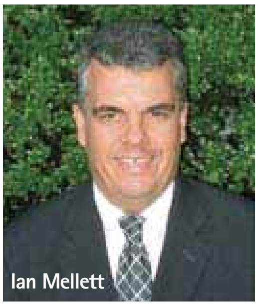
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# QUAY LAW LEGAL UPDATE

Advertorial

*by Ian Mellett of Quay Law Solicitor*

*In this issue, Auckland lawyer Ian Mellett discusses some of the sweeping tax changes announced recently and particularly those affecting investment properties.*

The recent budget has delivered the biggest tax changes in New Zealand in the past 25 years, affecting taxpayers across the board and especially those with property assets in LAQC (loss attributing qualifying company) structures. One of the most significant changes has been the reduction in the corporate tax rate to 28% which clearly illustrates the intention of the current Government to make New Zealand competitive and attractive to foreign investors.

The specific changes announced are as follows:

**Tax rates**

Personal tax rates will change from 1 October 2010

| | % | % |
|---|---|---|
| | **New Rate** | **Old Rate** |
| 0 - $14,000 | 10.5 | 12.5 |
| $14,000 - $48,000 | 17.5 | 21 |
| $48,000 - $70,000 | 30 | 33 |
| $70,000 + | 33 | 38 |

Company tax rate will reduce from 30% to 28% from 1 April 2011.
Trust tax rate remains unchanged at 33%.
Investment tax rates including PIE's to be largely aligned to the company tax rate of 28%.

## GST

To increase from 12.5% to 15% from 1 October 2010.

## Working for family's eligibility:

Eligibility criteria will be altered to prevent rental and investment losses being offset against taxable income when determining benefit eligibility.

## Changes to the depreciation treatment of plant, machinery and buildings:

These changes are complicated and will not be addressed here.

## LAQC's

Legislation is to be introduced soon that will require LAQC's to be taxed as if they are limited partnerships.

The reduction in the company tax rate was surprising, given that New Zealand invariably follows Australia's lead and not the other way around. It is not unusual for business owners to have their companies owned by family trusts. Considering the 5% difference between the 28% corporate tax rate and the 33% trust tax rate, directors may opt to retain and reinvest profits within company structures rather than distribute profits as dividends that will be taxed at 33% in the shareholder's hands.

The reduction in the personal tax rate of 5% for those taxpayers earning in excess of $70,000 is significant. It should also be noted that many taxpayers with investment properties are currently in the top personal tax bracket. Although there will possibly be extra tax payable as a result of the removal of depreciation allowances on buildings, this should be compensated for by the tax cut referred to above.

There is no doubt that treating LAQC's as "flow through" entities, taxed under a similar regime to limited partnerships, will have a significant impact on all LAQC's whether they are used for property investment or not. Under the current system, losses from an LAQC flow directly back to the shareholders who take advantage of the losses at their personal tax rates (soon to be a maximum of 33%). However when an LAQC produces profits those profits can be retained in the company and taxed at only 28%. It is this perceived notion of potential tax avoidance that has given rise to the limited partnership proposal as this "flow through" entity requires both profits and losses to flow out, meaning that profits from LAQC's will effectively be taxed in the shareholders' own hands at their own personal tax rates.

Due to space constraints, I have only briefly touched on some of the more significant tax changes proposed. I recommend that if you have an LAQC, you should consult with your professional advisor sooner rather than later in order to put appropriate strategies in place having regard to the matters discussed above.

*Please feel free to contact Ian Mellett (BComm LLB H Dip Tax) at Auckland law firm Quay Law for more information, or if you have any questions regarding your taxation or other legal needs visit our website www.quaylaw.co.nz for more information.*