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IMPORTANT NOTICE - ABOLITION OF GIFT DUTY

If you are currently on a gifting programme then you need to read this newsletter article carefully!

In late 2010 the Government announced the abolishment of gift duty in New Zealand. To date legislation has yet to be introduced and hence the reason we have not come back to you with anymore details.

However what has pre-empted this latest newsletter is that the Ministry of Social Development ("MSD") have issued a paper setting out the current criteria that will be applicable for any application of a Residential Care Subsidy ("RCS"). In plain English a RCS is a subsidy paid by the Government in eventuality you require rest home care.

The MSD has reiterated that gift duty is to be abolished on 1 October 2011 and although this is a change to duty law, there is to be no change to social security law. The limits on allowable gifts for the RCS are not changing.

Although there is no duty payable and you can gift as much as you want after 1 October 2011 the MSD when assessing an application for an RCS will treat any excess gift in a 12 month period as an asset and decline the application for residential care.

This means that if you were hoping to gift the balance of the debt due by your Family Trust on 1 October 2011 then any excess over \$27,000.00 will be treated as an asset as far as the MSD is concerned should you have to apply for an RCS in the future. The amount of the gift that exceeds the limit of \$27,000.00 will not be depleted with the lapse of time.

In essence if you wish to avoid asset testing you cannot gift more than \$27,000.00 in a 12 month period. This situation remains.

While we await for the introduction of legislation abolishing gift duty we felt compelled to advise our clients that as far as the MSD is concerned the criteria for asset testing remains unchanged.

Lets have a look at an example as to how this will work. Take the position of Tim and Sue who in 2008 decided to set up a Family Trust and transfer their home into the Trust in order to avoid asset testing in the future. Tim and Sue took advice from their solicitor and obtained a valuation of their home at \$600,000.00. The

home was transferred to the Trust on 2 February 2008. As the Trust had no cash resources Tim and Sue each lent to the Trust the sum of \$300,000.00 each.

They then entered into a gifting programme as follows:

- (a) \$27,000.00 - 2 February 2008
- (b) \$27,000.00 - 2 February 2009
- (c) \$27,000.00 - 2 February 2010
- (d) \$27,000.00 - 2 February 2011

This left a balance of \$192,000.00. Tim and Sue were elated at the Government announcement that gift duty was to be abolished. On 1 October 2011 they plan to gift the balance of the debt being \$192,000.00 each in one gift.

Then what happens should either Tim or Sue need to apply for a rest home care subsidy in 2018? The last gift of \$192,000.00 is outside the five year claw back period because with the abolition of gift duty Tim and Sue were able to gift the balance in one hit on 1 October 2011.

As far as the MSD is concerned the excess amount over \$27,000.00 (\$192,000.00 less \$27,000.00) = \$165,000.00 is of course treated as an asset and the application for a RCS would be declined.

It is therefore important that you complete the attached form if you wish to recommence your gifting programme. We suggest you either forward it to us by email or facsimile. We reiterate that we will not institute your gifting programme unless we receive clear instructions from you in writing.

There are a number of other rules that have been introduced by the MSD. The purpose of this newsletter is not to set out exhaustively those new rules which will be applicable. However what we can tell you is that we will be running a series of seminars in the short term and we will be in contact with you regarding that shortly. The purpose of today's newsletter is to urgently bring to clients attention the need to recommence the gifting programme immediately.