

## Penny v Hooper Tax Avoidance Verdict

In a unanimous decision the Supreme Court has agreed with earlier rulings that the Christchurch Orthopaedic Surgeons Ian Penny and Gary Hooper had used their company structures and Family Trusts to artificially lower their salaries and avoid paying the top personal income tax rate.

Following on from this the IRD has released their stance on this. They will generally focus on the most serious of artificial cases where the tax arrangement results in a substantial proportion of the income generated by the business being diverted away from the individuals that provided the service. They intend to examine arrangements where the total remuneration and profit distributions received by the service provider is less than 80% of the total distributions received by the controller, his or her family and any associated entities. In other words, is the income being "circulated" through the Trusts to the individual where it can still be enjoyed?

It is clear that the IRD is intending to pay particular attention to businesses that provide services.

We do not expect the floodgates to open and have all small businesses that pay remuneration to the business owners examined as the Penny v Hooper case has quite specific facts. It certainly means that more focus needs to be put on deciding the annual salary to be credited to ensure that this reflects a market rate, or if not, that there are valid economic reasons for the company not paying such a salary.

The line between what is and what is not avoidance has certainly been blurred by this decision.

## Talk to us about shareholding changes

We've recently experienced two cases where clients have decided to make shareholding changes in their companies, have gone online to the Companies Office website and Bob's your Uncle, shareholding changes updated!

Actually, it wasn't such a smart idea as it turns out. Changing shareholding in your company without talking to us first can have dire tax consequences. These consequences can be far reaching. Continuity of losses carried forward can be affected, imputation tax credits can be lost forever, and under the new Look Through Company regime the flow of losses will be affected.

Moral of the story? Talk to us when you're contemplating share changes. Even better, get us to be your Registered Office. In fact, we do this for most of our clients. We'll file your annual return for you, and we'll make sure you comply with all of your statutory records requirements under the Companies Act.

## New Continuity Cover

We are pleased to advise of a new simple and cost effective solution for both our Rural and Business clients via a new Income Protection based cover. The key is that the benefit is paid to the business/farm thus enabling the owner(s) to utilise the proceeds as they see fit. Some key points are:-

### Business Continuity:

- Key person income protection based on contributions to businesses income.
- Claims paid in advance.
- No ACC offsets.
- Access to business mentors whilst on claim
- Start up income protection may be available if in operation less than 3 years.

### Rural Continuity:

- Monthly benefit up to \$10,000 to a maximum of 35% of gross farm income.
- Claims paid in advance.
- Optional upgrades include no ACC offsets, peak season's assistance and partial disability income.

Should you require further information please contact David Cutfield or Tim Wild.

## Watch this Space...

### The Government's 2011 Budget signalled potential changes to the livestock valuation election process.

Government is concerned that farmers are taking advantage of the ability to switch back and forth between the Herd Scheme and the National Standard Cost Scheme, allowing increases in market values to go untaxed with decreases being deductible for tax purposes.

The IRD are recommending that elections into the herd scheme be irrevocable! As well as tightening the rules around retirement and associated party transactions.

As your accountant, we take utilising the valuation schemes to your best tax advantage very seriously.... We'll keep you posted as fresh information comes to light.



### Livestock Valuations Updated

The IRD have recently announced this year's livestock Herd Scheme Values and we think this is a great opportunity to update you on the latest movements. The Herd Scheme Values are the National Average Market Values as determined by a process involving a review of the livestock market as at 30 April.



### Sheep Values

Sheep values have increased on average by about 40% to record highs throughout the sector. The profitability being experienced by sheep farmers at the moment is reflected in the values. Also playing a part here will be the lack of supply of lambs due to the storms experienced in the Central North Island and Southland last spring which led to a significant number of lambs being lost.

### Deer Values

Deer values have generally risen overall from 2010 to 2011. The deer market is experiencing some 'quiet positivity' with worldwide demand for product beginning to increase as worldwide frozen venison stocks diminish. Demand for chilled product is increasing leading to higher meat returns for deer farmers.

### Beef Cattle Values

Beef cattle values have increased significantly on last year's values with Mixed Age cows rising by 26% to \$997 per head. This is the highest value for a Mixed Age Beef cow since the Herd Values were introduced in 1987 and is higher than the previous peak of \$916 in 2002.

The worldwide increase in demand for food is no doubt the driver behind these increases. Certainly some of the supplier driven pricing in the beef

market is leading to good returns being experienced by beef farmers at the moment.

### Dairy Cattle Values

From the 2010 year to the 2011 year there have been good increases in the value of rising 2 year heifers and mixed age cows which reflects the positivity in the dairy market from increasing dairy pay outs and from indications that these will continue for a year or two.

There have been significant increases in the value of rising 1 year heifers. These values were higher than anticipated by many commentators and are no doubt due to the high prices being achieved for heifers being sold into offshore markets such as China.



## General Summary

While there is the ability within the livestock valuation legislation to change livestock schemes, the decision to change schemes depends on a number of factors such as:

- Are market values for that class of livestock perceived to be increasing or decreasing? What confidence is there in the industry?
- Is the farmer likely to retire from farming in the short term?
- Is the farmer in a rapid growth phase, and how important is it to preserve cash flow within the farming operations in the short term?
- What is the taxable income for the farming operation, and how is the livestock valuation decision likely to impact on exposures to IRD interest?

Election decisions should be made on a case by case basis.

## University of Waikato Benchmarking

The New Zealand Business Benchmarking Survey has been run by The University of Waikato Management Research Centre for the past 30 years. During this time the University has worked closely with accountants to provide financial benchmarking information for client advice. The data for this survey is collected confidentially in partnership with MYOB NZ, from New Zealand accounting firms in public practice.

The Survey provides financial ratio reports covering income, profitability, overhead structure, ratios per person, liquidity, and capital structure for a range of NZ industries.

If you would like us to prepare a report of your business benchmarked against others in your industry, please contact your client manager or Jeanne, Tim or Janine directly.

## UK Pensions

A little known change to the Foreign investment Fund (FIF) Rules, is that UK Pension Funds are now generally included as a fund that is taxable under the FIF Rules. The new Qualifying Recognised Overseas Pension Scheme rules (QROPS) that came in, in 2006 in the UK, were designed to allow non UK tax residents living overseas (eg. New Zealand) to transfer their pension to their country of residence.

The IRD have now confirmed their ruling that generally the UK pensions will be taxed under the FIF Rules. This generally means that the movement in market value of the fund from year to year creates taxable income under one of the chosen methods. Given the IRD's increased activity in this area, we suggest that anyone who has a UK pension should contact our office to discuss whether there are any past tax liabilities, or future tax liabilities that may exist.

There may also be the opportunity to transfer your UK pension via QROPS, into your KiwiSaver Scheme, and if you would like more information on that, please contact Tim Wild or David Cutfield of our office.

## Investments OMIP

Over the years we have seen clients with investments in the OMIP Fund. Although these were managed in Australia, they are resident in the Cook Islands, and are not exempt from tax under the FIF Rules in New Zealand. The Inland Revenue have been investigating this area for some time, and they have recently reminded tax advisers that IRD now have details of all the New Zealand resident investors in these OMIP investments, and reminded us that taxpayers should be voluntarily disclosing these investments in their tax returns when filed. They have also stated that they intend to increase their audit activity in this area from later this year.

If you have any investment in an OMIP that you have not disclosed to us, we recommend that you approach us to discuss your options. Once the IRD request the details of your investment, you will have lost any chance to have any late payment penalties and potential shortfall penalties written off.



**Bright Wild & Thomas is proud to be a Xero Certified Partner. Xero is an online accounting system that is changing the way small businesses conduct their business. It provides a secure platform for business owners to collaborate with their advisors and business partners in real-time.**

Xero features a full accrual accounting system including, cashbook with automated daily banks feeds, invoicing, debtors, creditors, GST and reporting. It is a web-based application meaning that



it is delivered via the innovative business model Software as a Service (SaaS), all you need is your login and you can access all your financial data from any internet connection in the world. Every enhancement to Xero is free and available instantly without the need for purchase or installation.

The best way to see Xero in action is to attend a free, weekly web presentation run by Xero – **"An Intro to running your business on Xero (NZ)"**. You can register for this at <http://events.xero.com/nz/>. Contact Martin or Jordan for more information on Xero.

## Commercial depreciation allowances still available

While depreciation allowances on most building structures ended on 1 April this year, depreciation can still be claimed on a wide range of commercial and industrial building fit-out assets.

Just before Christmas, legislation was passed confirming that depreciation will continue to be allowed on building services assets such as lifts, air conditioning systems, plumbing and electrical reticulation in commercial buildings. The legislation recognises the practical reality that fit-outs in commercial, retail and industrial buildings suffer significantly higher wear and tear when compared to residential property.

Those clients who have never separately itemised the building fit-out assets acquired at the same time as the building can now take 15% of the building's adjusted tax value (that's the original cost price of the building less any depreciation claimed so far) less the adjusted tax value of any separately itemised fit-out assets acquired subsequent to acquisition of the building, call it fit-out and depreciate it at the rate of 2% for the 2011-12 year onwards.

For all new property purchases, building and fit-out assets should be properly segregated at acquisition date.

## Staff News

**CONGRATULATIONS to Tim Wild who has qualified and been accepted by the Financial Markets Authority as an Authorised Financial Adviser (AFA No. FSP 73561).**

Furthermore, under the new Financial Adviser regime, Tim and David Cutfield have been accepted as nominated representatives of the Grosvenor Investment Management Ltd QFE (Qualifying Financial entity 28142).

A copy of Tim and David's disclosure statements are available on our website or can be obtained from this office free of charge.

Our Financial Services division provides a wide range of services including:

- KiwiSaver
- Diversified Portfolio Investments
- Insurance Services (Life/Health and Income Protection)

1168 Amohia Street P.O. Box 917 Rotorua Ph: 07 347 0579 Fax: 07 347 0576 [mail@brightwildthomas.co.nz](mailto:mail@brightwildthomas.co.nz)

Accounting • Business Development • Risk Management • Financial Planning