



AUGUST 2012

USEFUL SNIPPETS

AUSTRALIA - THE LAND OF TAX TRIPS AND TRAPS

Australia! The land of promise – a chance for riches, luck and opportunity. However, when it comes to taxation it is a land of trips and traps.

Australian rental properties – for those New Zealanders with apartments on the Gold Coast, the Australian Government had a nasty surprise for them on 8 May 2012. From that date, it removed the 50% capital gains tax (CGT) exemption for non-residents on any capital gains accrued after 7.30pm Australian time on that day.

Kiwis with rental properties in Australia now not only have to pay the higher non-resident tax rate on their rental income (32.5% from the first dollar of net income) but any capital gains made after the budget announcement is subject to full CGT. Of course, apartment prices are down at the moment, so former capital gains lost with the global economic crisis will be fully taxable when prices recover!

As non-deductible costs can reduce the CGT amount, good records should be maintained of all costs and capital expenditure (e.g. interest, land tax, rates etc).

Temporary tax residents – Australia has a tax exemption for a person who qualifies as a 'temporary resident'. A temporary resident is a person who holds a temporary visa for Australia, is not a resident under the Social Security Act and does not have an Australian resident spouse.

New Zealanders do not need a temporary visa to live and work in Australia as we are issued a 'special category visa' each time we visit that country (unless the visitor has a criminal record which requires a visa). Most Kiwis qualify for the temporary resident tax exemption by virtue of holding the special category visa.

There is a fortunate outcome for New Zealanders in that there are no time limitations as to how long a Kiwi can remain a temporary resident as restrictions on time are linked to an immigration visa which we are not required to have.

Last year the Australian Tax Office (ATO) formed a different view on the matter and announced that temporary resident status is forfeited by a Kiwi migrant once they leave Australia even for a short period though they have resided in Australia for a number of years. This compares to the holder of an immigration visa who can come and go from Australia as much as they like.

However, in a change of heart, the ATO has now released a draft ruling that Kiwis 'temporary resident' status will not be lost in circumstances such as a quick visit home. Now that is lucky!

INFLATION LOW

Inflation, as measured by the consumer price index (CPI), was 0.3 percent in the June quarter and just 1.0 percent for the year ended 30 June 2012, the lowest annual rate since 1999. Prices for cigarettes and tobacco were up 3 percent and rentals for housing were up 2.3 percent – these were the most significant upward contributions.



There were lower prices for telecommunication services (down by 9.1 percent), audio-visual equipment (down 19 percent), international air fares (down 5.3 percent) and vegetable prices were down 5.1 percent, contributing the most significant downward trend for the year.

FARM PRICE INDEX LAUNCHED

The Real Estate Institute of New Zealand has launched a new Farm Price Index. The index has been developed in conjunction with the Reserve Bank and should be a more accurate indicator of changes in farm sales prices because it adjusts to take account of location, size and farm type.

The index indicates that for the three months ended in June, farm prices were 2.4 percent lower than the same time last year and 24.8 per cent lower than the market peak in October 2008.

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SMALL BLOCK FARMS

Small block farms, often referred to as lifestyle blocks, have remained a long standing topical issue in New Zealand. Whether it is purchased with a view to operating a proper business or to simply live on an extensive section while carrying on some business activities, taxpayers seem very keen on claiming whatever expenses they can as taxable deductions to reduce their personal tax income. However, the Inland Revenue has and will always argue that it is a lifestyle block if it is purchased solely for domestic purposes or the facts of the case are so grey as to indicate that it had nothing to do with any business venture.

This may pose a huge problem where there is a genuine intention to run the small block as a business which has incurred losses in the initial years, as would be normal, and the IRD questions the very existence of it as a business!

It is therefore absolutely important to establish that you intend to run the small block as a business. There are a number of conditions which determine whether the farming activity constitutes a business. These include:

- the nature and pattern of the activity
- the scale of operations
- the commitment of time, money and effort
- the statement of intentions made by the taxpayer
- the financial outcome (is it likely to make a profit?)
- whether the activity carried on is of the same kind and manner as any other profitable farming operation



Once the fundamental purpose of the lifestyle block as a business is established, all business-related expenses will be deductible. However, care needs to be taken when funds are borrowed as the

Inland Revenue Department may not allow a claim for the full mortgage interest. The premise is that the dwelling house on this small block is of a private nature and any interest paid on the mortgage will have to be apportioned between the private dwelling house and the land and buildings used for the business.

It is best to contact your advisor if you are contemplating buying a lifestyle block.

WORK BREAKS

When must they be taken? How long are they? Are there any such things as cigarette breaks? And what if your staff members don't take their breaks, preferring instead to spill coffee and drop muffin crumbs all over the keyboards?

Until 2009, these and other related questions were solely a matter for contractual agreement between the parties, having regard to health and safety and best practice.

The Employment Relations Act 2000 sought to provide some minimum workplace obligations - although a



degree in advanced mathematics may be required to apply them!

Rest and meal breaks are determined by the number of hours in the relevant 'work period' or work day. A work period of 4 hours or less attracts one 10 minute rest break. A work period of between 4 and 6 hours attracts one 10 minute rest break and one 30 minute meal break and a work period of between 6 and 8 hours must have two 10 minute rest breaks and one 30 minute meal break. Work periods above and beyond 8 hours get the full entitlement and more in accordance with a number of hours actually worked. The Act also deals with when the breaks must be taken, in the absence of agreement between the employee and the employer. The provisions are surprisingly complex but in essence, meal breaks are to be taken in the middle of the work period and rest breaks in the first and third periods.

The onus is on the employer to 'provide' employees with minimum breaks. So, an employer who actively prevents staff from taking breaks risks breaching the Act, as does one who provides no breaks at all. However, employees who freely choose not to take advantage of rest and meal breaks do so as their own preference and without comeback on the employer. The Act provides no provision for separate cigarette breaks and employees with the habit will therefore need to confine smoking to rest and meal breaks.

TAKING THE PLUNGE: USING THE SOCIAL MEDIA FOR BUSINESS



Social media, such as Facebook, Twitter, YouTube and Trade Me, has exploded into business consciousness. What was once the domain of your cousin's baby photos and funny videos of cats has now transformed into a viable marketing channel used by businesses of all shapes and sizes. More and more companies are joining the dialogue and are using social media as a way to complement – and in some cases – replace traditional marketing channels. It is free (at least in monetary terms), instant, and you control what you say and when you say it – meaning it can be a great marketing tool for small businesses.

The biggest benefit to engaging in social media, according to advertising businessman, Vaughan Davis, is the ability to massively grow your personal and professional network and, as conversations about your business are happening right now whether you use social media or not, engagement in whatever platform you choose enables you to listen and possibly establish connections which will be of long term benefit to your business. Interacting with people and organisations that your business would not normally be in contact with can build success from the sales that organically come from this network.

If you are a panel beater, for instance, you may not consider social media a relevant platform to promote your business but consider this: if you are posting interesting photos of jobs you have done, or tips on how to better maintain the paintwork on your car, people may want to follow you. From that you could get recommendations and referrals from people – and it is a growing community with two million Facebook users and even more site users on Trade Me in New Zealand – who use the social media to source recommendations for services. You don't even need to be actively self-promotional to get business – just concentrate on being relevant and interesting.

SKY TELEVISION

From October 2012, New Zealanders will start switching from analogue to digital television as the analogue service is gradually phased out across the country. Viewers will have to switch to SKY, Freeview or Telstra Clear and this may involve the purchase of a decoder box or subscription to a digital television service.

Farmers use the television to check the weather, the dollar, business news, market updates and special interest shows and documentaries. With the shift to digital television, information such as 24-hour weather forecasting, dedicated country and farming programmes and Fonterra's public broadcast channel become readily available.

To access these channels, farmers need to be SKY subscribers. The base package for SKY costs \$46.12 per month and provides the normal free channels (TV One, Two, three and Prime) as well as approximately 55 other channels. The SKY farming channel (Country 99TV) costs an extra \$16.68 per month.

Section DA1 of the Income Tax Act 2007 permits a deduction if the expense is incurred in deriving business income. We believe that the SKY subscription for news, weather, business and rural channels meets this test.

The Inland Revenue Department prohibits a deduction if the expenditure is of a private or domestic nature and this would exclude any deduction for SKY movies, sports or arts channels charged in excess of the basic SKY subscription. We are advising claim 50% of the basic subscription cost and 100% of the cost of the SKY farming channel if farming clients subscribe to SKY.

BID TO EMULATE US SUCCESS WITH SHALE OIL

A drilling platform on a property at Te Karaka could hold the key to New Zealand's future prosperity. It is the first physical sign of a \$100m commitment to explore the major unconventional resource potential believed to exist in the tight oil source-rock formations in the region. This rock is said to have many similarities to North America's Bakken source-rock formation in the Willston

Basin, North Dakota. Texas-based giant Apache Oil which farmed into permits held by Canadian-based TAG Oil will in the first instance be seeking to prove this potential. In 1999 North Dakota's rig count stood at zero after small pockets of conventional oil ran out. Now the Bakken oilfield is pumping out more than 550,000 barrels of shale oil a day and Willston, the town at the centre of the field, is booming.

This year shale oil should contribute some 720,000 barrels per day to America's total production. And shale oil deposits in Texas, Ohio, Nebraska, Colorado and Kansas could eventually contribute as much as 5 million barrels per day. TAG and Apache have completed a 2D seismic programme within the East Coast permits and plan to drill four vertical wells targeting tight oil source-rock.

TRIAL PERIODS – ARE THEY WORTH HAVING?

A trial period is designed to give employers the opportunity to take a 'punt' on a prospective, but untried and untested employee (previous or existing employees can't be trialed), and to end the relationship within three months if things just do not work out without having to worry about defending costly and time-consuming unjustified dismissal claims.

However, an employee who is dismissed under the provisions of a trial period still has recourse to all other personal grievance and employment related claims.

This means that employers can still face possible legal action if employment ends unhappily. And then there is the increasingly more specific requirements relating to the trial period itself. A recent case has reinforced the fact that the inclusion of and the wording of a trial period provision must have been agreed to prior to the first day of work at the point where written terms and conditions are being negotiated. Waiting until after employment is offered and accepted, or until the first day of work, is simply too late. The individual is already an 'existing employee' and therefore cannot be subjected to a trial period. Yes, it is a minefield but given the correct documentation and processes, trial periods can be successfully navigated.

QUOTE OF THE QUARTER!

**I always take life with a grain of salt,
A slice of lemon and a shot of tequila!**



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PARAPROSDOKIANS...

are figures of speech in which the latter part of a sentence or phrase is surprising or unexpected; frequently humorous. Winston Churchill loved them

- Where there's a will, I want to be in it.
- Since light travels faster than sound, some people appear bright until you hear them speak.
- War does not determine who is right – only who is left.
- Knowledge is knowing a tomato is a fruit. Wisdom is not putting it in a fruit salad.
- They begin the evening news with 'Good Evening', then proceed to tell you why it isn't.
- Buses stop in bus stations. Trains stop in train stations. On my desk is a work station.
- Women will never be equal to men until they can walk down the street with a bald head and a beer gut, and still think they are sexy.
- Behind every successful man is his woman. Behind the fall of a successful man is usually another woman.
- A clear conscience is the sign of a fuzzy memory.
- Money can't buy happiness, but it sure makes misery easier to live with.
- You're never too old to learn something stupid.
- To be sure of hitting the target, shoot first and call whatever you hit the target.
- Change is inevitable, except from a vending machine.

