



THE BALANCE SHEET

November 2020

Included this month;

Article from Grant Eddy - New Trusts Act 2019 | 90 Day Trial Periods
Using the Correct Tax Code | Team New | Christmas Things!



NEW TRUSTS ACT 2019 COMING IN TO FORCE 30 JAN 2021

By Grant Eddy

For many years New Zealanders have had an affinity with Trusts as an ownership structure. Reasons have included protection from business activity (creditors, business compliance risk etc.), government (taxes or means testing), relationship matters or simply management of wealth to future beneficiaries.

There is limited information on the exact number of trusts in New Zealand as there is no formal requirement to record in a register like companies. However the Inland Revenue is gathering more information with all property owning trusts now requiring an IRD number to register the purchase or sale of a property.

We see more compliance and monitoring required going forward for Trust Management.

Up to now there has been limited formal legislation to govern the operation of trusts, instead previously relying more on case law decided through court cases. The new Trusts Act 2019, coming into force 30 January 2021, aims to provide legislative guidance for all parties involved with Trusts.

With the introduction on the Trusts Act 2019, it is an important reminder for everyone who has set up a Trust to review the;

- Original Trust deed and any later updates,
- Trustees,
- Beneficiaries of the Trust, their classes and rights,
- Property held by the Trust,
- Current operation of the Trust in relation to original intentions and in relation to settlors wishes who have/will settle property on the Trust.

Are the above points still applicable and relevant?

The New Act brings in the concept on Mandatory Trustee Duties and Default Trustee Duties, as well as allowing the potential extension of the Trusts life span.

Mandatory Duties will be imposed on all trustee under the legislation and can't be contracted out of. In broad terms the Mandatory Duties require Trustees;

- to know the terms of the Trust,
- act in accordance with these terms,
- act honestly and in good faith,
- act for the benefit of the Trusts beneficiaries, or to further the purpose of the Trust
- exercise powers for proper purpose

In discussing Mandatory Duties with clients, common sense prevails with the comment, "That's what the Trust was set up to achieve."

Default Trustee Duties within the legislation prescribe best practice, however allow the Trustees to contract out of (allow the deed to contain terms contrary to the legislation). Trustees should address their minds to the Default Duties and where necessary expressly modify/exclude these. Examples include;

- to invest prudently,
- trustees to act of no reward,
- to act unanimously,
- avoid conflict of interest,
- trustees not to exercise power for self-benefit.

In reviewing Trusts with clients, the Default duties often need to be modified to achieve the Trusts original intention. The Life of the Trust (previously the Trust perpetuity period) can potentially be extended from 80 years to 125 years. In client discussions, this may not be a concern of the current trustees, however thought should be given about extending the life of the trust if it is intended to hold equity longer term for multi-generational asset management, or the wish to transfer wealth to the next generation via the Trust.

In summary, it is important that a review of your Trust is completed to ensure the Trust is still fit for purpose and achieves its goals within the new legislative framework.

If anyone requires assistance with Trust matters, CooperAitken have a specialist in house team focusing on Trust Administration, Trust management and recommendations for updating your trust in regard to the new legislation.

We are happy to discuss Trusts with our clients and non-clients, for a set fee. Please contact us on Trustsact@cooperaaitken.co.nz.



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90 DAY TRIAL PERIODS

A reminder that as of 6 May 2019, only an employer with 19 or fewer employees (at the beginning of the day on which the employment agreement is entered into) may employ a new employee on a trial period for the first 90 calendar days of their employment.

Any employer with 19 or fewer employees can use a 90 trial period, as long as this is agreed in the written employment agreement before the employee starts work.

[Read more on trial periods](#)

CONGRATULATIONS TO OUR GRADUATES



Congratulations to our 2020 class of Chartered Accountant Graduates!

After years of in-depth training and rigorous exams, both Indy Bandara and Dot Larsen can now proudly call themselves Chartered Accountants!

Unfortunately the graduation didn't happen in it's normal grand fashion this year, and instead was celebrated online, but what a celebration and absolute achievement for both Indy and Dot!

Congratulations ladies!! We're proud of you!!
(Photo left to right: Indy, Coral, Dot and Amy)

USING THE CORRECT TAX CODE

We have noticed an increase in provisional tax payments to Inland Revenue (IR) having the incorrect year or tax type being used.

Please follow the instructions on the tax notice that you receive from us.
The tax notices will state the tax year and tax code to use for your provisional tax payments.

Our tax team have managed to move most of these misdirected payments to the correct year with no issues. However this isn't always the case. Often the misdirected payment will be refunded from Inland Revenue as there is no tax owing in the year or tax type it was paid to.

If this happens, the payment is often deemed late when paid again to the correct area, and correspondence to Inland Revenue is needed to ask for remission on penalties and interest due.

What tax code should I be using?
When paying provisional tax you should be using the tax code INC (Income tax and provisional tax).

However if you are paying both GST and provisional tax due on the same day you can use the GAP code, but only if you have both payments due on the same day.

GAP tax code
Please do not use the tax code GAP (GST and Provisional Tax) unless you are paying both GST and the provisional tax amounts together. A GAP payment goes straight to the GST account first and then a transfer is done through to provisional tax secondly. This saves paying the IR twice e.g. GST and INC codes.

If there is no GST owing, the Inland Revenue system doesn't know what to do with the payment so puts it to their suspense account.

What tax year should I be using?
Please always refer to the tax notice or e-mail you have been sent for the year or period end to use.

Setting up payment
We recommend that upon receiving your tax notice from us, that you pre-load a payment (via internet banking) all set to go out on the tax due date. This will ensure it doesn't get missed or forgotten, and avoids any penalties.

If in doubt please call our tax team 07 889 7153 or the staff member whom notified you of the tax to pay.

Find us



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Save the Date!





MORRINSVILLE

Christmas Parade

SATURDAY 12TH DECEMBER
TIME: 1.30PM

THEME: "THE FAMILY CHRISTMAS"
ENTRIES CLOSE ON 30TH NOVEMBER

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Business Vitality

For entry forms and further details call into the Morrinsville i-SITE Visitor centre
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OUR 2020 CHRISTMAS DO



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