



By Lloyd Collins
lloyd@collinsmay.co.nz
 DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
 DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
 DD: 576 1412

Simone Seddon
simone@collinsmay.co.nz
 DD: 576 1411

Freya Boyd
freya@collinsmay.co.nz
 DD: 576 1409

If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at www.collinsmay.co.nz

TAXATION CONSEQUENCES FOR TRUSTEES - FOUR THINGS THAT EVERY TRUSTEE MUST KNOW

1. TRUSTS CANNOT PASS OUT TAX LOSSES

While the Trustees may have the ability to distribute income to discretionary beneficiaries in order to obtain the best taxation rate there is no ability for the Trustees to pass out the benefit of any accumulated tax losses to beneficiaries.

Trustee to actively manage and take responsibility for all decisions of the Trust. It is no excuse to argue that you were merely an Independent and undertook a rubber stamping role. Your personal liability for all outstanding taxes and penalties will remain whether you had knowledge of the existence of the debt or not.

2. TRUSTEES ARE PERSONALLY LIABLE FOR PENALTIES AND INTEREST

One should give serious consideration when accepting whether to be an Independent Trustee in a friend's Trust. As far as IRD are concerned all Trustees are jointly and severally liable for all outstanding taxes and penalties incurred. While it is possible to place limitation clauses in loan documents with Banks etc this is not possible with IRD. Liability is imposed by legislation as such you are not in contractual relationship with IRD. This is not a liability you can negotiate. If the Trust is a tax payer and is registered for GST then all Trustees are jointly and severally liable for the debts.

4. WHERE A TRUST IS GST REGISTERED THEN PAST TRUSTEES REMAIN LIABLE UNTIL IRD IS ADVISED

There is specific provision in the Goods and Services Tax Act that a Trustee remains personally liable for all GST and penalties even where the Trustee has resigned. The Act provides that a Trustee must advise IRD of the resignation. You should write to the IRD advising them that you have ceased to be a Trustee and you should keep a copy of the letter on file. If you don't then you could find yourself remaining liable for GST obligations of the Trust where you no longer have any control or ability over the decision making process.

3. PASSIVE TRUSTEES HAVE NO EXCUSE

The High Court and Court of Appeal in New Zealand held that a Trustee cannot argue that their role was passive. The Courts have held that this is not a valid defence. You have a duty as

20 MINUTE FREE

**WANT to review your Family Trust structure?
 THEN call us and take advantage of our 20 Minute Free interview**