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Client Newsletter

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Risk Review Letters

The IRD was supposed to send risk review letters around May 2012 to people (mainly professionals) that the IRD considered were avoiding tax. In other words, professionals they consider were operating under structures similar to the Penny and Hooper case. Since the Penny and Hooper case has been thrashed to death in the media we will not go into details. Suffice it to say that the Supreme Court found the two surgeons had diverted their income through company and trust structures to avoid the top marginal tax rate of 39%.

Following the judgement, the IRD conducted a roadshow late last year and indicated that it will not go back more than two years if professionals (who believed they had a similar set-up) came forward and made a voluntary disclosure. The IRD probably expected a large number of professionals to make voluntary disclosures thereby

removing the need to send risk review letters altogether but this does not appear to have happened.

It is, however, interesting to note:

- that New Zealand has a higher number of trusts per capita than comparable countries and that the number of companies and trusts formed spiked during the period when the top tax rate was 39% according to some reports;
- that the IRD has published statistics on industry-based financial information such as turnover figures for small, medium and large businesses in say the food industry thereby setting up a benchmark for each industry.

If you receive a risk review letter from the IRD, contact your tax advisor before taking any steps.

ACC CoverPlus Extra

Who qualifies?

When a person starts self-employment, ACC CoverPlus for standard personal injury cover automatically applies. An alternative to the standard cover is ACC Coverplus Extra, which is ACC's agreed-cover product for self-employed people or shareholder-employees. Instead of the weekly compensation limit being based on 80% of the individual's previous liable earnings under the standard ACC cover, CoverPlus Extra pays 100% of the agreed cover level. There are a number of common business situations where CoverPlus Extra may better suit your ACC entitlement in the event of an accident or injury.

For example:

- When you don't have a history of liable earnings. In this situation you may only get the minimum payment in the event of an injury;
- If your liable earnings fluctuate from year to year;

- Farming partnerships where one partner is responsible for all, or a majority, of the revenue income.

ACC CoverPlus Extra may also be a good option for you if you feel you need a higher level cover than your taxable income. For example in a partnership, where one partner is a passive earner, the other partner's level of cover can be negotiated with ACC so that it takes into account the total partnership liable earnings.

Premium Deductibility

ACC CoverPlus Extra premiums were not tax deductible either to the company or to shareholder-employees for many years. This was because the shareholder employee is not able to claim expenses relating to his salary and since the ACC levy invoice was not billed to the company, it too could not claim a tax deduction.

However, the Inland Revenue Department now allows the employer company to treat it as a tax deductible

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expense if it pays the shareholder-employee's ACC CoverPlus Extra levy or reimburses the levy. Note that the Earners' levy portion is excluded.

For more information about ACC CoverPlus Extra or to discuss your own situation please contact this office.

Earners' Levy Thresholds

- The annual maximum earnings for the 2012-2013 income year on which earners' levy is payable has

increased from \$111,669 to \$113,768. However, the levy rate has dropped from \$2.04 to \$1.70 per \$100 of earnings.

- The annual minimum amount of earnings on which ACC is payable has also increased to \$27,040 for those working 30 hours or more a week if 18 years of age and over.

Intellectual Property (IP)

What is it?

Intellectual property is a term used to describe that area of law that recognises the creativity and intellectual output of the human mind. The six main types of rights that are usually protected from unauthorised use are patents, trademarks, designs, copyright, geographical indicators, and plant variety rights.

Patents are granted under the Patents Act 1953 for any new invention or manufacturing process. Once a patent is granted the owner has the exclusive right to make, use or sell the invention for 20 years provided the renewal fees are paid. Before applying for a patent it is advisable to check with the Intellectual Property Office as to the originality of the invention or manufacturing process to prevent infringement of rights already patented.

Trademarks are signs or symbols that distinguish a set of goods or services from those provided by other traders. Trademarks that describe, praise, offend or mislead about goods or services cannot be registered, but once a trademark is registered the owner has the exclusive use for an unlimited period provided the prescribed renewal fees are paid.

The **Design** Act 1953 affords protection by means of registration to a design that is original and relates to the shape, configuration, pattern, or ornament applied to an article. The registration of a design gives the owner 15 years of exclusive rights provided renewal fees are paid.

Copyright is covered by the Copyright Act 1994 which provides protection for any original literary, dramatic, musical and artistic work, sound recording, film broadcast, cable programme or published edition. Copyrights are not registered but automatically come into existence on the completion of the author's original work. It is identifiable by the international copyright symbol ©. Copyright provides protection for the period of the life of the author plus a further 50 years.

Geographical Indicators are registered to designate the origin of goods offered for sale in New Zealand.

Plant Variety Rights protects the breeders of new plant varieties by allowing the owner exclusive rights over the new variety.

Pitfalls and Redress

There is a risk of keeping the intellectual property confidential, other than copyrights that afford automatic protection, between the period of initial conception to the actual application for registration especially if third parties are involved in its development. The risk can be avoided by signing a confidentiality agreement to protect the information from being misused or stolen. The Fair Trading Act is a good watchdog for those persons whose competitors engage in trading activity that is misleading or deceptive. There is also the common law right of passing off that offers some redress where a person disguises his goods or services in order to divert trade or injure another person's trading reputation.

Tax Implications

Generally, depreciation is not claimable on an intangible property unless it has a finite useful legal life. Even then, it must not carry a high risk of being used as a tax avoidance scheme. Schedule 14 of the Income Tax Act 2007 lists the types of intangible properties that may be depreciable. Usually, licensees who are granted the right to use the intangible property for a limited period, are able to claim a depreciation deduction. The owners, on the other hand, do not always qualify for a deduction e.g. an owner of a trademark will not qualify for a deduction because it will last perpetually. However, a patent owner is entitled to claim depreciation over the statutory life of the patent.

Please contact your advisor for further information on IP rights.

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Client Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Client Newsletter is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 188/2011.