BC'S BUSINESS BRIEFS

Trusts and the new disclosure rules affecting all trusts required to file a tax return

For those clients who have domestic NZ trusts, you may be aware that recent changes to the annual disclosure requirements to IRD have started applying from the current 2022 income year. After the new Trustee Act was introduced with practical effect from early 2021, which formalised greater disclosure requirements on trustees to adult beneficiaries, the government has this year imposed on all trusts that file a tax return, a requirement to disclose additional information to IRD.

The requirement appears to come from a deep-seated suspicion that 'wealthy' people are not paying their fair share of tax and one of the main ways they are doing this is by the extensive use of trusts to hide or reduce their income. While a persuasive argument can be mounted that this simplistic view of the world is completely misinformed, it is nevertheless a requirement that all 2022 trust tax returns will require the following additional information to be disclosed with the return.

These mandatory disclosures fall broadly into three categories;

1. A 'one off' disclosure (IR6P) giving details of the person or persons who hold the Power of Appointment (of trustees) for the trust.
2. Annual disclosure of the following information;
   a. Details of all Beneficiaries (IR6B);
   b. Details of the Settlor or Settlors of the trust (IR6S). This requirement is more onerous than it sounds as a 'Settlor' as defined by the tax legislation to be much wider than just the person or persons named as settlors in the Deed. It can include Beneficiaries who have received distributions from the trust that have chosen not to withdraw the settlement from the trust and accordingly have a Beneficiary Loan account with the trust, on which no interest is being paid, as one example.
3. Financial information disclosures that mean we are required to include direct information from the Profit and Loss Account and Balance Sheet within the body of the return in addition to the IR10 which is required to be submitted with the return wherever there is 'Business' income of any sort. This effectively means a doubling up of some of the information within different sections of the tax return.

The specific information required for each of the separate disclosures required are as follows;

IR6B
Name of beneficiary and current address;
Date of Birth;
IRD number;
Distributions during the year differentiating between Income, Capital and 'Corpus' (an artificial distinction from Capital);
Beneficiary Account transactions showing opening and closing balances and transactions during the year;

IR6S The personal details are similar for the settlors to the beneficiaries; Settlements made during the year differentiated between Cash, Financial Arrangements, Land, Buildings, Shares, Services and 'other'.

IR6P The personal details are also similar for the Appointor's to the beneficiaries information.

We estimate that on average a trust tax return is taking us between 30 minutes and 1 hour in additional time to complete this year over past years solely as a result of the additional information required to be submitted. We have had some people say to us, 'just don't provide the information'. Unfortunately the information is compulsory and if trusts don't comply, there are penalties as high as $50,000 able to be charged against the Trustees personally, as the trustees have personal responsibility for the actions of the trust.

While the Trustee Act (which became effective for most trusts from early 2021) has seen a good number of people wind their trusts up, they remain a valuable tool for both asset protection and estate planning for many people and are therefore going to be with us for a long time to come. However with the increasing compliance requirements the days of being able to maintain a trust without the need to properly account for trust transactions and document trustees decisions on a formal basis each year are gone. The costs of administering them will continue to rise. While not yet at similar levels to compliance requirements for companies, they are nevertheless getting closer.

GST Registration

We have noticed an increased focus on GST registration by IR recently. Where activity levels have dropped from previous levels to either Nil or near Nil for business entities, IR are suggesting reasonably forcibly that there is no longer a taxable activity being conducted by the taxpayer and are advising the taxpayer that they will cancel the registration from the time period that income failed to appear in the GST returns. They are enforcing the 21 day time limit from the time they deem the taxable activity has ceased as being when the GST registration should be cancelled and any claims for Input tax credits after that time run the risk of penalties for adopting an incorrect tax position. In cases we have seen the reasons for the decline have been a result of things such as Covid impacting the business and other factors outside the business' control. There appears to be little compassion being shown by IR in to these entities.

In our experience, in many cases the facts are not as cut and dried as IR are suggesting and no two cases are the same. It is definitely worth looking at the causes of the change in trading as these types of changes can have far reaching consequences.

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