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Whether you are just starting out in property investment, or an experienced investor, visit www.landlords.co.nz and click on Free Advice to have your questions answered. Feel free also to ask questions about investing strategies, finance and investment structures, tenancy management or anything else to do with property investing.

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Ask a *tax* expert

Tax is currently a timely issue, with financial year-end fast approaching. We put some of your tax questions to our expert, **Kenina Court**

Kenina Court

Q My husband and I have been living overseas for the past three years. We are New Zealand citizens but not residents and we are planning on returning to New Zealand in the next couple of years. We own two houses in New Zealand that are currently in two different trusts. We want to know whether it would be better to keep them in a trust and merge the two trusts into one, or get rid of the trusts and set them up as a company? Are there any implications because we are not New Zealand residents?

A With a question such as yours, there are a few hooks which must be looked at on a case by case basis, so I will answer generally and you must make sure you get advice specific to your situation.

Firstly, if a New Zealand company is 25% or more owned by overseas tax residents (that is, for tax purposes, they are not New Zealand tax residents), regardless of whether or not those residents are New Zealanders or not, then company legislation requires the company to be audited each year that this situation applies. This is not a big deal if you're a property investor, however it does bring in an additional compliance cost for which there is no value.

In this situation, at the very least, the shares in the New Zealand company should be owned through a New Zealand resident trust. However, if the business (including rental property) is conducted through a New Zealand resident trust, there is no audit requirement at all. In considering whether or not to move properties between different entities, there are some hugely important issues to consider prior, such as why are you transferring the property and are you going to trigger depreciation recovered?

These issues in themselves can be extremely costly if not dealt with properly. In terms of whether or not to merge two trusts, that will depend on why there were two trusts in the first place and what your plans for the future are. There may also be some concerns as to whether or not the trusts are New Zealand trusts, as some countries have different rules for determining the tax residency of a trust. This could mean with a country such as Australia, if the trust has not been dealt with properly and you are now living in Australia, your New Zealand properties in what you think is your New Zealand trust, are now subject to Australian capital gains tax.

Q My ex-partner and myself are both shareholders at 50% each of a property company that owns four properties. As we split up a couple of years ago, we are thinking of winding up the company and one option would be for one shareholder to buy out the other. Would the capital gain on the selling of shares be taxable as income for the seller? Or is there a better way to wind up the company in order to minimise tax?

A New Zealand does not have any tax on capital gain. However, if you buy shares or property with the intention of on-selling those shares or property, then you are taxed on any gain made, in the same way as a supermarket buys a can of beans for $1 and sells it for $1.50. Assuming you bought both the shares in the company and the property owned by the company with the intention of owning them long-term, then there will be no tax payable on the capital gain of the shares.

Q I have had a rental property since 2000 and have made no tax claims on it. I wondered, if I do go to the IRD, what info I need to provide them with and how far back I could claim if I can claim? Rent received never covered all of the mortgage or the rates and insurances.

A The fact that you have not made any money on your rental property is irrelevant. You are required to file a tax return with your rental income. Also, if the rental income did not cover the cash expenses of the property, you have missed out on being able to offset that loss against your personal income, assuming you own the property in your personal name. My advice would be to get yourself off to an accountant quick smart who can then go back and do your accounts from when you purchased the property back in 2000.

Q I have rental property in Adelaide. Mortgage repayments are $450 per week and I receive weekly rental income of $340. I work in New Zealand, can I use this to be more tax efficient here?

A As a New Zealand tax resident, you are required to include in your tax return all of your world wide income, which will obviously include your property in Adelaide. Even though the property is located in Australia, when the property is accounted for here in New Zealand, it is done according to New Zealand tax law, not Australian tax law. Any loss from the property is offset against your New Zealand income and your tax reduced accordingly. As the property is located in Australia, you should also be filing a tax return with the ATO for the property and it should be accounted for under Australian tax law.

Q I have owned my first rental property for a year but don't make any money off it and have been topping up mortgage repayments. What sort of things can I claim back on? I can't afford an accountant and would just like to know what I should do and how I would do it. a

A While I can understand you may not be able to afford to pay for the services of an accountant, you've also just spent a serious amount of money on buying an asset that if accounted for properly, can give you excellent returns. Having said that, we would suggest you use an accountant at least for your first year. The accountant will prepare a depreciation schedule, rental income schedule and your tax return and ensure you claim all the expenses you are entitled to claim.

Once set up, you could complete it yourself in the following years. However, this could be dangerous as you will not keep up-to-date with any tax changes which could mean penalties for you in the future that outweigh anything you might have spent on accounting fees. If you do want to complete the tax return yourself, IRD have a guide they publish called Rental Income IR264 which you can download from www.ird.govt.nz. It has a lot of useful information in it on what you can claim and the sorts of records you need to keep.