Kieran Hayes

KPMG

Saturday, August 13, 2016

(Room 7)

16:30 - 17:30   WS #137: Optimising the tax structuring of your business

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OPTIMISING YOUR TAX STRUCTURE

Kieran Hayes – Tax Senior Manager

Saturday 13 August 2016

AGENDA

STRUCTURING YOUR INVESTMENT

PENNY & HOOPER UPDATE

TAX TIPS

RESTRAINT OF TRADE

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PRACTICE OWNERSHIP STRUCTURES

Traditional GP Model

Service Company
(employs staff, manages practice)

Levies practice costs →

← Pays practice costs

Practitioner/entity

↓

Patients

Modern GP Model

Practitioner/entity

↓

Group practice company
(owns all good will and fixed assets, employs staff, manages group practice)

↓

Patients

POLLING QUESTION

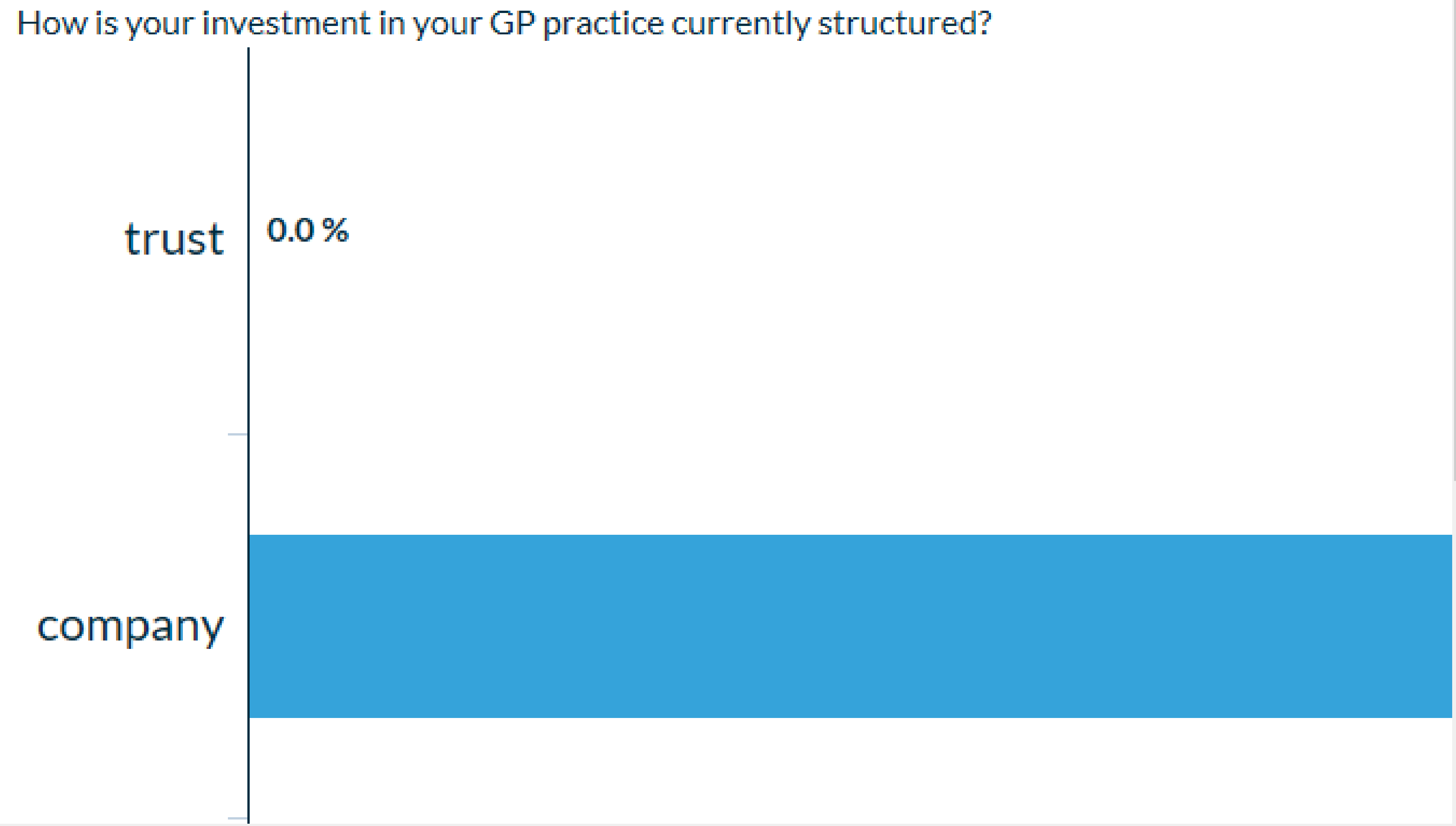
How is your investment in your GP practice currently structured?

A trust

B company

C your own name

How is your investment in your GP practice currently structured?



Source: https://api.cvent.com/polling/v1/api/polls/spmjb1cw

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STRUCTURING YOUR INVESTMENT

	Trust	Company	Sole Trader (own name)
Liability / Risk	🟡	🟢	🔴
Wealth accumulation	🟢	🟢	🔴
Tax efficient	🟢	🟢	🔴
Compliance burden	🟡	🟡	🟢
Operating entity	🟡	🟢	🟢

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POLLING QUESTION

What amount of revenue did Inland Revenue collect from voluntary disclosures made subsequent to the Penny and Hooper case?

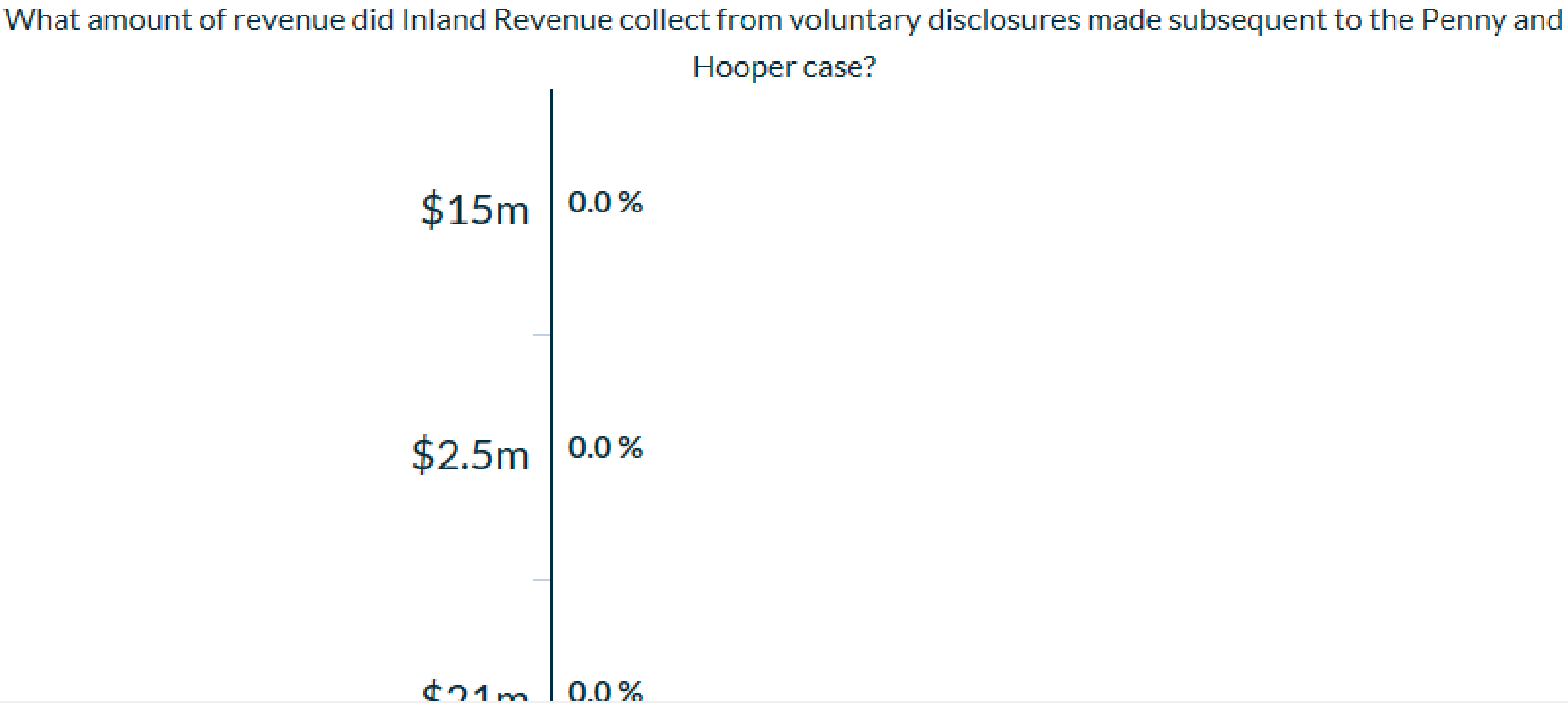
A $15m

B $2.5m

C $21m

D $7m

What amount of revenue did Inland Revenue collect from voluntary disclosures made subsequent to the Penny and Hooper case?



PENNY AND HOOPER UPDATE

- Refresher – what happened?
- Applicable to structures using a company as an operating entity
- Should not apply where use company to hold investment in GP practice
- Where are we now? Attribution rules still apply

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TAX TIPS

- Provisional tax
- Overseas income
- Foreign trusts
- Refinancing debt to shareholders
- Staying away from overdrawn current accounts
- Travel expenditure

POLLING QUESTION

What area of tax do you find the most burdensome?

A Provisional tax

B GST

C Fringe benefit tax

D Other

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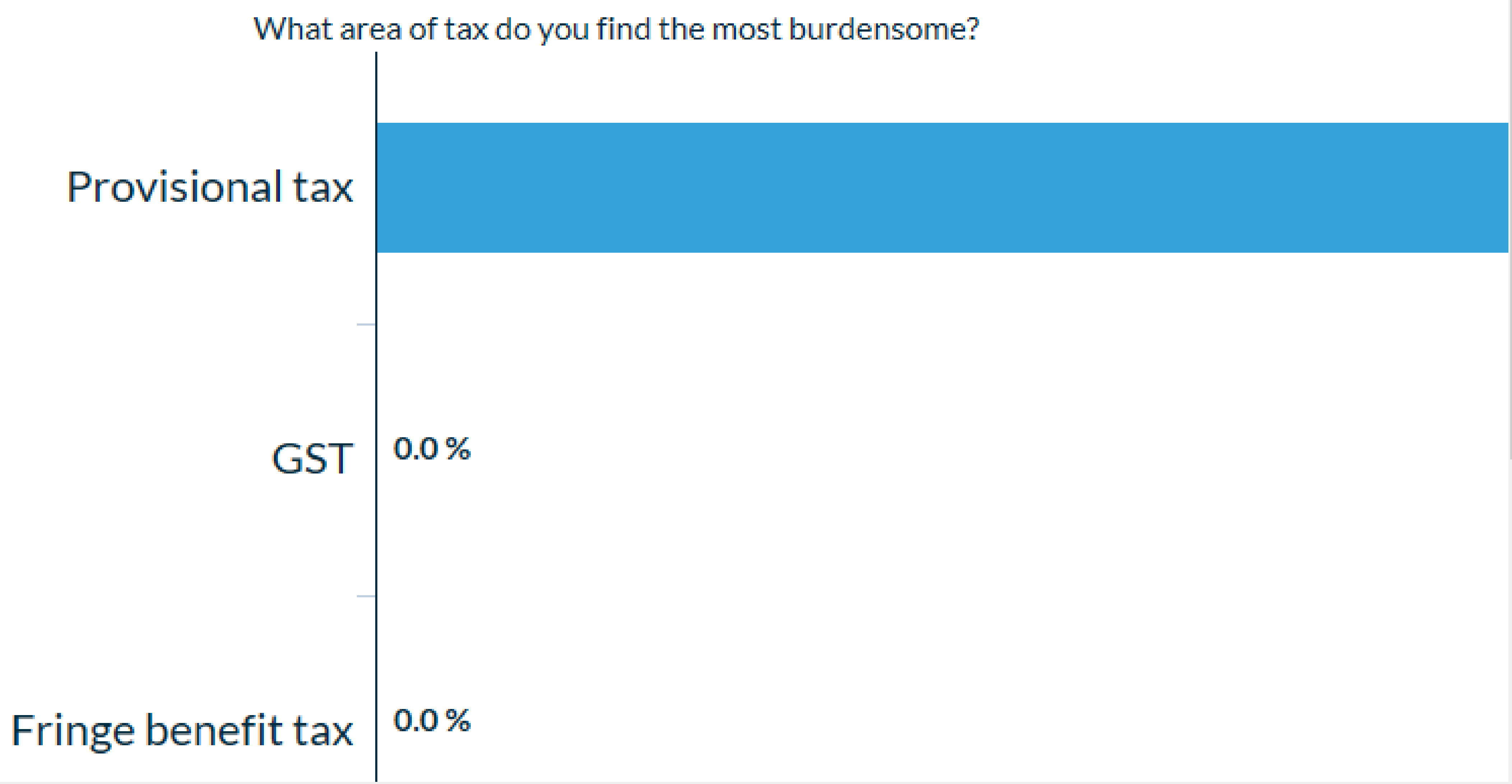
What area of tax do you find the most burdensome?



Source: https://api.cvent.com/polling/v1/api/polls/spe2vipd

PROVISIONAL TAX

Almost 25% of Government revenue comes from provisional tax.

Harsh penalties and interest for getting timing wrong.

UOMI rates: Underpayment = 8.27%

Overpayment = 1.62%

WHAT AMOUNT SHOULD I PAY?

“Standard uplift” method?

Estimate?

PROVISIONAL TAX – PROPOSED CHANGES

APPLICATION DATE 1 APRIL 2017

Current rules

- 3 provisional tax instalments payable - UOMI applies from the first instalment for over/under payments
- Can use uplift or estimate method to calculate instalment amount
- Tax pooling available to mitigate UOMI

Proposed rules

- UOMI to apply from third instalment only if use standard uplift method
- If use estimate method, current UOMI rules apply
- Same principles apply for reassessments
- Tax pooling still available
- Company may pay provisional tax on behalf of shareholder employees

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OVERSEAS INCOME

- Foreign share portfolios – calculating FIF income
- IRD questioning overseas credit cards – particular focus on migrants
- Foreign superannuation schemes – rules now tax on withdrawal, likely IRD scrutiny of historic withdrawals

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FOREIGN TRUSTS

- Storm in a tea cup?
- If you are NZ resident and have a “foreign trust” see your tax advisor
- Be careful - settlors and beneficiaries moving can change tax treatment for trusts

REFINANCING DEBT TO SHAREHOLDERS

- Keep your share capital small and loan funds to your company
- Need money for personal purposes? How much does the company owe you?
- Company can borrow money to repay shareholder debt – interest is tax deductible
- How are your other investments financed?

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OVERDRAWN CURRENT ACCOUNTS

- If you draw out more money than the balance owing to you, FBT becomes payable
  - Not a problem if credit all income as shareholder salary
  - If maintain income in company, may need to pay a dividend

- If paying a dividend, check imputation account balance and complete documentation correctly – may be 5% WHT to pay to IRD

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TRAVEL EXPENDITURE

- I’ve travelled to Rotorua for a conference - “what can I claim?
- What is the prime purpose of the trip? Business or holiday?
- Taking a spouse or partner with you - generally not tax deductible

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RESTRAINT OF TRADE CLAUSES

- Restraint of trade clause in agreement for sale & purchase
- Vendor works in business for “hand over” period and is compensated for this

Expected tax treatment

- Income from sale of business / shares in company is non-taxable (capital in nature)
- Any income relating to restraint of trade is non-taxable (capital in nature)
- Compensation paid for vendor working in business is taxable (salary & wages)

Potential tax treatment

- Sale proceeds identified as relating to restraint of trade are treated as taxable.
- Rule intended to prevent structuring of payments to obtain tax advantage (i.e. lower salary amount and allocate to restraint of trade).
- Rule is drafted widely so you could be inadvertently caught

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QUESTIONS?

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