



DECEMBER 2018

The Principals and Staff of Graham & Dobson thank you for your continued support during 2018. We wish you a safe, happy and relaxing festive season. The offices of Graham & Dobson will be closed from 4.00pm on Friday, 21 December and will re-open on Thursday, 10 January 2019 at 8.00am.

SNIPPETS

IRD "FISHING EXPEDITIONS!"

We have been made aware of clients being contacted directly by IRD for onsite meetings at clients' business premises – these meetings being set up under the guise of "we're here to help".

The meetings are not audits, but some meetings have lasted for more than an hour where the IRD staff have asked questions about operations as well as drawing comparisons on business performance from the past 10 years. Consequently, these meetings feel more like an interrogation than a friendly chat.

We do not consider it is appropriate that IRD contact clients directly without first informing their agents about a visit. We also remind clients that these types of meetings are voluntary and clients have every right to reject IRD's proposal for these meetings if it is not convenient for them. And it is totally acceptable to ask IRD staff to contact your Graham & Dobson tax agent first.

DEDUCTIBILITY OF LEGAL EXPENSES WHEN BUYING OR SELLING A RENTAL PROPERTY

Under Section DB62 of the Income Tax Act 2007, a person can deduct legal expenses if the expenses are \$10,000 or less in an income year. This includes legal expenses that relate to spending on capital assets such as property. The legal expenses still have to be incurred in deriving income or as part of a business activity. They cannot be claimed if they relate to expenditure of a private or domestic nature, such as the purchase of the family home.

Inland Revenue had previously held that a claim for legal expenses under DB62 for buying or selling a rental property was only permitted if they were in the business of

providing residential rental accommodation, as otherwise they would not meet the general permission. However, the IRD now considers that a person will be able to claim legal expenses under Section DB62 when buying a rental property, regardless of whether they are in the business of providing residential rental accommodation. Please note though that the position regarding selling a rental property has not changed.

Please get in touch with us if you would like to discuss this matter further.

UPCOMING RETIREMENT OF CASHMANAGER RURAL DESKTOP

Ten years after Cashmanager RURAL online was released, CashManager are preparing to retire RURAL desktop. Key dates are as follows:

28 February 2019 – the last annual activation code will be supplied (dates may vary dependent on your subscription renewal anniversary)

29 February 2020 – Desktop will no longer be available or supported.

You may be surprised how well online works with your internet connection. We encourage you to contact Cashmanager to get your possible migration to RURAL online underway in the New Year.

TAX INVOICE DOCUMENTATION

Businesses are now increasingly e-mailing invoices or a link to view an invoice online rather than posting them. For both tax and audit purposes we need to be able to view the invoice. We are happy to receive the electronic invoices by e-mail or on a USB stick which we will return to you.

Alternatively, you can print and supply the invoices with the rest of your paper based records.



Contents	
IRD "Fishing Expeditions"	1
Deductibility Of Legal Expenses When Buying Or Selling Rental Property	1
Cashmanager RURAL Desktop Is Retiring	1
Tax Invoice Documentation	1
'Til Death Do Us Part	2
Domestic Violence Leave Is Coming	2
Capital Gains Tax This Way Or Capital Gains Tax That Way..	3
Town And Around	3
Champagne Christmas	4

'TIL DEATH DO US PART!

It is said that only two things are certain in life – death and taxes. But that was before the Employment Relations Act 2000 was amended to require the terms of employment to be recorded in writing and, like estate and tax law, the lawmakers have also made sure that what should be a relatively simple but specialised undertaking is often anything but.

In the age of the internet and with a comprehensive Ministry of Business, Innovation and Employment website available to build an agreement, employers can sometimes lose sight of the fact that an employment agreement is a binding legal document. It gives rise to a wide range of responsibilities and obligations for both parties and creates specific, and at times, bewildering legal avenues for redress if things go wrong.

The Act lists a number of matters that must be included in every individual employment agreement as mandatory clauses and there are also other provisions which must be in writing if you want to rely on them at a later date. The MBIE website has lots of draft clauses from which you can pick and choose – however, one size does not fit all and many clauses may be unsuitable for your particular business. Taking advice before the document is issued to the employee can ensure that the agreement works in the way your business requires and that it is clear, concise and fair to both parties.

What is not widely known is that earlier versions of finalised employment agreements must be kept on file if they have been provided and then amended as part of the negotiation process between employer and employee or prospective employee.



Comment:

We recommend seeking advice and putting the time in at the outset, to save time down the track amending a poorly prepared employment agreement, that was a result of sloppy drafting or clauses that are unnecessary or just plain wrong.

DOMESTIC VIOLENCE LEAVE IS COMING – WHAT CAN EMPLOYERS EXPECT?

The Domestic Violence – Victims' Protection Bill has been assented to, will become law from 1 April 2019 and makes three key changes that employers and employees should know about. These are:

- Employees who are affected by domestic violence can request paid domestic violence leave.
- Such employees can also make a request for a short-term (not longer than two months) flexible working arrangement to assist them to deal with the effects of domestic violence, with tight deadlines for the employer to respond and;

- The creation of a new form of discrimination under the Human Rights Act 1993 which explicitly prohibits an employee being treated adversely in their employment on the grounds that they are, or are suspected to be, a person affected by domestic violence. An employee or applicant for employment in most cases has a year to bring such a claim under the Human Rights Act.

Note:

- **Employers may wish to review their Employment Agreements and in the case of new employees starting after 1 April 2019, insert a new provision into the Agreement setting out the right to request domestic violence leave and/or flexible working arrangements.**
- **Employers need to be aware that once a request for flexible working arrangements is made, the employer must provide the employee with information about the appropriate domestic violence support services.**
- **Employers are also advised to consider drafting a specific policy or set of protocols - consistent with the mandatory requirements of the Act - for the process of requesting domestic violence leave. To assist with such policies there is a website www.businessworkingtoendfamilyviolence.co.nz.**
- **Employers will also need to familiarise themselves with the mechanics and consequences of the law change, including knowing how to respond when an employee makes a request for domestic violence leave and/or flexible working arrangements.**
- **Employers also need to factor domestic violence leave into their payroll systems since such systems often have a special code for every type of leave which can be taken.**

Similar to sick leave, an employee becomes entitled to domestic violence leave after six months' continuous employment. Employees can then request up to 10 days' leave for each year and must notify their employer as early as possible before taking leave. Although an employee becomes entitled to 10 days each year, any unused entitlement cannot be 'rolled over' into the next year. Payment for domestic violence leave is to be calculated in the same way as sick or bereavement leave – by paying the employee's relevant daily pay or average daily pay.

A request for leave can be made no matter how long ago the domestic violence event occurred or regardless of whether the employee was employed by the employer at the time.

However, an employer may request proof of domestic violence which means a number of practical considerations are likely to arise. These could be:

- What kind of proof is required if this is to be requested? Guidance as to the forms of proof were removed from the Bill so whether sufficient proof is provided is a decision for the employer to make – this decision must be fair and reasonable in all the circumstances.
- How long should a period of domestic violence leave be for and who gets to decide?

- Can further leave be taken in subsequent years for the same incident? Domestic violence leave will likely be treated as similar to sick leave, meaning that entitlement can be used throughout the year for the same incident and possibly for subsequent entitlements in later years.



CAPITAL GAINS TAX THIS WAY OR CAPITAL GAINS TAX THAT WAY.....!

In September 2018 the Tax Working Group (TWG) released its Future of Tax document and like most tax practitioners our focus is on the TWG's comments on capital gains tax (CGT) which presented either taxing capital gains on a realised basis or the alternative risk-free rate of return method.

Like many, we consider the risk-free rate of return alternative a red-herring and that the most likely outcome is a regime that imposes CGT on a realised basis only. Members of the TWG have stated publicly that legislation will be enacted before the next election but will not take effect until post-election – this is contrary to Labour's statements prior to the last election. Even if Labour does not win the next election, that does not necessarily mean there won't be a CGR regime. A new Government will have to repeal the legislation and if we have a National led Government they will need coalition support unless National manages to secure 61 seats!

Our prediction is that we will have CGT regime post the next election which will impose CGT on a realised basis that even if National got back into power, it is unlikely to have the numbers to repeal it.

So let us have a quick look at National's potential coalition partners in the next election and what their stance on a CGT regime might be:

- *The Act Party:* So far, the one-man Act Party has not made any formal announcements on their position on a capital gains tax but if David Seymour's press release of 10 September 2018 is to be believed then it seems that he sits on the side of ditching the tax. Generally speaking, Act favours less taxes and less Government spending so it would be a surprise if Act did not support repealing the legislation.
- *NZ First:* Winston Peter's NZ First Party has also not made any public announcements on its position on introducing a CGT regime. NZ First is, however, part of the current Government and its votes are relied upon by Labour to pass new legislation. It would be an almighty U-turn for NZ First to support the repeal of the legislation when it appears they will most likely vote for

it as part of the existing coalition. That said, only Winston knows what Winston is thinking!

- *The Green Party:* The Greens have a clear view on introducing a CGT regime. In its policy document, the Party supports the introduction of a comprehensive CGT regime on inflation-adjusted capital gains at the time of realisation. It would seem highly unlikely the Greens would vote to repeal the legislation should there be a change in Government.

Our prediction is that we will have CGT regime post the next election which will impose CGT on a realised basis. Our fingers are crossed that the Government will adopt the Australian model under which CGT is imposed only on assets acquired after specified effective date – however this is not TWG's recommendation at this point.

What can you do now?

Not a lot, and nor is there a need to act now. The TWG recommends taxing assets realised after a specified "effective date". Assets already owned on the 'effective date' would therefore need to be valued and appreciation in the value of the asset accruing before the effective date would not be taxed. This is what we understand Canada did when it introduced its CGR regime. This approach would result in significant compliance costs on implementation. The family home is likely to be excluded from CGT.

There may be an opportunity for some property investors to complete remedial works (R&M) on their investment properties (residential and commercial) to ensure they obtain a high cost base at valuation/effective date.

TOWN AND AROUND



Principals, Callum Thompson and Richard Stannard, along with fellow staff member Jo Sherratt, recently joined Joanna Bradnock and her family to celebrate Joanna attaining the Chartered Accountant qualification.

While working at Graham & Dobson, Joanna undertook the Chartered Accountants' study programme, taking a break to have her first child. She has a background in farming and helps her husband and his family with the accounting side of their hay and contracting business, Bradnock Contracting. To further develop her skills and experience, Joanna has recently moved to our audit team. Joanna thanks Graham & Dobson for all their support during her studies.

CHAMPAGNE CHRISTMAS!

A company held a reception to celebrate Christmas and a special vintage of their 'Noel' champagne. The waiter gave each guest a glass of the champagne. But on inspection, each guest noticed that their glass contained a fly.

- The Swede asked for new champagne in the same glass.
- The Englishman demanded to have new champagne in a new glass.
- The Finn picked out the fly and drank the champagne.
- The Russian drank the champagne, fly and all.
- The Chinese ate the fly but left the champagne.
- The Israeli caught the fly and sold it to the Chinese.
- The Italian drank two thirds of the champagne and then demanded to have a new glass.
- The Norwegian took the fly and went off to fish.
- The Irishman ground the fly and mixed it in the champagne, which he then donated to the Englishman.
- The American sued the restaurant and claimed \$50,000 in compensation.
- The Scotsman grabbed the fly by the throat and shouted, "Now spit out all that you swallowed."

