



WE BELIEVE IN CREATING LASTING PARTNERSHIPS BETWEEN **OUR TEAM** OF SPECIALISTS AND OUR CLIENTS, SO WE LEARN TO BECOME VALUED MEMBERS OF **YOUR TEAM**.

advisor



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LIFE CYCLE OF A BUSINESS

Business Accounting & Taxation Compliance

In this article we expand on the BVO lifecycle of a client by introducing our business accounting and taxation compliance line of business.

The recent changes to financial reporting legislation contained in the Financial Reporting Act 2013 as well as new developments in IRD policy will necessitate a shift in how the financial statements of some of our clients are prepared. The changes touch on a number of large businesses and not for profit entities and will apply from the 2015 financial year onwards. Your BVO team are up to date with these new financial reporting requirements and, if applicable, will prepare financial statements in compliance with them.

Recent tax anti avoidance successes by the IRD in conjunction with the punitive penalties regime means it is critical that businesses correctly apply tax legislation when calculating their tax liabilities. This is where your BVO team assist you by calculating your tax position by correctly applying tax legislation to ensure you pay the right amount of tax and take advantage of all available tax benefits. Our in house tax specialists are available to address questions

on tax including providing tax opinions on transactions, be they complex or cross border transactions.

Our clients find our taxation risk review service helpful in ensuring that taxes they manage themselves such as GST, PAYE and FBT have been appropriately treated; given the regular nature of these taxes, any errors can compound quite quickly to cause significant financial penalties.

With the level of budget being allocated to the IRD for investigations around certain industries deemed risky together with inter departmental sharing of information, the likelihood of an IRD review or audit has increased. BVO is able to manage this process to ensure that the appropriate information and explanations are provided to the IRD in the event that our clients are reviewed or audited. If errors are identified BVO manage the process in order to mitigate where possible penalties and interest.

The BVO book-keeping service has been used with great effect to enable clients to focus their attention on the important parts of their business rather than the "books". This service has often identified inefficient book-keeping processes and has been effective at reducing the amount of time and resources required to manage the back office. This service can therefore be used as an ongoing resource

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LIFE CYCLE OF A BUSINESS

to manage your back office function or on a consultancy basis to streamline your regular ongoing book-keeping function.

The BVO audit team undertake audits on a number of New Zealand and overseas commercial and not for profit clients. The audit team also undertakes internal audit reviews and agreed upon procedures work for our clients. The BVO internal audit function is often called on to ensure that the financial processes of a business are operating as intended with the appropriate level of control. It also provides management, who may not participate in the day to day running of the business, comfort that the information upon which they are reliant to make business decisions is as accurate and timely as possible.

The BVO business accounting and taxation compliance service line encompasses a broad level of services focused on ensuring clients are in compliance with tax legislation, financial reporting legislation, whilst also providing comfort that the numbers are accurate.

If you have any questions concerning the services outlined please feel free to contact the partner you ordinarily deal with.



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Changes to Tax Payments & Due Dates

Inland Revenue is in the process of updating its guidelines regarding how tax payments may be made to Inland Revenue and when they will be treated as being received on time.



Some important changes coming into effect are:

- The current practice of treating payments which are mailed and post-marked on the due date for payment as being received in time is to end. From 1 October 2014 payments mailed to Inland Revenue must be received on or before the due date for payment or late payment penalties and interest may be imposed.
- From 1 October 2014 only cash and EFTPOS tax payments can be made at Westpac. However, cheque payments can still be made at any Inland Revenue office.
- A provincial anniversary holiday is not treated as a public holiday. This means if a tax due date falls on a provincial holiday payment must be received on or before that day to be treated as received in time.

As a result of these changes we would encourage any clients still using cheques to move to online payment of tax, to

avoid cheques inadvertently being late and corresponding interest and penalties being charged. This is especially so given New Zealand Post's current delivery times and

their intention to cut delivery on certain days of the week which will further slow delivery times.

Student Loan Rule Changes

There have been significant changes to the obligations of student loan borrowers from 1 April 2014. These changes will affect both New Zealand resident and overseas-based student loan borrowers. Some of the key changes include:

- Moving to a broader test of what constitutes income for the purposes of calculating how much your student loan repayments should be;
- The annual repayment obligation for overseas-based borrowers will be set at a fixed minimum amount that will not decrease over time;
- Higher payments for overseas-based borrowers with loans exceeding \$45,000; and
- The power to stop defaulting borrowers from leaving the country.

If you have a student loan and are concerned about the impact of these changes on you then please contact BVO so we can give you appropriate advice on the best course of action.



TO GIFT OR NOT TO GIFT?

We are almost three years on from the repeal of gift duty on 1 October 2011. Since this time some of our clients have chosen to make a one-off gift. However, many of our clients have not and still have sizeable outstanding loans to their family trust. These loans have generally arisen from the transfer of their home or other assets into their family trust.

As well as looking at existing loans to family trusts, people may also be considering gifting other assets to their family trust. These assets could include, for example, parcels of shares, an art collection, or other assets with monetary and sentimental value.

Now that gift duty is gone, people with outstanding gifting should be asking themselves whether it is worthwhile simply making a one-off gift. While this seems a no-brainer due to eliminating ongoing gifting paperwork, it may not necessarily be to every person's advantage and it should be considered on a case-by-case basis.

When weighing up whether to make a one-off gift, consideration should be given to the following factors.

Means Testing

With an increasingly ageing population, the demand for aged care facilities is on the rise. The high costs for rest home care have the potential to eat into your asset base to the detriment of future generations.

Currently the Ministry of Social Development ("MSD") operates a means testing programme

to determine whether a person is eligible for a subsidy for their rest home fees. The rules regarding eligibility are relatively complex and have different criteria and thresholds depending on each individual's circumstances.

Of note is that MSD can disregard gifts made to a trust when they are assessing your asset base for the purposes of determining your eligibility for a subsidy. Take the hypothetical example of Mrs and Mr Smith. Mr Smith applies for a residential care subsidy due to his deteriorating health, while Mrs Smith will remain in the family home. Say Mr and Mrs Smith had been carrying out a gifting programme of \$27,000 per spouse for the past five years. In other words, they have made combined gifts of \$270,000 to their family trust over the past five years.

In this situation, when assessing their asset base for subsidy purposes, MSD will only allow \$6,000 in gifting in total in each of the last five years. As Mr and Mrs Smith had made gifts of

\$27,000 each, or \$54,000 combined in the last 5 years, then \$240,000 of gifting (i.e. \$270,000 less the allowable \$30,000 across the five year period) is added back when determining their assets for rest home subsidy purposes.

Whilst this appears to be a bad outcome, it is even worse where a one-off gift is made. Say Mr and Mrs Smith had not entered into an ongoing gifting programme and had instead made a one-off gift of \$270,000 to their trust 2 years ago. As they made a gift in a single year, they only have \$6,000 of "allowable" gifting meaning \$264,000 of gifting (i.e. \$270,000 less the allowable \$6,000) is added back when determining their assets for rest home subsidy purposes.

The advantages of ongoing gifting is magnified where the subsidy application takes place more than five years after the ongoing gifting has started, as less punitive "add-back" rules apply to gifts outside five years.

While this seems a no-brainer due to eliminating ongoing gifting paperwork, it may not necessarily be to every person's advantage and it should be considered on a case-by-case basis.



This is a simplified example and each person's eligibility will be dependant on their particular circumstances. However, the example demonstrates that a one-off gift will, in many cases, lead to a larger add-back than gradual gifting over time.

With the increasing pressure on the public purse from NZ's ageing population, it is likely the rules will be changed in the future and eligibility progressively tightened. However, for clients in the 65+ age bracket who want to maximise their chances to qualify for a rest home subsidy, it may be worthwhile investigating the benefit of continuing their gifting programme as opposed to making a one-off gift.

Estate Planning and Tax

There is a variety of estate planning considerations to bear in mind when deciding to make a one-off gift or not.

For example, do your children (or other intended beneficiaries) have different needs meaning you want to leave them an unequal share of your wealth upon your death?

To the extent you have not finished gifting your assets to your trust at the time of your death, these assets will form part of your estate and are dealt with in your Will. Although your Will can specify that personally owned assets are split unequally between your children or intended beneficiaries, an unequal division has the possibility of opening up your estate to legal challenge by a disaffected party.

On the other hand, where your assets are fully gifted to your Trust it is much harder for a party to challenge any subsequent distribution.

There can also be certain tax issues where "tax base property" (which could include foreign shares, bonds, or a rental property) is

owned personally and upon a person's death is transferred from that person's estate to a beneficiary. These issues generally do not arise where the property is owned in trust at the time of your death.

Asset Protection

An ungifted loan from you to your trust constitutes an asset in your personal hands. As such, in the unlikely event of personal insolvency it is possible that the Official Assignee (the Government department which manages personal bankruptcies) could demand repayment of the loan from the trustees of your family trust for the benefit of creditors.

This issue is not likely to be of great concern for people with a low risk profile such as salaried employees. However, it will be an important consideration for self employed

people who have a higher risk profile by virtue of their dealings with the Inland Revenue, customers, or suppliers. Self employed people can be at risk from being sued for professional negligence; being GST registered; or entering into commercial contracts, to name just a few examples.

Accordingly, self-employed people may find it desirable to make a one-off gift to get personal assets out of the reach of future creditors.

Conclusion

As the above demonstrates the decision to make a one-off gift or not can be a difficult one and is highly dependant on each person's circumstances. If you still have outstanding gifting and are unsure what you should do, please contact your BVO partner so we can discuss the best course of action for you.

Budget Round-Up

The Government's 2014 Budget, as expected, was a conservative and fiscally prudent election year Budget.

While there were no bold new tax measures the Government did signal the following changes of note:

- An increase in the duration and amount of Paid Parental Leave ("PPL"). The duration of PPL payments increases from 14 to 18 weeks in two stages over the 2016-2017 tax years. The maximum gross weekly PPL payment increases slightly to \$504.10 from 1 July 2014.
- An increase to the duration and amount of the Parental Tax Credit ("PTC") component of Working for Families. The duration of PTC payments increases from 8 to 10 weeks and the maximum weekly payment increases from \$150 to \$220, both from the 2016 tax year.
- Proposals to allow certain research & development intensive companies to "cash out" the monetary value of their tax losses instead of carrying the losses forward.

Recent BVO Intrepid Travels

Margaret Barron and her husband Peter have recently returned from a five week holiday.

'We had a very varied five weeks commencing with two days in Dubai, a city with innovative architecture and great wealth, where petrol is cheaper than water. One of the highlights was our visit to the Burj Khalifa the tallest building in the world.

From there we went to Morocco a country with huge contrasts, with sandy and rocky deserts, areas that have not had rain for four years, and lush river valleys, with tall date palms and wheat and vegetable fields. There was much more agriculture than we had anticipated and the most delicious strawberries and oranges we have ever eaten. The cities had busy traffic interspersed with laden donkeys and horse drawn carts. The most fascinating place was the medina in Fez with its dark narrow alleyways and small shops selling everything from clothes, leather goods, pottery, brassware, live chickens, fish, vegetables and bread. Within the medina there are 300 mosques and 300,000 people live there like rabbits in a warren. If we had not had a guide we may still be there.

We flew to Lisbon and drove north to Porto via several small towns and the Duoro valley with its steep terraced sides with grape vines as far as you could see. The old town of Porto was



lovely to wander through with many buildings, including our hotel, decorated with azulejo, blue and white tile pictures. The Loire Valley in France was another different world with the wide river, flat landscape, green fields and huge chateaux, forts and monasteries.

We ended our trip with five days in Paris, a city which we had not visited previously and walked miles visiting the Louvre, Arc de Triomphe, Eiffel Tower, Notre Dame, Montmartre and other museums and parks. A varied, interesting and worthwhile trip.'



Adventures in Paris

Over the 2013-14 Christmas break BVO staff member Nick Beresford and his partner Alice spent a couple of weeks travelling through Paris and Rome.

Nick and Alice rented an apartment in the centre of Paris for a week and saw many of the big attractions including the Eiffel Tower, Notre Dame and the Sacre Couer, as well as various art galleries and museums.

After that it was off to Rome for a week where they stayed in a great spot near the Trevi Fountain. Sightseeing included trips to the Colosseum and Vatican City.

Welcome

Sarah O'Connell has recently joined BVO from a mid sized accounting practice in Newmarket where she had been working for nearly 5 years.

Sarah has a keen interest in tax and is currently completing a Master of Taxation Studies degree at the University of Auckland.

Sarah says that undertaking the course has been really interesting and has broadened her skill base in areas such as Tax disputes, Tax administration, Non Corporate Taxation and Goods and Services Tax.

Sarah is really looking forward to working alongside the team at BVO and getting involved with assisting clients with their day-to-day accounting needs.



Home is where the heart is!

If an individual is a New Zealand (NZ) tax resident they will be taxed on their worldwide income. Conversely, if a person is non-resident they will only be taxed on their NZ sourced income. This makes it important for a person to confirm their tax residency when they leave the country as it determines the extent of their continuing NZ tax liability. Simply leaving NZ for a period of time does not necessarily mean your tax obligations here end.

A person is a NZ tax resident if they are either in NZ for more than 183 days in a 12 month period or if they have a 'permanent place of abode' in NZ. A person will be non-resident once they are absent from NZ for more than 325 days in a 12 month period and they do not have a permanent place of abode in NZ.

The concept of a permanent place of abode is not defined under the legislation. But the courts have considered the issue on a number of occasions. One recent case has arguably shifted 'the line'.

The Taxation Review Authority ("TRA") recently considered whether a taxpayer was a NZ tax resident over the four year period to 31 March 2007. The taxpayer had worked for the NZ Army for 25 years. After he retired in 2003 he left NZ to work in Papua New Guinea on a 12 month contract providing personal security.

The taxpayer gave evidence that when he left NZ in 2003 he had no intention of returning to live here. After the contract finished in Papua New Guinea, he spent approximately four



months living in Queensland, before he began working in Iraq. In Iraq he also provided security services, completing a number of contracts up until April 2012, when he moved back to Australia.

Despite such a lengthy absence, the individual was found to be a NZ resident (and liable for tax on his worldwide income) because he was deemed to have a permanent place of abode here. The following factors were relevant to the decision:

- The taxpayer separated from his wife in 1994 and they had four children together. The taxpayer maintained close family and financial ties to his ex-wife and his children, and he provided financial assistance to them.
- Although absent from NZ for the majority of the time, between July 2004 and March 2007 (covering the period in dispute), he visited NZ every five to six months, with an average time in NZ of 42 days per year.
- The taxpayer owned rental properties in NZ with his ex-wife (personally and then through a company) that would have been available to him if he served the required notice under the Residential Tenancies Act 1986. Those properties were in the same locality as his ex-wife and children.
- The taxpayer's ex-wife had a debit card to access his US based bank account, to pay property and family related expenses.

Looking at the overall circumstances, the TRA found that the taxpayer continued to have a strong and enduring relationship with NZ, deeming him to be a NZ resident during the four years in dispute. Interest and penalties were applied by Inland Revenue in the relevant years.

Inland Revenue have also recently issued an Interpretation Statement (IS 14/01) that came into effect on 1 April 2014, that sets out its view on how to determine whether a person is a NZ tax resident. The effect of the TRA decision has been taken into account in preparing the Interpretation Statement, namely the permanent place of abode test requires that a dwelling is available that can be used by the person in NZ. This does not necessarily mean ownership or control over a dwelling. If a person is able to use a property as a place to live on an enduring basis, then it can still be their permanent place of abode irrespective of whether the property is rented to someone else while the person is residing overseas.

Whether someone has a permanent place of abode is not easily determined. It takes judgement to weigh the particular facts and professional advice should be obtained. If you are currently living overseas or planning on emigrating from New Zealand, please contact BVO to discuss whether this recent case and Inland Revenue's new interpretation of the law will affect you.

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