



5 Hunt Street, Whangarei



09 438 5309



09 438 7430



admin@maq.co.nz

## March 2016

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## MAQ Farewells Former Directors

1 April 2016 sees the “official” retirement of longstanding former partners and directors Erc Angelo and Bill Mallett. Both have sold their interests in the firm and have been actively assisting the introduction and transition of client affairs to the current MAQ directors being Des Quinn, Mark Wilson, Steve Watene and Shery Hendrikse.

Erc and Bill, together with Des Quinn are founding partners of the practice, starting out in 1988 in somewhat smaller premises at Norfolk Street, subsequently moving to the current premises in 1994 and now expanded to occupy the full floor.

And what changes they have seen over this period - the Tax Act now covers three books, there is GST, student loans, child support and working for family tax credits regime, various changes to the taxing of companies, not to mention the huge developments in computer technology. “Thank heavens for great staff with big brains”, says Bill. “There is no way we could keep on top of all this without the support of dedicated and able staff. On that score we have been hugely well served”, agrees Erc. But now it is time for them to hand on the reins to the next generation; knowing that their clients, many of whom they have acted for over several decades, will be well served.

We say “official”, as whilst both Bill and Erc will no longer be involved on a daily basis, MAQ have retained their collective knowledge and experience through provision of specialist consulting services to MAQ as required.

We wish them all the very best.



## Upcoming Client Seminar

### New Tax Year Essentials

Free Seminar: **5.30 - 7.00pm** Wednesday **13 April**.  
Mallett Angelo Quinn, 1<sup>st</sup> Floor, 5 Hunt Street.

You thought the time for New Year resolutions had passed. Not so! Now is the perfect time to set out exactly what you want your business to achieve for you for the 2017 financial year. This seminar will help you do so, and put the measures in place to know how you're going as the year unfolds.

This seminar will teach you how to:

- Set a realistic budget for your business

## Case Corner

### Discrimination against employee on religious grounds

This could be an increasing problem for employers in New Zealand given the increased number of immigrants and that some of them will be followers of religion, especially forms not especially common in New Zealand. However, the issue relates to any religion, including religions relatively familiar to New Zealand.

In a recent case, an employee of the Mormon faith was dismissed for refusing to work on Saturdays. They alleged that they had been discriminated against, on religious grounds, to which the Human Rights Tribunal agreed.

There were two problems for the employer, which argued that it could not reasonably accommodate the employee's religious belief.

First, it didn't understand that it was obligated to consider whether it could reasonably accommodate the employee's religious belief. Secondly and not

- Monitor your monthly performance against that budget
- Run useful reports out of your software to know exactly how your business is going and how the cash is holding up
- Manage your cash flow to meet tax payments, debt repayments and plan for asset purchases
- Identify areas in your business where you can improve profitability and cash flow.

MAQ welcomes you to join us for refreshments at this 90 minute seminar. Places are limited so please be quick to book!

surprisingly given the employer's ignorance of the law, it hadn't taken any steps to see whether it could reasonably accommodate the employee's religious belief, and the reasons that it gave before the tribunal for not being reasonably accommodate the employee's religious beliefs weren't supported by any evidence.

Employers may or may not be religious. No matter what an employer's view is of religion, the fact is that legislation has enshrined religion as having particular importance and in the employment context, an employer must consider whether it can reasonably accommodate an employee's beliefs. Various factors may be relevant in each instance in determining what is reasonable, including the size of the employer and its resources, the requirements of the business and the nature of the work to be undertaken.



## Employment Corner

### Minimum Wage Increase

The Government announced that the adult minimum wage will go up to 50 cents to \$15.25 an hour from Friday 1 April 2016.

The starting-out and training hourly minimum wages rates will also increase from \$11.80 to \$12.20 per hour from Friday 1 April 2016.



If you have any staff currently on the minimum wage rate the increased rate will need to be reflected from Friday 1 April 2016 onwards (even if this is in the middle of your pay week).

Please contact us if you have any queries regarding the wage increases.

### Important change to Employment Law

- Important changes are in the wind under the guise of an Employment Standards Bill and a Parental Leave Act Amendment Bill, both of which have been passed into legislation, to be effective from 1st April 2016.
- In relation to matters relating to the new Employment Standards, all new employment agreements must comply – for existing Agreements, there will be a 12 month transition period. Employment Agreements will need to be checked for compliance.
- Parental Leave changes will apply immediately.

- Many changes are involved, so this Update only briefly summarises the position.

## A. EMPLOYMENT STANDARDS

### Secondary Employment

Employers will need to state genuine reasons in Employment Agreements if they want to restrict employees from entering into other employment while they are employed with the Employer. Genuine reasons might, for example, include protecting the employer's commercially sensitive information, intellectual property or commercial reputation.



### Record Keeping

Employers will have to demonstrate that they are complying with minimum entitlement provisions by keeping detailed records of hours worked, including hours worked by salaried employees. This can be done by having worker hours stated in the employment agreement, the wages and time record, or in a roster.

### Deductions from Wages

Up to now, deductions (apart from those required by law such as PAYE and KiwiSaver) could only be made from an employee's pay if they consent. Now, Employers must consult with an employee before making any deduction, even if the Employee has previously consented, and only reasonable deductions may be made. (The amendments confirm that a clause in an Employment Agreement is sufficient to constitute "written consent" to deductions.)

### Zero Hours Contracts

There are prohibitions on including availability provisions in Employment Agreements, where an employee is required to be available to accept any work offered to them except where:

- there are guaranteed hours of work, as set out in the Employment Agreement;
- the employer has genuine reasons based on reasonable grounds for including an availability provision; and
- the employee is reasonably compensated for making themselves available to work. Agreed hours of work will have to be recorded in each employment agreements.

Where shift work is involved, Employment Agreements will need to specify a reasonable period of notice that will be given before an Employer cancels a shift. Agreements will also need to set out the amount of reasonable compensation payable if that notice period is not given.

### Liability

Employers may be named and shamed if they breach the new standards.

Banning orders may be made:

- against employers e.g. from entering into employment agreements;
- against officers (e.g. directors, partners, persons having significant influence over the management or administration of the employer) e.g. from being an officer or from being involved in employing employees.

Persons, including advisers like lawyers, who aid or abet an employer to breach the standards can be fined.

## B. AMENDMENTS TO PARENTAL LEAVE

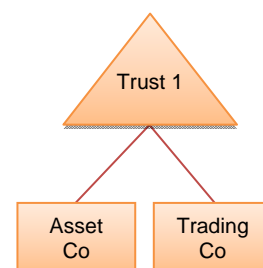
The amendment Bill is large and covers quite a number of matters.

Key amendments include:

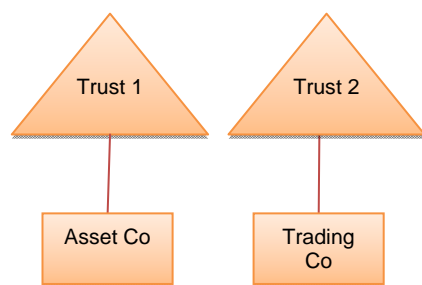
- expanding eligibility. The new definition of "primary carer" extends existing parental leave entitlements beyond the natural parents to individuals who assume primary responsibility for the day-to-day care of a child under the age of 6, if the primary carer meets the appropriate thresholds in terms of hours worked for the employer;
- providing for a new Preterm paid leave entitlement in relation to primary carers of babies who are born prematurely;
- entitlement to "keeping-in-touch days", where by employees on paid parental leave can work for up to 40 hours during their leave period, without being treated as having returned to work;
- allowing unpaid extended parental leave to be taken (by mutual agreement between employee and employer) in more than one block, within the extended leave period;
- extending paid parental leave from 16 weeks to 18 weeks.

## Structuring - to put your eggs in different baskets or not?

When establishing a business, there are a number of considerations to take into account to determine the ideal structure to adopt. One such consideration is protection of assets, not just the assets of individuals who invest in the business, but also protection of the business's assets. This objective typically means a company structure is chosen. It is also common to use multiple companies to separate a business's assets from its trading operations to ensure the assets are not at risk if the business fails. For example, the structure below splits a single business across two companies.



Taking it a step further, the structure below reflects the shareholding has also been split to increase the separation between the two companies. The argument being that it provides greater protection from third party claims by adding a further layer of independence.



The question becomes whether this separation is needed and at what cost? A High Court decision delivered early last year allowed liquidators to make a parent company pay for the subsidiaries outstanding debts due to an apparent lack of independence between the parent and subsidiary. (*Lewis Holdings Ltd & Steel & Tube Holdings* - see *MAQ July 2015 newsletter*). This risk increases the desirability of the second structure above.

The problem is that multiple entities and complexity drive administration, compliance costs and are not tax efficient. Between the two structures above, the first offers the following advantages:

- If one company makes a profit and the other company makes a loss, that loss can be offset against that profit. This can be achieved either through management fees, group company offsets or, preferably "subvention" payments when the profit company buys the losses of the loss company. This can be achieved where commonality of shareholding is greater than 66%

- The two companies can form a GST group. This simplifies the GST treatment of transactions between the two companies as they are able to be ignored for GST purposes and a single GST return is filed for both companies. Note however, that with group GST registration, the group members undertake to be liable for each other's GST debt.
- There is greater discretion to choose the effective date at which tax credits resting with Inland Revenue (IRD) are able to be transferred between the companies.
- Below market value transfers of assets or services by a company will ordinarily give rise to a deemed dividend. However, transfers of this nature between the two companies are able to be ignored.
- Resident Withholding Tax does not need to be withheld and paid to IRD on payments of interest between the two companies.
- The turnover of the two companies is able to be added together for the purpose of applying the \$2m threshold when applying for a certificate of exemption from resident withholding tax.
- The companies can elect to be treated as a single company for income tax purposes by electing to form a consolidated tax group. This allows 'the group' to file a single income tax return for both companies.
- If in the future the companies decide to amalgamate, this can easily be completed by a short form amalgamation.

It is a case of balancing the advantage of asset protection and the likelihood of something going wrong against the benefits foregone from not having the most efficient structure. It is not an easy decision to make, best evidenced by the ensuing debate that occurs when accountants and lawyers are put in the same room.

## Student Loans - sharing with Australia

Compliance with student loan repayment obligations remains a continued focus for IRD and the Government. IRD currently estimates that \$3.2 billion is owed by student loan borrowers who are currently living overseas, the majority of whom reside in Australia.

In November 2015 a new Bill was introduced to Parliament which, once enacted, will enable IRD to track down student loan defaulters living in Australia. The new legislation is part of a broader IRD focus on compliance and will allow IRD to obtain up-to-date information including taxpayer's addresses from the Australian Taxation Office (ATO). This information will then be matched against the IRD's records and where appropriate, IRD will act to recover outstanding loan amounts.

The Bill will also enable the IRD to demand the entire balance of an outstanding student loan debt from 'serious non-compliers' (rather than only being able to demand the outstanding loan repayments). The serious non-compliers who would be targeted

by IRD are those with large amounts of outstanding debt, who have been in default for a long time, or who have missed multiple repayments.



In the IRD media statement Tertiary Education, Skills and Employment Minister Steven Joyce commented:

"We are making steady progress in tracking down student loan defaulters and getting them to pay up. However, there is still too many who have spent a long time in Australia refusing to meet their obligations. This new initiative will give IRD up to date contact details to track down those deliberately avoiding their payments and being unfair to other taxpayers."

Information sharing with the ATO has also seen substantial success as the IRD has already used data from Australian customs officials to track defaulters and send letters out that explain how to repay loans. The IRD also offer facilities that make it easier for borrowers to comply with their obligations,

with options such as fee-free payments for borrowers living anywhere in the world.

It is expected that the new rules will come into effect in mid-2016.

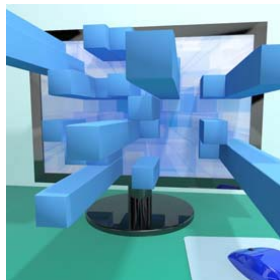
The above changes add to existing initiatives, such as the ability to arrest student loan defaulters, with the first arrest made on 18 January 2016. The arrest was made as a “last resort” after Inland Revenue had not managed to get hold of the borrower since he had left NZ, meanwhile his loan had increased

from \$40,000 to \$120,000 (including interest and penalties). In other cases people have chosen to meet their obligations before an arrest was needed.

The overall message from the IRD is that just because someone leaves New Zealand that does not mean that they can forget their student loan debt. The New Zealand taxpayer funded their education and expects to be repaid so that the next generation of students can receive the same funding.

## Changes to the IRD’s Administration System

The manner in which we interact with Inland Revenue (IRD) is likely to change dramatically over the next two years as the upgrade of IRD’s IT system and associated legislation comes on-line. IRD’s broad objective is to reduce the amount of time and cost it and private business spends on tax administration by modernising its software platform.



At present, both GST and PAYE processing costs are higher than necessary and there are problems with the quality and timeliness of information submitted. These issues not only impose costs on employers and the IRD, but also limit the Government’s ability to provide effective social services.

IRD is currently working with third party software providers to design digital solutions that will integrate tax obligations into everyday business practices. To ensure the changes are well designed and beneficial to all parties, feedback is being sought on potential changes via discussion documents.

One of the most recent discussion documents outlines potential changes to GST and PAYE. The IRD is currently requesting feedback on proposed changes and poses several questions that are designed to challenge our thinking on the current approach. For example, whether changes should be made to the calculation of PAYE on extra pays, holiday pay and years that include an extra pay period?

**GST** related changes include the ability to allow GST return filing and payment processes to be integrated with digital accounting platforms. This would allow GST-registered persons to submit their GST returns through their chosen accounting

software programme as they fall due, effectively eliminating the requirement to file a separate GST return as a separate process. Such changes would remove the need to double-enter information, and reduce the potential for error. IRD’s proposals also include making GST refunds via direct credit to a customer’s bank account compulsory, unless it would cause undue hardship or is not practicable.

**PAYE** could shift to a semi-automated process. Similar to the GST proposal above, businesses would be able to submit payroll information to the IRD direct from their accounting system and make necessary payments to the IRD at that time. For example, PAYE information could be submitted to IRD at the same time that a ‘pay run’ occurs. Under this design, employers’ PAYE obligations would be integrated with their current business procedures, eliminating certain processes such as the need to file nil employer monthly returns. PAYE payments to IRD might be due at the same time the employee is paid.

By increasing the quality and timeliness of the information provided, IRD should have greater capability to improve individual’s access to social entitlements and identify and prevent errors; such as overpayments of family assistance.

The changes represent a shift to a framework in which IRD’s system would no longer work on a stand-alone basis. Instead, IRD would ‘talk’ to software providers, ensure their system worked in accordance with its view of applicable legislation and would then accept what it was sent. Such changes would provide the business and IRD with greater confidence regarding the accuracy and correctness of a tax return.

## Snippets

### Watch those Tax Scams

A client recently contacted us concerning a phone call she received from a gentleman claiming to be an IRD auditor who advised that her affairs were to be audited and she should engage a lawyer to assist in her defence. The “auditor” somehow had her initials and surname and was bold enough to request her IRD number, IRD security code and ask

who her accountant was (all things the IRD should already know!) to enable the audit to proceed. The client was understandably concerned and queried us as to how she should respond. We advised



her to ignore the requests - it was clearly (to us, anyway) a scam.

IRD will not contact you by phone on such matters as audits. This is especially so where you are listed as having engaged MAQ as your tax agent. The

## Software

**Question** - When is an opportune time to review your software requirements?

**Answer** - At the commencement of a new financial year.

MAQ is an accredited trainer of Reckon (QuickBooks), Xero, MYOB and Banklink systems. Within each system there is a range of options from the simple cash book to fully integrated systems and varying levels of reporting. Time spent at the set up stage in developing an appropriate chart of accounts and gaining some training pays off in spades later

## So who should own the new vehicle?

We frequently receive calls from clients concerning which is the most tax efficient entity to own vehicles. Should it be owned personally, or by their company, or Trust?

## Australia shames non-tax paying firms

The Australian Taxation Office (ATO) has shamed large corporates by publishing revenue and tax information of more than 1,500 companies with reported total earnings over A\$100 million (US\$72.11 million) for the 2014 tax year. Of these companies more than a third paid no tax according to the ATO, with the highest level of non-payment coming from the energy and resources sector.

Companies listed include familiar names such as Boeing, Hilton Worldwide Holdings, and US oil services firm Halliburton (for list see <https://data.gov.au/dataset/corporate-transparency>). Based on the information provided by the ATO the Australian unit of Boeing, Hilton and Halliburton paid no tax on taxable earnings of A\$53m, A\$2m and A\$1.3m, respectively.

## Staff Corner

### Rochelle Adams

Rochelle grew up in Auckland, moving to Dargaville in 1997 and then onto Whangarei in 2002.

Originally working as a Customs Agent in Auckland, Rochelle has spent the last 8 years working for a small accounting firm in Whangarei. She is looking forward to the challenge of working in a larger accounting firm.

Rochelle is currently studying part time towards a Bachelor of Business majoring in Accounting.



initial request from IRD for information will come to MAQ and will seek background information and responses to any concerns they have before an audit is commenced. So if you receive a call from an "IRD auditor" direct them immediately to MAQ.

on. Contact us to review the various systems and decide which would suit your needs.

MAQ can assist by running the variables through a spreadsheet programme which generates the likely tax and cash flow outcomes of each scenario. Best time to review this matter is prior to purchase as the tax invoice needs to be in the correct entity to enable GST claims if that is the outcome of the review.

Contact your MAQ partner for further information.

There is no "one size fits all" answer to this. It will depend on the type of vehicle purchased, the purchase price, the likely level of personal usage, fringe benefit implications, how long you intend owning the vehicle and other factors.

Australia's Tax Commissioner blames aggressive tax structuring for the lack of tax paid and vows to continue to work to tackle base erosion and profit-sharing methods, which large corporations use to manoeuvre profits to lower-tax jurisdictions.

In contrast, despite Apple Inc and Microsoft Corp receiving negative media attention for their worldwide tax arrangements this year, their tax payments are more reasonable, having paid more tax than most of their tech peers.

It is unlikely IRD could do something similar given the secrecy provisions that it has to comply with, but a similar analysis of NZ companies would likely tell a similar story.

Rochelle and her family are keen water-skiers and spend a lot of time at the beautiful Kai Iwi Lakes.

### Tara Goile

Tara has always lived and worked in Whangarei and loves the lifestyle and beaches of Northland. She joins our administration team and was with her previous employer for over 20 years.



In her spare time she likes cooking, reading and spending time with her two daughters.