

CONTENTS

| | |
|--|-----------|
| 1. TAX DRIVERS IN STRUCTURING FOREIGN INVESTMENT INTO NEW ZEALAND | 5 |
| INTRODUCTION | 5 |
| STRUCTURING CONSIDERATIONS | 6 |
| NEW ZEALAND COMPANY AS THE ACQUISITION VEHICLE | 6 |
| <i>Tax at Company Level</i> | 6 |
| <i>Dividends</i> | 7 |
| <i>Funding and Thin Capitalisation</i> | 9 |
| <i>Cross-Border Transactions Between Associated Parties (Transfer-pricing)</i> | 11 |
| <i>US Tax Characterisation of NZ Co</i> | 11 |
| DIRECT ACQUISITION BY US CO AND US LLC ("BRANCH" STRUCTURE)..... | 12 |
| <i>Branch Taxation</i> | 12 |
| <i>Repatriation from NZ Branches</i> | 13 |
| <i>Funding and Thin Capitalisation</i> | 13 |
| <i>Cross-Border Transactions Between Associated Parties (Transfer-pricing)</i> | 14 |
| <i>US Tax Characterisation of NZ Branches</i> | 14 |
| LIMITED PARTNERSHIP AS THE ACQUISITION VEHICLE | 14 |
| <i>NZ LP Tax Outcomes Similar to that of the NZ Branches</i> | 15 |
| <i>Loss Limitation Rule</i> | 16 |
| RECOMMENDED STRUCTURE? | 16 |
| TOPICAL RELATED NON-TAX ISSUES | 17 |
| 2. LATEST CHARITY AND NOT-FOR-PROFIT DEVELOPMENTS..... | 19 |
| INTRODUCTION | 19 |
| PRELIMINARY MATTERS | 20 |
| <i>"Charities"/"Charitable Purposes"</i> | 20 |
| <i>"Not-for-profits"</i> | 22 |
| <i>Administration of Tax Concessions</i> | 23 |
| GENERAL INCOME TAX EXEMPTIONS AVAILABLE TO CHARITIES & NOT-FOR-PROFITS..... | 24 |
| <i>"Tax charity" exemptions for non-business & business income</i> | 24 |
| <i>Requirements that apply for the purpose of both "tax charity" exemptions</i> | 25 |
| <i>Charities Act registration as a prerequisite for the "tax charity" exemptions</i> | 26 |
| <i>Development of the "charitable purpose" definition & Charities Act registration decisions</i> | 27 |
| <i>Proposals to clarify the tax consequences of Charities Act deregistration</i> | 29 |
| <i>Additional requirements that apply to the "tax charity" business income exemption</i> | 29 |
| <i>Other general exemptions from income tax</i> | 32 |
| WITHHOLDING TAX & INVESTMENT TAXATION ISSUES FOR TAX-EXEMPT ENTITIES..... | 33 |
| <i>Withholding taxes may apply to certain payments</i> | 33 |
| <i>Company taxation & dividend imputation – non-refundability of imputation credits</i> | 34 |
| <i>Tax-exempt subsidiary entities, PIEs, "flow through" structures & other options</i> | 34 |
| TAX TREATMENT OF NON-EXEMPT/TAXABLE CHARITIES & NOT-FOR-PROFITS | 35 |
| <i>Application of ordinary income tax rules, including trust and company tax rules</i> | 35 |
| <i>Tax-exempt charities & not-for-profits becoming non-exempt/taxable entities</i> | 36 |
| <i>Proposals to clarify the tax consequences of Charities Act deregistration</i> | 36 |
| TAX INCENTIVES FOR CHARITABLE OR OTHER PUBLIC BENEFIT GIFTS | 38 |
| <i>Tax incentives available for gifts to "donee organisations"</i> | 39 |
| <i>Entities and funds described in s LD 3(2) of the IT Act</i> | 39 |
| <i>Entities listed in sch 32 of the IT Act</i> | 40 |
| <i>Impact of Charities Act deregistration on "donee organisation" status?</i> | 41 |
| <i>Tax incentives apply to monetary gifts only</i> | 42 |
| <i>Monetary gifts vs. non-monetary gifts</i> | 42 |
| <i>Common law meaning of the term "gift"</i> | 42 |
| <i>Inland Revenue public ruling item relating to gifts vs. consideration</i> | 43 |
| <i>Revenue Alert RA11/01 regarding purported gifts that may not be "true gifts"</i> | 43 |
| <i>Current policy review regarding what is or is not a "true gift"</i> | 44 |
| <i>End of year tax credits/refunds for individual donors</i> | 44 |
| <i>"Payroll donation" tax credits for individual donors</i> | 45 |
| <i>Concessionary tax deductions for corporate donors</i> | 46 |
| <i>Reversal of past tax incentive claims?</i> | 47 |

| | |
|---|-----------|
| <i>Possible introduction of new tax incentives?</i> | 47 |
| SPECIFIC TAX ADMINISTRATION ISSUES FOR CHARITIES & NOT-FOR-PROFITS | 48 |
| <i>Filing income tax returns</i> | 48 |
| <i>Provisions applicable to "gift exempt entities"</i> | 48 |
| <i>Other tax compliance obligations</i> | 48 |
| TAX TREATMENT OF REMUNERATION/REIMBURSEMENT OF PERSONNEL | 48 |
| <i>Default tax treatment of remuneration/reimbursement</i> | 48 |
| <i>The limited FBT exemption for "charitable organisations"</i> | 49 |
| <i>Officials' "salary trade-off" (STO) tax proposals rejected</i> | 50 |
| <i>Limited changes to FBT exemption for "charitable organisations" approved</i> | 50 |
| <i>Revenue Alert RA13/01 regarding salary sacrifice for vouchers/stored value cards</i> | 51 |
| <i>Impact of Charities Act deregistration on use of the FBT exemption?</i> | 51 |
| <i>Tax treatment of volunteer reimbursement payments vs. honoraria</i> | 51 |
| GST TREATMENT OF NON-PROFIT BODIES UNDER THE GST ACT | 52 |
| <i>"Non-profit bodies"</i> | 52 |
| <i>Determining whether a non-profit body must or should register for GST purposes</i> | 53 |
| <i>"Output Tax" issues for GST-registered non-profit bodies</i> | 54 |
| <i>"Input Tax" issues for GST-registered non-profit bodies</i> | 54 |
| 3. TOPICAL TAX COMPLIANCE AND ENFORCEMENT ISSUES | 57 |
| STATUS OF THE COMMISSIONER'S ADVICE | 57 |
| CASE STUDY: TAXPAYER SPECIFIC OPINION | 57 |
| ANSWER..... | 58 |
| CASE STUDY: REMISSION OF INTEREST AND PENALTIES | 59 |
| ANSWER..... | 59 |
| CASE STUDY: OFFICIAL STATEMENT | 60 |
| ANSWER..... | 60 |
| CASE STUDY: RETRACTION OF PUBLIC STATEMENT | 61 |
| ANSWER..... | 61 |
| CASE STUDY CONTINUED: MORE FAVOURABLE TAX POSITION | 62 |
| ANSWER..... | 62 |
| CASE STUDY: COURT DECISION | 62 |
| ANSWER..... | 63 |
| SECTION 17 NOTICES | 63 |
| WHY AN OPERATIONAL STATEMENT? | 64 |
| CASE STUDY: INFORMAL REQUEST | 64 |
| ANSWER..... | 64 |
| CASE STUDY CONTINUED: DOCUMENTS..... | 65 |
| ANSWER..... | 65 |
| CASE STUDY CONTINUED: Q&A..... | 66 |
| ANSWER..... | 66 |
| CASE STUDY CONTINUED: FULL DISCLOSURE | 67 |
| ANSWER..... | 67 |
| INCOME TAX, RESIDENCE AND "PERMANENT PLACE OF ABODE" | 68 |
| WHAT IS A PPOA?..... | 68 |
| CASE STUDY: 3 YEAR SECONDMENT | 68 |
| ANSWER..... | 69 |
| <i>Inland Revenue's 1989 View</i> | 69 |
| <i>Inland Revenue's 2012 View</i> | 70 |
| CASE STUDY: TENANTED RESIDENTIAL PROPERTY | 72 |
| ANSWER..... | 73 |
| 4. CURRENT TAX ISSUES IN RELATION TO PROPERTY | 75 |
| INTRODUCTION | 75 |
| PREVIOUS INCOME TAX TREATMENT OF LEASE INDUCEMENT AND SURRENDER PAYMENTS..... | 75 |
| INLAND REVENUE REVIEW | 76 |
| NEW INCOME TAX TREATMENT: LEASE INDUCEMENT (AND SIMILAR) PAYMENTS | 76 |
| <i>All LIPs and similar payments taxable</i> | 76 |
| <i>Deductibility of LIPs</i> | 77 |
| <i>Timing of income and deductions</i> | 78 |
| <i>Wash-up provision</i> | 78 |
| NEW INCOME TAX TREATMENT: LEASE SURRENDER (AND SIMILAR) PAYMENTS | 79 |

| | |
|--|----|
| <i>Income tax treatment</i> | 79 |
| <i>Deductibility of LSPs</i> | 79 |
| <i>Timing</i> | 79 |
| BROADER PROPOSALS FOR THE TAXATION OF LAND RIGHT PAYMENTS | 79 |
| <i>Criticism of the proposals</i> | 81 |
| <i>Summary table</i> | 83 |