

Client Newsletter

April/May 2008

Transfer of depreciation property between associated persons

The IRD issued a Standard Practice Statement (SPS 07/05) which sets out when the Commissioner will exercise its discretion under section EE33 of the Income Tax Act 2004 which permits depreciation deduction based on the “new” acquisition cost where a purchaser has acquired the property from an associated party.

As a general rule, when a depreciated property is transferred to an associated party, depreciation is limited to the lower of:

1. original cost to the vendor; or
2. acquisition cost of the associated party.

However, the Commissioner may use its discretionary powers according to SPS 07/05 if certain factors are present, that is, the associated party may be allowed to depreciate the property at the acquisition cost.

The following are the factors that the Commissioner will consider before using discretion:

1. Is the transfer genuine?
2. Is the transfer at a fair market value?
3. Is it a permanent transfer of legal ownership of the property?
4. Does the vendor continue to retain control over the associated purchaser in any way or have beneficial ownership/interest in the property transferred?

5. Is there a commercial or non-tax reason to transfer the property?

The Commissioner will require a written request from the taxpayer along with a comprehensive list of complete and unambiguous documentation that covers the above factors. For example, to support the “fair market value” requirement, an independent registered valuation will need to be enclosed with the application.

Most taxpayers may run into difficulty with supporting information required on the non-control or non-ownership of the property. For example, the vendor cannot have a leaseback arrangement with the associated party after the purchaser acquires the asset as this may defeat the fourth requirement.

Also, individuals who wish to retain their home for rental income often achieve this by transferring their home into an LAQC company in which they are the shareholders. Although the house is let out to an independent third party at market rental, they continue to benefit from the property. In such a case, it would be hard to prove they do not have a beneficial interest in the property. However, this particular instance is more complex than can be covered here fully so it is best to seek tax advice.

The statement, while tightening the rules in this area, also clarifies when the new cost price can be used.

Provisional tax and GST returns

By 31 March 2008, all taxpayers who are GST-registered will have their GST returns aligned to their balance date. Those with early balance dates have already been aligned. This has been done so that the taxpayers are able to pay their 2009 provisional taxes with their GST payments.

Those who file their GST returns online have the option to file their provisional taxes online as well. The GST returns will have an additional question asking whether the taxpayer would like to pay their

provisional tax and if "yes" is selected, then the tax section will appear at the end of the return with the necessary fields to calculate the provisional tax.

It should be noted however, that the provisional tax section is not customised to the taxpayer's circumstances and the amount calculated may not be the correct amount. It will pay to contact your tax advisor before switching onto the automated provisional tax calculation.

Donations

Individuals

The donation rebates ceiling of \$630.00 for individuals has been removed from 1 April 2008. Individuals will now be able to claim a 33% rebate on all donations made during the year but will be limited to their annual net income.

Companies

The close company restriction on donations will also be removed from 1 April 2008. Companies will now be able to deduct donations up to its net income.

KiwiSaver and employer contributions

From 1 April 2008, employers are required to make compulsory employer contributions to their employee's KiwiSaver scheme if the employee is having KiwiSaver contributions deducted from their salary/wages.

The Inland Revenue Department has updated the monthly employer deductions form (IR345) which will be mailed out in time for the April deductions. The compulsory contribution is set at 1% of the employee's gross wages and will be phased in to 4% by 2011 at an annual increase of 1%.

Also included in the IR345 form is a box to claim employer tax credits (ETC) which is equal to the amount contributed by the employer, but limited to \$20.00 per member (of the KiwiSaver scheme) per week. The ETC can be claimed for both compulsory and voluntary employer contributions to complying funds from the first pay day after 1 April 2008.

The ETC is offset against the contributions due and only the net amount is payable to the Inland Revenue Department.

In order to avoid delays and processing errors at the

Inland Revenue Department the payroll administrator may want to ensure the following steps are taken:

- Use the correct name and IRD number of each employee on the forms.
- Send the Inland Revenue Department the new employee details (KS 1) form *before* the monthly schedules are sent. The Inland Revenue Department can then set up an account for the employee's contributions first.
- Check that the payments are correct. The employer cannot deduct more than 8% of the employee's gross salary or wages.
- Calculate the employer contributions and employer tax credits correctly.
- File the monthly schedules on time. If filing online, the Inland Revenue Department processing time is 11am daily.

The above changes are found in the updated employer guide (KS 4) and employee information pack (KS 3) which were posted to employers by the Inland Revenue Department in February 2008. If you have not received this, you can call the Inland Revenue Department on 0800 257 773 and obtain the information.

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. 172/08.