

# assurance adviser

Grant Thornton 

## New office in Auckland

We are pleased to announce that on 1 January 2002, Brown Woolley Graham, has become the new Auckland office of Grant Thornton in New Zealand.

The Auckland office offers a full range of professional advice to clients in all areas of accounting, assurance, taxation, management advisory, wealth and asset management and IT consulting. They adhere to a proactive client service philosophy and are committed to providing professional advice of the highest quality to their clients.

The Grant Thornton Auckland office has 10 partners and 75 team members.

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## How would your organisation stand up to IRD's scrutiny?

In today's commercial environment, business is more and more about identifying, managing and reducing risks. The risk and potential exposure that Inland Revenue imposes on businesses with their audits on various tax types, are threats that many businesses do not prepare for. The costs associated with an audit and the flow-on implications of "problem areas" identified by the Department can rapidly accumulate. This is not taking into account any of the consequences that are linked to the new penalty regime, which on their own have the ability to cripple businesses.

Inland Revenue tends to target a standard set of problem areas when conducting an audit. We can perform a "health check" to review these particular areas and identify whether there are any procedural or general errors that should be remedied.

This would involve us coming to your premises and effectively completing a "dummy audit" for a particular GST period. Another area that causes much confusion with taxpayers (and is an income spinner for the Inland Revenue investigations department) is that of fringe benefit tax. If requested we can review a return for a selected period to identify whether any problems exist.

## What return do you get on your investment?

Peace of mind! By being proactive rather than reactive you will be able to identify whether the current processes and procedures that you have in place are appropriate and will be able to stand up to Inland Revenue scrutiny.

If problems are identified, you will be able to fix them voluntarily. Voluntarily disclosing errors to the Department reduces by 75% any potential penalties that they choose to impose, so the option is certainly well worth your while.

As part of the health check we will provide you with an indepth report detailing what we have found (if anything), whether the procedures you have in place are appropriate and possible solutions to reduce your exposure to Inland Revenue.

Whilst a health check is primarily focused on GST and FBT, we often find some related income tax issues. These will of course be brought to your attention.

Please contact us to discuss whether the health check is a viable option for your organisation.

## Assurance Adviser - Electronically

If you would like to receive a copy of our Assurance Adviser electronically, please email your local editor.

## When is an issue of shares an issue to the public?

A Board of a company may, subject to any restriction outlined in the constitution, issue additional shares in the company after its incorporation. Certain matters that must be considered and resolved by the Board before new shares are issued under section 42 or section 44 of the Act. These sections set out the mechanics for the issue of the shares including the certificates that need to be signed by the directors and delivered to the Registrar of Companies for filing.

Issue - who can the directors issue shares to without being caught by the requirements of the Securities Act? We often become involved with clients and find in our initial review that shares have been issued to the public and no prospectus has been generated. This area of the law is, at times, unclear and varying opinions have been proffered to us in recent times. Our conclusion is that the definition of the public is extremely wide and there are many circumstances where a prospectus will need to be issued.

The Securities Act provides an exemption from these requirements for close business associates that could be based on:

- existing shareholders is prima facie an offer to the public
- he or she is a purchaser of goods from the entity
- an employee or client of the entity or a holder of any securities previously issued by the entity.

There have been a number of cases on the definition of "public" and it is no justification that only a section of the public is capable of accepting an offer.

The law in this area is subject to considerable interpretation and care should be taken when an issue of shares is being considered to ensure there are no breaches of the Securities Act occurring. If a breach of the Act does occur, by way of securities being allotted to the public without a prospectus, the allotments can be declared void and will be liable to be repaid including penalty interest at the prescribed rate in terms of the Securities Regulations. It should be noted both the issuer of the securities and the directors for the issuers are jointly and severally liable to repay the subscriptions. This potentially imposes a large liability upon the directors, should an allotment be voidable.

In summary the requirements for a prospectus are very wide ranging and avoidance of these provisions can expose the directors to business risks. We recommend that any entity considering issuing shares consult with both ourselves and their legal advisers to ensure that the entity can correctly issue shares without a prospectus. The risks and liabilities pertaining to errors in the issuance of shares are large and potentially damaging for both the directors and the entity.

### Editors

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### Directory of Grant Thornton offices

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