

# Business Advice



## Business Matters

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### GST - payments basis threshold

You can only use the payments basis for GST purposes if the total value of your taxable supplies will not exceed \$1.3million (GST excl) for the current month and the previous 11 months **or** the current month and the next 11 months.

Note the word **or** - this means that a person may satisfy either on the above in order to remain on the payments basis.

A person who has supplies exceeding \$1.3million in the previous 12 months but expects to have less than \$1.3million in the next 12 months can stay on the payments basis.

Any GST payable due to changing from a payments to an invoice basis must be paid on or before the last day for filing the return for the last taxable period prior to the change in basis being effective.

Note if the IRD find you are incorrectly using the payments basis they can (and do) go back to the period you should have changed and charge interest and penalties from that due date.

This change can cause cashflow issues as you usually have your debtors/ accounts receivable (GST to pay) should be greater than your creditors/ accounts payable (GST to claim) and therefore a payment has to be made and in some cases this can be large.

If you think you will exceed this threshold then you need to plan what period you will change - preferably when your debtors are low.

If you would like any assistance with this matter please feel free to contact us.



## Trusts can be a great idea - as long as you carry out your duties

*“if you want the court to treat the assets as being the trust’s and not yours, then you should have done the same”*

Many people in business have set up trusts, to which they transfer assets, start a gifting programme and then promptly forget about important (not to mention ongoing) administration and record keeping requirements. Also often overlooked is that transfers to a trust have no effect on a Trustee’s ability to use or dispose of those assets **in the same way** as when they were personal property.

In relation to trustees duties (and liabilities) ignorance is no excuse or protection. When determining whether assets belong to a trust or the individual, the courts and the Inland Revenue are increasingly giving less weight to the documentation, and more to how the assets have been treated and how the trust is run.

### **To whom do Trustees owe a duty?**

As a trustee you owe your duties to the trust beneficiaries, the IRD and any other party that has an interest in the trust’s assets (such as banks, finance companies, and so on).

In certain circumstances trustees can be held personally liable and accountable for their actions, or inactions as the case may be. For instance, trustees can be personally liable under the Income Tax Act to pay income tax owed by the trust.

### **Record keeping duties of a trustee**

A number of Acts regulate the administration and record keeping of a trustee, including the Trustee Act 1956, Tax Administration Act 1994, Electronic Transaction Act 2002 and, in some cases, the Financial Reporting Act 1993. Key points are:

- Trustees have a duty of ‘efficient management’ and must ensure that assets are managed in an efficient and economic manner. This means trustees must take all necessary precautions such as those that would be made by a prudent business person managing similar affairs of his or her own.
- Trustees must keep and render to the beneficiaries a full and proper record of their administration of the trust assets,

including appropriate accounting records and financial statements. These records are the direct responsibility of trustees along with tax returns and all documentation (including bank statements, invoices etc.) - all of which must be kept for a period of seven years.

Note that records relating to the management of the trust, such as resolutions, deeds, and the like, should be retained for the life of the trust (up to 80 years).

- A trustee also has a duty to act personally in managing the trust’s affairs. This means trustees generally cannot delegate their powers and discretions.

### **The steps trustees should take**

Some of the more important steps trustees can take to protect themselves against liability include:

- Familiarising themselves with the trust deed and other relevant documents, as well as all the trust’s assets and any liabilities and obligations attached to them.
- Seeking beneficiary approval of proposed or current record keeping procedures and then ensuring detailed records and accounts are kept.
- Ensure trustee meetings are held, minuted, signed and retained.
- Regularly reviewing the financial performance and position of the trust to ensure it is satisfactory (solvency being a key measure here). The trustees should also meet to discuss major decisions such as the sale or purchase of a significant asset. These decisions must be recorded in resolutions in the trustee minute book (including where meetings are held and resolutions approved over the phone), and minutes from the meeting should be circulated and signed off by all the trustees as a record.
- Separate trust bank accounts are required to ensure that personal and trust funds do not become mixed up.



## Trusts can be a great idea - as long as you carry out your duties

- A chartered accountant should be employed to prepare the trust accounts and other professional advice taken whenever necessary (for example, investment advice).

All of this may seem complicated and potentially expensive, but in fact the actual time needed to administer a trust need not be great. Trustees should meet formally at least once a year to review investment portfolios, strategies, distribution issues, and to consider and approve the trust's accounts and balance sheet. Additional meetings and attendances may be needed depending on the nature and extent of the trust fund.

### Summary

The more complicated and varied the assets that are held in trust, the greater is the time required for administration. For example, a trust with only one asset, such as a mortgage-free family home and all outgoings paid by the family members, would require very little administration and may not have to complete an annual tax return.

On the other hand, a trust with a substantial variety of assets, including income-producing investments, would require a lot of administration, not just to complete an annual tax return, but also to review investment strategies and the ongoing upkeep and administration of the assets themselves.

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## Problem Workers Paid Off

The Employers and Manufacturers Association northern branch says:

- A survey showed 30% of employers said they had had a workplace problem in the past year classified as a personal grievance.
- More than 70% of personal grievance claims were settled out of court.

- 25% of them paid their employees off to avoid the costs of a court battle.
- It was cheaper and less risky for an employer to pay off a worker with \$3,000, for example, than face the minimum \$5000 cost of going to court.

The Government was reviewing the personal grievance legislation Lowe said.

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## United Future promises cheaper health insurance

United Future health spokesperson Judy Turner says her party's policy of tax breaks for people with health insurance would be a boon for the increasing number of people taking out health insurance.

"With the uncertainty surrounding waiting lists and strikes right now, more people are sensibly looking after their own healthcare by investing in medical insurance."

Turner was responding to the news from Southern Cross that 12,700 people have taken out health

insurance in the past six months, compared with just over 7,300 in the financial year 2005-06.

"United Future would introduce tax concessions, prioritising it to those aged over 65. They are the ones who can least afford health insurance but are too scared to cancel it.

"While ensuring their own wellbeing, these people are also freeing up extra space in hospitals and on waiting lists. United Future believes such people should be rewarded," Turner said.

We are able to implement medical/healthcare insurance for you through AIA and Sovereign Assurance, both of which are excellent healthcare insurance providers.

Phone Juliet for assistance.



## Further Changes

- **Student Loan Repayment threshold rises**

The income threshold at which New Zealand-based borrowers must begin repaying their student loans will rise from \$17,160 to \$17,784 on 1 April 2007.

- **KiwiSaver tax exemption extended**

The tax exemption for employer contributions to KiwiSaver will be extended to other registered superannuating schemes, the government announced. From 1 July 2007, employer contributions will be exempt from specified superannuating contributions withholding tax for amounts of up to 4% of an employees gross salary. *More in-depth information on this will be in our next Newsletter.*

- **New style Certificate of Exemption**

The new certificates will be a convenient credit card size and will have more security features. The IRD will also have the discretion to issue certificates for a longer exemption period - from one year to five years, depending on your compliance history.

The changes will apply to certificates that take effect from 1 April 2007.

The processes around applying for a certificate, and the eligibility criteria remain the same. People qualify for a certificate if they have a good record of filing returns and paying their tax. Those with a very good compliance history will be eligible for a longer exemption period.

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## Interest Deductibility

The IRD recently released its interpretation on deductibility of interest. It is probably more relevant to trusts, partners, qualifying companies, and individuals as they have to provide a nexus between the income earned and interest expenditure. Companies are automatically entitled to deduct interest.

Where it gets murky is when the funds are used to retain assets rather than produce income. According to the current view of Inland Revenue Department, it will allow an interest deduction if it is satisfied that there is a sufficient connection between the interest and assessable income. If the taxpayer can establish that *all* the following 3 factors are present then the taxpayer will have certainty of interest deduction.

These are:

- The taxpayer would definitely have realised the income-earning assets if they had not borrowed;
- The liability that the borrowings were used to discharge arose in connection with the income-earning assets retained;
- The liability that the borrowings were used to discharge was involuntary.

The above is Inland Revenue Department's approach to clarify its intention to allow interest deduction on funds borrowed to retain assets - however, if the above factors are absent, it will consider on a case-by-case basis.

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