



## Estate and Taxation Planning Council New Zealand Inc

September 1994

Dear Member

### Fourth Estate

The Selwyn by-election is history, the National party has retained the slimmest of majorities, but life and business go on as usual.

The Estate & Taxation Planning council is doing its part for growth, with a strong contingent of new members, an exciting topic round table planned for mid September in Auckland, and a workshop interchange session planned for November. Meanwhile, Christchurch branch will hold its inaugural meeting on September 21<sup>st</sup>. The featured guest speaker will be none other than Sir Roger Douglas – familiar to those of you who attended our function in June.

We move from strength to strength. Witness, in this issue, the first ever letter to the editor, about that vexing subject, *licences to occupy*. We would welcome correspondence from members, on any topic or aspect of the work that involves us all.

This newsletter comes to you via the sponsorship of Fiji Palms Timeshare Resort – thank you to Bede Brittenden for this tangible support for our Council.

Marguerite Brien, Editor

### Sir Roger Douglas on MMP

On Tuesday 21 June at 5:30, members and their guests were treated to an excellent address by Sir Roger Douglas.

Sir Roger was originally to present an interactive address for approximately an hour's duration. However, he did invite questions and comments, which had good results. The 90 strong audience managed to keep him occupied with their questions and provocative comments for over two hours.

His address covered a variety of topics, the main points being:

- Reforms in the health sector
- Reforms in education
- Reforms in state-provided superannuation

the above reforms leading to repayment of debt and abolition of personal and company taxes in stages over a 20 year period. Finally, Sir Roger gave an illustration of MMP in action, which everyone in the audience received gladly.

The reforms in the health and education sectors revolve mainly around the opening up of those areas to competition by the private sector and providing the choice of health care and education to the consumer, rather than to the Government-appointed ministries presently responsible for these sectors.

Sir Roger favours compulsory superannuation which he feels will eventually come about under the present Todd Task Force review of superannuation which provided for the possibility of compulsory superannuation in the event of voluntary savings falling sort of targets by the end of this decade.

The example of MMP in action was most illuminating with the number of members of Parliament theoretically able to reach 180 under the proposed system. This is due to the elected representatives automatically being eligible for MP status with other MPs on the list system making up the balance through proportional representation and the party lists.

Sir Roger's presentation was most thought provoking and provided ample scope for debate between the sceptics and the supports over drinks following the presentation. As Sir Roger said, at the end of his address, it will be up to the public whether or not the views of ACT (*the Association of Consumers and Taxpayers*) are well received; that is of course provided ACT becomes a political party.

Contributed by  
Colin McEwan, Assistant Manager  
New Zealand Guardian Trust

## New Members

Please welcome:

**Alan Godfrey** is a member of the LUA, has assisted clients with estate planning for 20 years, as an insurance agent with AMP Society. Alan advises that he is studying for a diploma of business studies in order to become a qualified financial planner.

**A M Fortune** is a solicitor of 23 years experience in estate and taxation planning, is a partner of Fortune Manning.

**Terence P Smith** is a member in good standing of the New Zealand Society of Accountants, is an accountant with over 30 years experience, some 15 of them in estate and taxation planning.

**Brigit Morrison** is a member of the New Zealand Law Society, began her career with Jackson Russell Dignan Armstrong and for the past year has been engaged solely in personal asset and tax planning work for Bell Gully.

**Ian Smedley** is a member of the Executors and Trustees Institute and has been a trust officer with NZ Guardian Trust for the past four years. He has a background in education and private hospital management.

**B V C Stafford** a member in good standing of the New Zealand Law Society and a former partner of Simpson Grierson. Barry has been involved with estate and tax planning for 20 years and has recently become one of the founding principals of Stafford Klassen.

## Letter to the Editor

We wonder if any of your readers or your Council, has the final answer to those two questions which continue to cause debate in the estate planning arena, namely the possible effect of sec 65(2)(g) of the Income Tax Act 1976 on a licence to occupy granted by trustees of a residential property, and the possible application of sec 96 of that Act to the settlement of an income earning asset on a discretionary trust.

The transferor of a resident to trustees, who wants to continue to occupy it, seems to have a choice of two evils. He can reserve the interest to himself before transferring, as some advocate. That, as far as the Estate and Gift Duties Act is concerned, makes it still part of his estate for estate duty purposes, saved by the fact at the moment there is no estate duty.

There is no guarantee that, particularly with MMP, estate duty will not be restored, and if it is the transferor could be in trouble. Or, as others advocate, the trustees can, as part of the consideration for the transfer, grant a free life occupancy at its present value. But if they do, then it is suggested that sec 65(2)(g) may apply, and land the

trustees in a tax problem. Others, again, dispute this, pointing out that 65(2)(g) is expressly a revenue section concerned with rents and premiums, that the value of the licence has no 'premium' or rent element but is at its true value, and is of a capital nature, being expressly part of the consideration for the transfer.

As to sec 96, some advocate including the seven-year minimum period expressly in the settlement terms, in case a limb of sec 96 should apply. Others query how a transfer for value of an investment permanently to the trust could be caught, even if the transferor is also a trustee and would continue to exercise some powers in regard to the asset.

Computer assisted research into the problems is continuing, but so far has not thrown up any conclusive material. If the uncertainties still exist at the date of the next meeting of the Council, it could be of interest to hear any views members may have.

Estates Department  
(C A Atchison and W R Bell)  
Martelli McKegg Wells & Cormack