at \$1,000 - in addition the legal bills will keep rolling in.
- The trauma and uncertainty of the court processes - no matter what your view of your legal position there is no certainty that the court will agree, and consequently the court process will often seem to go on forever.
- The financial implications of separation - both parties will be

reasonable employer would have done in all the circumstances" to what the employer "could" have done, thus widening the options of what might be considered a 'justifiable decision' for an employer to have made. The test is further extended to include consideration of the resources available to the employer at the time, suggesting that there should be more flexibility for smaller enterprises.

Union Access to Workplace

Before entering a workplace, union organisers must now get consent to do so and the employer has to respond to the request by the end of the next working day. If they have not responded within 2 working days, consent is treated as having been obtained. The employer must provide a reason for withholding consent and it cannot be withheld without good reason. A penalty can be imposed for unreasonably withholding consent.

Labour Inspectors

The functions of Labour Inspectors have changed and create the opportunity for employers to receive free advice from Labour Inspectors. Their role includes supporting employers and employees to comply with the employment laws and providing them with services that will help resolve their employment problems. This means they can be invited by either party to help resolve an issue, which is most likely to be with respect to pay or leave.

An accountant appears at Saint Peter's gate.



Saint Peter starts asking him all the usual questions required to get into heaven. The accountant, it seems, has repeatedly helped people cheat on their taxes and embezzle funds.

Finally, in exasperation, St Peter asks, "Well, have you ever done anything good, anything totally unselfish and altruistic in your entire life?"

"Well," says the accountant, "Once I saw this pretty lady being beaten up and about to be raped by a bunch of bikers. So I yelled "Hey jerks, why don't you pick on somebody your own size" and I then kicked all their hogs over, all six of em, and took off running. They forgot about her for a second and she managed to run also."

Saint Peter asks, "I'm looking through the book of your life, and I don't see this incident recorded. When did it occur?"

The accountant replies, "About five minutes ago."

BUILDING DEPRECIATION UPDATE



Legislation passed as a result of the May 2010 Budget eliminated depreciation for most buildings that had a useful life of over 50 years. After the legislation was passed there was considerable uncertainty in a commercial context regarding what part of a structure would be classified as "building" versus "fit-out" (which can continue to be depreciated). The IRD had previously provided its view on the issue, but in a residential rental context, and commented that the principles could also be applied in a commercial context. The principles would have favoured the classification of some fit-outs as part of a building.

Stepping away from those principles, the Government has amended the Income Tax Act 2007 in favour of the taxpayer. Specifically, the changes enacted include:

- A new definition of "building" which specifically excludes "commercial fit-out".
- The insertion of a commercial fit-out definition, which includes an item attached to a "commercial building" that is non-structural and not part of a building's weather-proofing.
- The insertion of a commercial building definition that captures buildings that are not primarily used as a person's residence and specifically includes: hospitals, hotels, motels, inns, hostels and boarding houses, certain serviced apartments, convalescent homes, nursing homes, and hospices, rest homes and retirement villages, from hospital care through to residential care facilities, and camping grounds.

The clarification of these definitions enable items that could otherwise be considered part of a commercial building, such as internal non-load bearing walls, suspended ceilings, plumbing and electrical reticulation to be depreciated as fit-out.

Where items of fit-out are shared between both residential and commercial structures (e.g. lifts, fire protection, sewerage), the principle purpose of the building will determine whether the fit-out is depreciable property. For example, if a building is used principally for commercial purposes, then the fit-out will be depreciable property.

If upon construction or purchase a person has not separately identified and depreciated fit-out, a new provision allows the owner of a commercial building to amortise 15% of the building's book value at a rate of 2% straight-line per year. The building's adjusted tax book value is reduced by any fit-out purchased and depreciated separately after the building was purchased.

The question left unanswered by the IRD is whether a person that has not separately identified and depreciated fit-out in the past can perform an analysis to determine what proportion of a building is structural versus fit-out, and start depreciating the fit-out based on the higher fit-out rates.

QUOTABLE QUOTES

If you can't be kind, at least have the decency to be vague.

If you lend someone \$20 and never see that person again, it was probably worth it.

The second mouse gets the cheese.

