



NEWS & VIEWS

SPRING 2011

■ ■ WELL DONE TEAM!



■ ■ 2012 OTAGO DAIRY INDUSTRY AWARDS

Have you, an employee, or a friend thought about entering the Dairy Industry Awards? Entries are being accepted until 20th December 2011. And, early-bird (entries prior to 1st December) are eligible to win one of three Honda XR125 Duster Farm Bikes.

The awards celebrate excellence and innovation in the dairy industry and award categories include dairy trainee, dairy manager and sharemilker/equity farmer. Entrants have the chance to share in substantial regional and national prize pools, including the Otago long term vision and industry knowledge award which we sponsor.

There are two ways to enter the competition:

- complete an on-line form via www.dairyindustryawards.co.nz; or
- contact the Otago Convenor, Deborah Erskine, on 027 2456522.

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■ PENNY & HOOPER VS THE IRD



Penny and Hooper, two Christchurch based surgeons, recently lost their appeal to the Supreme Court in a high profile tax avoidance case.

In 1997 and 2000, respectively, Penny and Hooper re-arranged their business affairs to trade as a company. The company was substantially owned by family trusts.

The arrangement was ruled as tax avoidance by the court and the surgeons will have to meet back taxes and penalties.

The key factors that led to the court's decision were:

- the high incomes of the individuals prior to forming the company
- the artificially low salaries paid to them by the new company
- the avoidance of the highest personal tax rate
- the accessibility to the company's income through dividends to the trusts, where the trusts loaned funds and provided houses and holiday homes to the surgeons and their families.

It is noteworthy that the Supreme Court observed that the structure the taxpayers had adopted when they transferred their businesses to the companies owned by their family trusts was, as a structure, entirely lawful and unremarkable. The Court also noted that there was nothing unusual or artificial in that the taxpayers caused a company under their control to employ them on a salaried basis, and the adoption of a familiar trading structure could not in itself be said to involve tax avoidance.

The outcome of the case has had significant media exposure and is expected to result in increased IRD audit activity where re-arrangements have occurred and salaries to principal employees are not market based.

■ THE ABOLITION OF GIFT DUTY



Legislation has been passed to abolish gift duty from 1st October 2011. Government officials and Inland Revenue officers have made it clear that in future current NZ legislation will be used to prevent individuals from divesting themselves of assets overnight to defeat creditors, relationship partners and Government agencies providing social assistance (rest home fee subsidies, student loans etc).

While gift duty itself is abolished, it has been recently indicated that gifts defined as 'extraordinary', i.e. they exceed \$27,000, may be subject to claw back at any time and legislation such as the Insolvency Act, the Property Law Act and Social Security regulations will be used in future to police this area.

So, substantial gifts should not be undertaken without seeking professional advice and due consideration of your personal circumstances.

■ HOLIDAY HOMES UNDER SCRUTINY

The IRD is currently phoning owners of holiday homes to remind them of their obligations to return the rental income on their properties. The callers indicate that this is a precursor to some more dedicated follow up and audit activity next year. They also freely share that the source of their information is internet advertising (such as www.holidayhomes.co.nz, www.holidayhouses.co.nz, www.bachcare.co.nz, www.nzholidayhomes.co.nz) and newspaper advertising and property management listings.

If you rent your holiday home you are required to return the rental income for tax purposes.



■ ■ KIWISAVER CHANGES

The KiwiSaver changes announced by the Government in the 2011 Budget are being phased in over the next two years. They are intended to reduce the cost to the Government of the scheme, through reducing or removing some of the current incentives.

The change that affects employers the most is the removal of KiwiSaver's exemption from Employer's Superannuation Contribution Tax (ESCT). This applies from 1st April 2012 and all employers with employees in KiwiSaver will need to calculate, deduct, and return ESCT in a similar manner to PAYE. The application of ESCT will mean the Government's tax revenue will increase and the employer contribution to an employee's superannuation savings will effectively be reduced. ESCT must be calculated at the applicable tax rate based on each employee's annual salary and employer contribution.

The other change of note is the halving of the current \$1,040 per annum tax credit to a maximum of \$521 per annum. The \$1,000 kick-start payment available to members when they sign up to KiwiSaver remains unchanged.

Although not legislated at this stage, the Government has also signaled its intention to increase the minimum contribution rate for employers and employees from 1st April 2013 to a minimum of 3% (currently 2%). Members will be able to select a higher rate of 4% or 8% for their own contribution if they wish.

Employer contributions form part of the total remuneration of the employee, and therefore should be taken into account when setting remuneration for individual employees.

Employers will need to update their wages preparation processes, as the changes come into effect, to ensure that the ESCT tax obligations are met. Computerised payroll packages will calculate ESCT for you and we can help if you prepare wages manually.



■ ■ LIVESTOCK VALUATION OPTIONS

Policy advisers at the Inland Revenue Department have released a Discussion Paper on livestock valuation schemes. The paper sets out the concerns held by the IRD that the current legislation enables farmers to enjoy a significant tax advantage over other taxpayers who must value their trading stock (cars, widgets, etc) at cost. There seems to be acceptance that the herd scheme, which enables valuation of livestock at market value, should be available to farmers, however the advantages that can accrue by being able to move between schemes are the target of the IRD.

The writers of the paper estimate that at least \$100 million tax revenues have been lost through dairy herd owners exercising the options under the current legislation and this is driving the view that changes to the legislation are required.

The discussion paper proposes that:

- once a farmer has elected to use the herd scheme, the election is irrevocable (as was originally proposed by the consultative document in 1986).
- the current ability to choose which year's herd scheme values apply when you exit farming (either through sale or taxpayer death) be removed.
- an associated purchaser be bound by any herd scheme election and base herd scheme numbers of the associated vendor. In addition, the vendor must use the year-end herd values in the year the stock are sold.



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The Grapevine

Shand Thomson recently held a MasterChef night at Otago Polytechnic's training kitchens. Team members prepared and cooked a smorgasbord of Italian food (risotto, ravioli, fettuccine,



biscotti, tiramisu) under the watchful eye of well known lifestyle chef Judith Cullen and her assistants. We enjoyed both the preparation process and (eventually) a delicious meal.



Ben Eatwell has recently been admitted into the Chartered Accountant (CA) college of the New Zealand Institute of Chartered Accountants. The CA qualification is the culmination of Ben's university degree, work experience, workshops and exams and is his passport to a Chartered Accountancy career anywhere in the world. Well done Ben!



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The paper is open for consultation and the NZ Institute of Chartered Accountants has made submissions advocating:

- lengthening the notice needed to move from scheme to scheme from two years to four years rather than removing the option altogether
- recognition of genuine inter-generational sales of livestock and a relaxation of the proposals for these transactions so that a genuine 'new' farmer purchasing from a parent can exercise their own elections.

■ ■ BOGUS IRD EMAILS

There continue to be scam emails circulating that appear to come from the Inland Revenue Department. They invariably suggest you are due a refund and require you to click on a website link to access the refund.

The Inland Revenue Department will never email anyone requesting information or about refunds and these emails are always scams designed to extract personal information from you such as your bank account number, IRD number etc. It is very dangerous to release this information to untrusted websites, so please delete any email you receive that appears to come from the IRD.

Ways to protect yourself generally on the internet include:

- taking care what information you share and who you share it with
- asking why an organisation or individual needs your information and what they intend to do with it
- keeping important documents, such as passports, in a secure place
- ensuring you properly dispose of records such as bank statements, utility bills and correspondence with your name and address printed on them
- never accessing internet banking from a shared or public computer (i.e. an internet cafe)
- removing all personal information from computers before you dispose of them
- being suspicious of events (i.e. letters from creditors, emails from the IRD or your bank, bank transactions you can't remember, texts from people you do not know) that could be scams.

If you have any concerns in this area please give us a call.

