CHAIR



Stephen Tomlinson, Tomlinson Law, Christchurch

Stephen is the principal of Tomlinson Law. He has lectured in taxation, finance and business law at the University of Canterbury and is a well-known presenter of taxation and trust seminars and webinars. Stephen advises clients, including accounting firms and law firms, on a wide range of taxation and trust law issues. He is a member of the New Zealand Law Society's Tax Law Committee and the ADLS Trust Law Committee.

CO-CHAIR



Neil Russ, Russ + Associates, Auckland

Neil specialises in corporate and international tax issues, and domestic and cross-border transactions. He formed his current firm after over 20 years as a partner and head of tax at a national law firm. Neil has a multi-jurisdictional background in banking, capital markets, structured finance, venture capital and private equity transactions, and has expertise in AML/CFT matters. He is Convenor of the New Zealand Law Society's Tax Law Committee.

SPEAKERS



Brendan Brown, Mayne Wetherell, Wellington

Brendan is a partner and head of the tax practice at Mayne Wetherell. He specialises in corporate and international taxation and has advised on some of New Zealand's most significant commercial transactions and tax disputes.



Howard Davis, Inland Revenue, Wellington

Howard is the Tax Counsel Office's group leader (Customer Advice) at Inland Revenue. He was formerly Director (Taxpayer Rulings) and in both roles, since 2004, has been responsible for Inland Revenue's taxpayer rulings service. Prior to joining Inland Revenue, Howard worked in law and accounting firms in tax. His principal areas of interest in tax law are tax avoidance, the financial arrangement rules and business taxation.

SPEAKERS



Rhonda Gregory, Inland Revenue, Auckland

Rhonda is a senior tax counsel in the Tax Counsel Office at Inland Revenue working primarily in binding rulings. She has a wide range of experience, previously being a Special Counsel at Russell McVeagh with a particular focus on mergers and acquisitions, group restructuring and corporate finance work.



Helen Johnson, PwC Legal, Auckland

Helen works closely with corporate and high net worth clients to provide advice on all aspects of New Zealand tax. Her specialisms include international tax matters, corporate restructuring, domestic and cross-border M&A, and investment into or out of New Zealand.



Mike Lennard, Stout Street Chambers, Wellington

Mike is a litigation lawyer, specialising in tax and civil cases. His career to date has involved eight years' practice as a Crown prosecutor and civil litigation lawyer, then eight years as head of litigation for Inland Revenue, and practice at the independent bar since June 2004. Mike's practice includes intellectual property, competition law, professional negligence, and relationship property litigation. He has a particular interest in financial regulatory and criminal issues, including money laundering and administration of the AML/CFT legislation.



Rachael Lyons, Inland Revenue, Auckland

Rachael is a chartered accountant and technical specialist at Inland Revenue. Her role involves leading technical issues, providing advice and guidance to front line staff and technical oversight of complex risks. Rachael has over 20 years tax experience, predominantly leading teams of investigators completing investigations covering sole traders through to significant enterprises. She is involved in assessing compliance risks associated with the 39% tax rate.



Fiona Wellgreen, Inland Revenue, Wellington

Fiona is a senior tax counsel in the Tax Council Office at Inland Revenue working primarily in binding rulings. She has a wide range of experience, with particular expertise in the financial arrangements rules, PIEs, and public-private partnerships.

CONTENTS

TAX PLANNING AND TRUSTS - CHOICES AND CONSEQUENCES	1
Introduction	3
TRUSTS AND TAX PLANNING	4
INLAND REVENUE'S OBSERVATIONS OF THE PROLIFERATION AND USE OF TRUSTS FOLLOWING THE	
INCREASE IN THE TOP PERSONAL TAX RATE TO 39%	
INLAND REVENUE'S CURRENT VIEW ON THE USE OF TRUSTS TO EXPLOIT THE DIFFERENCE BETWEEN THE	
TRUSTEE TAX RATE AND THE PERSONAL TAX RATES	
CONCLUSION	
APPENDIX A	
MIND THE GAP: COMPANIES – RATE AND DIVIDEND ISSUES	17
Introduction	19
A BRIEF RECAP: THE TAXATION OF COMPANIES AND DIVIDENDS	19
CASE STUDY: Mr A AND TCo LTD	
FACTORS WHICH MAY CONCERN INLAND REVENUE	
BACKGROUND FACTS	
VARIATION ONE: MOVING TO A COMPANY STRUCTURE	
VARIATION TWO: PAYMENT OF A DIVIDEND ON 31 MARCH 2021	
VARIATION THREE: TRANSFER OF OWNERSHIP OF TCO LTD FROM MR A TO A FAMILY TRUST	
VARIATION FOUR, GIFT TO THE TRUST AND USE OF SHAREHOLDER LOANS	
VARIATION FIVE: TRANSFER TO A NEW HOLDING COMPANY INSTEAD OF A TROST	
CONCLUDING REMARKS	
DIVERSION OF PERSONAL SERVICES INCOME AND TAX AVOIDANCE	37
Introduction	39
PART 1: TYPES OF ARRANGEMENTS	
PART 2: INLAND REVENUE GUIDANCE	
PART 3: THE CASE LAW	
PART 4: SUMMARY OF IMPORTANT FACTORS FROM THE CASE LAW	
CONCLUSION	57
${\bf DIVERSION\ OF\ PERSONAL\ SERVICES\ INCOME\ AND\ TAX\ AVOIDANCE-ADDENDUM\ }.$	59
Introduction	
PENNY FOR YOUR THOUGHTS	
Krukziener	
TAX RATES AND THE CHOICE OF ENTITY AND BUSINESS STRUCTURE	63
Introduction	66
To what extent is it permissible, under s $BG\ 1$, to choose the lowest tax option from the	
AVAILABLE STRUCTURES?	
WHAT PRACTICAL STEPS CAN TAXPAYERS TAKE TO REDUCE THE RISK OF A STRUCTURE BEING IMPUGN	
UNDER S BG 1?	—
GETTING CERTAINTY ON BUSINESS STRUCTURES WITH A BINDING RULING	77
TYPES OF BINDING RULINGS	79
PRE-LODGEMENT MEETINGS AND OTHER KEY FEATURES OF RULINGS	80
PANEL DISCUSSION	83