



**BVO**<sup>®</sup>  
BLACKMORE VIRTUE & OWENS

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

Level 2, 18 Broadway, Newmarket, Auckland 1023  
PO Box 9579, Newmarket, Auckland 1149, New Zealand  
Tel: 00-64-9-520 4089, Fax: 00-64-9-524 7580, Email: [bvo@bvo.co.nz](mailto:bvo@bvo.co.nz)

Spring 2015



LIFE CYCLE OF A BUSINESS

## ASSET PROTECTION

The Asset Protection client service offering covers a wide range of services to manage and protect the assets of clients.

### IN THIS ISSUE

Asset protection

IRD rates

Attribution of personal services income

A lesson for us all

New property rules

Staff news

All information in this newsletter is to the best of the authors' knowledge true and accurate. No liability is assumed by the authors, or publishers, for any losses suffered by any person relying directly or indirectly upon this newsletter. It is recommended that clients should consult a senior representative of the firm before acting upon this information.

Your BVO team take a long term asset protection view in respect to planning for the time when assets are passed to the next generation, whilst advising with our clients' other advisers the best means of protecting assets through the use of companies, trusts etc. Tied in with asset protection is ensuring that the assets are protected in the appropriate structure. The optimal asset protection structure may change from time to time after an event such as the sale of a business; retirement etc. Accordingly BVO advise clients on the best means of restructuring their affairs if their circumstances have changed.

Part of the asset protection umbrella includes commercial property management. BVO manage a number of commercial properties on behalf of clients ranging from retail and office space through to industrial properties. Managing properties and managing the tax compliance process ensures a hassle free service is offered to those clients who own commercial properties. BVO work with other property professionals in managing clients' properties such as leasing agents in order to facilitate the tenanting of vacant property.

As your circumstances change, the level of protection may change as well, which may necessitate the simplification of your asset protection plan such as when a client heads into retirement. BVO constantly monitor their client's circumstances and make recommendations when changes are seen to be necessary.

If you feel your current business structure needs to be reviewed to ensure that it continues to offer the same level of protection when it was initially structured, you should contact your BVO partner.





Inland Revenue has announced a reduction in the mileage rate from 77c per kilometre to 74c per kilometre. This is the rate for the 2015 income year (i.e. year ended 31 March 2015 for business taxpayers with a standard balance date).

### Key Points:

- Only applies up to 5,000 kilometres
- Actual costs can still be used by self-employed taxpayers
- Inland Revenue do not require amended returns where taxpayers have already filed their 2015 return using the old rate
- The new mileage rate should now be used in relation to reimbursement of employees for the use of their own vehicle for business related travel. AA rates can still be used
- The mileage rate does not apply to hybrid vehicles

### Summary of IRD rates

Use-of-money interest – the rates on underpaid and overpaid tax rose on 8 May 2015. The interest rate charged on underpaid tax went from 8.40% to 9.21%, and the rate for overpaid tax rose from 1.75% to 2.63%. This movement aims to align the rates with the market interest rates and were last updated in May 2012.

ACC earners levy rate – the ACC earners levy rate for the 31 March 2016 year is 1.45%, the same rate as last year. For employees, the maximum earnings on which the levy is payable is \$120,070.

FBT rate for low interest loans – the last notified prescribed rate of interest used to calculate fringe benefit tax on low-interest employment-related loans was 6.70% for the period 1 October 2014 to 31 December 2014. This was up from the previous rate of 6.13%.

Personal marginal tax rates – no changes are proposed to the income tax rates for individuals for the 2016 tax year. The lowest marginal tax rate is 10.5% for taxable income up to \$14,000, then 17.5% up to \$48,000, 30% to \$70,000 and the top rate is 33% on income over \$70,000.

# Attribution of personal services income

Many people aren't aware that specific tax rules exist that can deem income derived by a company or trust to be derived by them personally.

The rules were first introduced when the 39% tax rate was introduced to stop people getting a tax advantage by trading through a company or trust to access the lower 33% tax rate. Although the top personal marginal tax rate has been reduced to 33%, the company rate is lower at 28%, and hence the rules are still active and need to be kept in mind.

Income is attributed when:

- 80% or more of the entity's income from personal services is derived from services personally performed by an associated person or a relative,
- 80% or more of the entity's income from personal services is derived from the sale of services to a customer or a person associated with the customer,
- The person's net income for the income year exceeds \$70,000, including any amounts available for attribution, and
- Substantial business assets (as defined below) are not a necessary part of the business structure used to derive the entity's assessable income.

"Substantial business assets" are depreciable property that cost more than \$75,000 or, make up at least 25% of the associated entity's total assessable income from services for the income year and are not for private use.

When a person first sets up business, it may be that the rules don't apply. But experience has shown that circumstances change over time and those changes can mean someone drops into the ambit of the rules, without realising it. For example, Jenny and

Harry are a brother and sister team that went into business together. Jenny is an interior designer and Harry is an architect. They are employed by a company in which they each own 50% of the shares. The Company receives income from the services they perform.

Jenny decides she wants a change of scenery and sells up and moves to New York to become an actress. Harry buys Jenny's 50% share in the Company.

Harry subsequently wins a large contract with Fletcher Construction that provides more than 80% of the company's income for the following six months and the contract is later extended.

In this scenario, the income derived by the company from personal services performed by Harry is likely to be subject to the 'attribution rules'. Under the attribution rules, the net personal services income derived by the Company will be attributed to Harry. If net income of \$180,000 were attributed directly to Harry and subject to tax at the top marginal tax rate (33% as opposed to the 28% company tax rate), additional tax of \$9,000 would be payable.

The IRD's intention is to ensure that taxpayers like Harry cannot avoid the highest personal tax rate (currently 33%). Increasingly more resources are being put into this area to ensure taxpayers are returning the appropriate amount of tax, so if you think the attribution rules may apply to you, please speak to your BVO advisor.

## International measures to prevent tax evasion

When some individuals move overseas they stop fulfilling their NZ tax obligations (e.g. student loans and child support).

In 2012 NZ signed up to The Convention on Mutual Administrative Assistance in Tax Matters, however it only came into effect for NZ from 1 January 2015. As a result of the agreement, the IRD's ability to find and pursue tax evasion and tax debts internationally has been strengthened.

The Agreement provides for administrative assistance in the assessment and collection of taxes between tax authorities who have signed up to the Convention (currently 84 countries). The IRD can now seek assistance from other tax authorities also signed up to the convention.

This reinforces the need for people to be aware of and meet their tax obligations irrespective of where they happen to move to.

# A lesson for us all

## The "general permission" under the Income Tax Act broadly allows expenditure to be deductible if it is:

- Incurred in deriving assessable income, or
- Incurred in the course of carrying on a business for the purpose of deriving assessable income.

A recent Taxation Review Authority (TRA) case provides a strong reminder to us of the importance of ensuring there is a connection ('nexus') between the expenditure you deduct for tax purposes and your business or income earning process.

In TRA 008/13, a taxpayer entered into an agreement in 2006 to purchase a block of land for the development and sale of retail units and residential apartments. By June 2007 four deposit payments had been made totalling \$1.9m. Before settlement occurred, a number of conflicts arose between the vendor and the taxpayer.

Following several failed attempts by each party to cancel the agreement, they eventually went through a disputes resolution process where they agreed to split the deposit between them. The taxpayer also agreed to pay the vendor's costs (\$70,047). The taxpayer subsequently entered into an agreement to sell the plans for the project, including resource consent, for \$650,000; however the transaction was not completed.

The IRD sought to disallow \$1.4m of expenditure (including the lost deposit) incurred after 24 July 2008, when the taxpayer ceased negotiations to resurrect the agreement. The taxpayer disagreed with the IRD and the case went to the TRA.

### The taxpayer argued:

- The expenditure related to a business that operated until at least December 2011,
- The agreement was entered into for the purpose of purchasing the land to derive taxable income or alternatively to escape an onerous contract, therefore all expenses are deductible, or
- The business was operating in 2007 (the IRD agreed) and the lost deposit was deductible because it was paid at that time.

The TRA decided in the IRD's favour, concluding that from July 2008 onwards the taxpayer's focus changed from advancing the settlement of the purchase, to pulling out of the Agreement. From this point the taxpayer ceased being in business, and there was no nexus between the taxpayer's business and the expenditure.

The TRA also broadly concluded that in order to deduct expenditure to derive income, income must be derived and here there was none. It was further stated that the

taxpayer intended to acquire and sell full legal title to the land. However, the taxpayer only acquired an equitable interest in the land.

The implication being that the taxpayer's intention when the due diligence clause was fulfilled was not to sell an equitable interest, therefore there was no requisite intention of resale in respect of the interest that was acquired.

The TRA took the view that the settlement amount was paid from the deposit monies held by the taxpayers' lawyer as a stakeholder; it was not payment of the deposit.

The IRD not only denied the deductions, but also charged a \$39,194 shortfall penalty for taking an unacceptable tax position.

Decisions like this are unsettling because at face value, it would seem reasonable to claim a deduction for the expenditure. Especially given, if income had been derived, the expenditure is likely to have been deductible.

The lesson here is to think carefully about situations that may be outside 'the norm'. Even if intuitively an expense appears deductible, it may not be. In these situations, a quick phone call to your BVO advisor would be a good idea.

## New Property Rules

The new tax rules in relation to residential property come into effect on 1 October 2015. These consist of two main measures:

### 1) Information Requirements

Offshore persons or trusts will need to provide a New Zealand IRD number as part of the property transfer process. In addition, offshore persons will be required to provide their overseas equivalent IRD number.

New Zealand individuals will need to provide IRD numbers if the property is not going to be their main home.

### 2) Bright-line Test

If a property is sold within 2 years of purchase any profits will be taxable. Any losses will be ring fenced and can only be offset against future gains on land sales. For the purpose of this test the date of purchase will be taken as the date of the transfer of title. The date of sale howev-

er, will be the date the sale and purchase agreement is entered into.

This will potentially give rise to a period greater than 2 years from the time the first interest in the property was acquired (the date the original purchase agreement is entered into) to the end of the Bright-Line period.

This will apply to sale and purchase agreements entered into on or after 1 October 2015. Any property purchases that are subject to a sale and purchase agreement signed before this date will need to be completed (i.e. the transfer of title will need to be registered) before 1 April 2016.

Exclusions are available for the seller's main home, inherited property and relationship property.



# BVO STAFF ADDITIONS AND NEWS

We are pleased to announce the addition of three new staff members to our practice in recent months – Philip Hampson, Lydia Lobo and Steven Khoo.

Philip is a highly skilled tax practitioner with over 17 years' experience. Initially in the United Kingdom and then in New Zealand for the last seven years.

Philip has worked with a broad range of clients from individuals to multi-national corporations and across a broad range of industries.

Lydia is a qualified accountant with over 10 years Chartered Accounting experience who is passionate about her work.

She is also one of the convenors of the Accounting Institutes Tax Special Interest Group and is very accomplished on Xero. She enjoys



Philip Hampson, Lydia Lobo, Steven Khoo

assisting and training clients in the use of this accounting software.

Steven is an experienced Senior Accountant with a total of 12 years work experience across both Commercial and Professional practice and is a Certified Public Practitioner (C.P.P). He is also experienced in preparing US tax returns and holds a US Paid-Preparer Tax Identification Number (PTIN).

## RECENT INTREPID BVO TRAVELS

Over the Christmas period Greg Virtue was fortunate enough to fly to Antarctica and over a 10 day period successfully complete a climb of its highest point – Vinson Massif which lies 700 nautical miles from the South Pole. This completed Greg's 4th "7 summit peak".

His adventure started firstly with a flight from Auckland to Punta Arenas in Chile and from there a further flight onto Union Glacier in Antarctica. Almost immediately upon arriving in Union Glacier, he along with his fellow climbers jumped on a Twin Otter plane for another 45 minute flight which took them to Base Camp on Vinson Massif in the heart of the Ellsworth Mountains.

Over the next 6–7 days Greg and his climbing teammates slowly moved up the mountain to High Camp and after patiently waiting for a weather window to appear, two false starts and a little bit of



Greg Virtue

frustration Greg, his three teammates and guide successfully summited on 7 January. Following this success the next few days were spent getting back down to Base Camp and organising themselves for the return trip back to Punta Arenas.

After landing back in Punta Arenas, Greg then spent an enjoyable week back in Chile being a tourist. In this week he managed to see such things as the King Blue Penguin in a day trip around Patagonia, the Magellan Penguin on Magellan Island and two majestic days in Torres del Paine National Park.



Your Chartered Accountants and Business Advisors  
Level 2, 18 Broadway, Newmarket, Auckland, PO Box 9579, Newmarket,  
Auckland 1149, New Zealand, Tel: +64-9-520 4089 Fax +64-9-524 7580  
[www.bvo.co.nz](http://www.bvo.co.nz)

