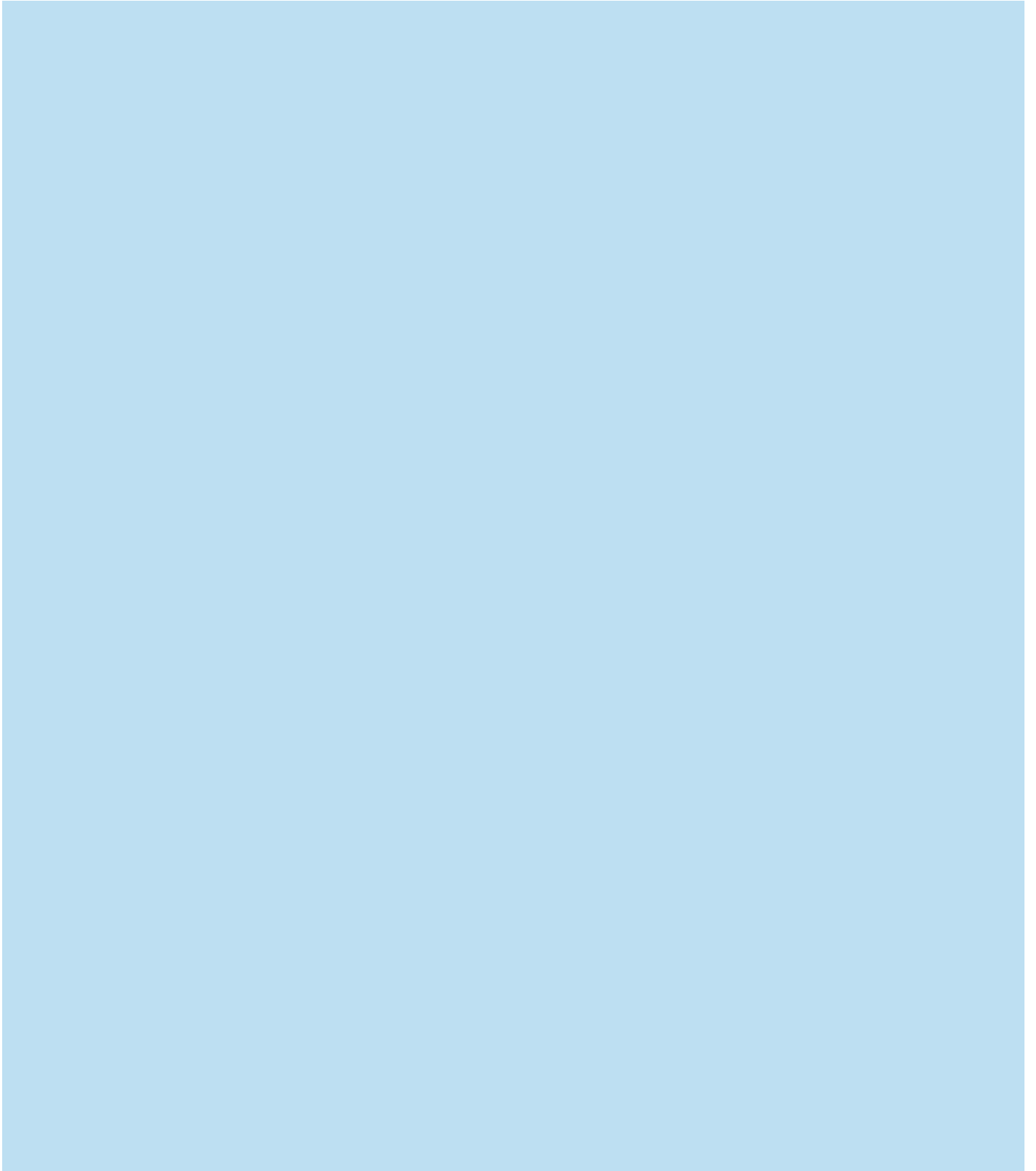


Bell Gully's Taxation Services

Bell Gully



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1. Introduction

Income Tax and Goods and Services Tax

The New Zealand Income Tax Act 1994, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985 have a significant impact on individuals and private and public companies. It is necessary to consider the impact of these Acts in almost every aspect of business carried on in or from New Zealand. It is important for all clients to have access to specialist legal advisers experienced in these areas to guide them through the range of taxation and goods and services tax ("GST") issues that arise in day-to-day business.

Bell Gully's Taxation Department

Bell Gully has the largest legal taxation department in New Zealand with specialist members in both our Auckland and Wellington offices. With 5 partners and 20 lawyers working solely on tax matters, it is considered to be the leading legal taxation department in New Zealand.

Providing comprehensive taxation advice requires a multi-disciplinary approach. Members of Bell Gully's Taxation Department have backgrounds in accounting and banking and also in drafting much of the new tax legislation in New Zealand. There is significant tax litigation experience within the Department. We also have a team of specialists advising on indirect tax matters, including GST, customs and excise duty.

Bell Gully's Taxation Department draws on the experience of other departments within the firm to provide the most comprehensive service available. We apply our collective and individual expertise and experience to develop effective, client driven solutions for a range of individual and corporate clients.

2. Income Tax Act 1994

New Zealand income tax law is primarily contained within the Income Tax Act 1994 (“the Act”). The Act establishes general rules relating to:

- the amounts received by an entity which are liable to tax;
- the expenditure or loss that may be deducted from an amount of income in calculating a taxation liability;
- when income and expenditure must be recognised for income tax purposes;
- the recharacterisation of tax avoidance arrangements;
- tax credits; and
- withholding taxes including PAYE, fringe benefit tax and resident and nonresident withholding tax.

The Act contains rules that relate to the taxation of specific entities, including:

- groups of companies and closely-held companies;
- partnerships;
- trusts and unit trusts; and
- group investment funds.

It also contains specific regimes relating to income and expenditure in a number of industries, including:

- forestry;
- films; and
- petroleum mining.

3. Tax Administration Act 1994

The Tax Administration Act 1994 sets out the statutory duties of the Commissioner of Inland Revenue and the Inland Revenue Department ("IRD"). It also contains the provisions dealing with disputes and challenge procedures, public and private binding rulings, and penalties and settlements of tax in dispute.

The Inland Revenue Department

The IRD is a state department that is responsible for the collection of the tax imposed by the Act. It also has an investigatory and enforcement role.

Every tax paying entity (other than those whose income is fully taxed by way of withholdings) must file a return of income with the IRD for an income year reporting income and deductions. The IRD may audit a return. If amendments are identified, the IRD may initiate the disputes resolution procedure. If the issue is not resolved to the taxpayer's satisfaction a challenge may be initiated by the taxpayer by commencing legal proceedings before the Taxation Review Authority or the High Court within the applicable response period.

Binding Rulings

The IRD may issue product rulings that outline the IRD's interpretation of the taxation provisions as they apply to a specified arrangement. The IRD may also issue private rulings which give the interpretation of a provision as it applies to a specific taxpayer and a particular arrangement. The IRD is bound to follow a ruling in assessing a taxpayer if the transaction in question complies with the ruling.

Penalties and Recovery

The IRD may impose the following civil penalties:

- a late filing penalty;
- a late payment penalty; and
- a shortfall penalty.

Shortfall penalties are graded according to the degree of culpability giving rise to the tax shortfall and are calculated by reference to the amount of the shortfall. The shortfall penalties are 20% for lack of reasonable care, 20% for an unacceptable interpretation, 40% for gross carelessness, 100% for an abusive tax position and 150% for tax evasion. Therefore, it is critical to any business' risk management policy to ensure that correct interpretations of taxation laws are adopted.

4. Goods and Services Tax Act 1985

GST is imposed at the rate of 12.5% on goods and services supplied in New Zealand by a “registered person” in the course or furtherance of a “taxable activity”.

There is a \$40,000 per annum threshold above which GST registration is compulsory. If a taxpayer fails to register but is liable to do so, it must still account for GST as if it had registered.

5. Our activities

Common Transactions

Bell Gully's Taxation Department advises on all aspects of New Zealand income tax and GST. Common transactions on which we advise are:

- business establishment and reorganisations (i.e. asset and share acquisitions and disposals, mergers and amalgamations);
- on and off-market share buybacks;
- domestic diversification and overseas investment into New Zealand (i.e. inbound and outbound investment);
- cross-border structured finance transactions (for investors and promoters or arrangers);
- the acquisition of real and personal property in New Zealand;
- debts and other financial arrangements;
- formation and operation of domestic and foreign trusts and establishment and compliance obligations of trustee companies; and
- managed funds, superannuation schemes and employee share and option schemes.

Relationship with other Bell Gully departments

The expertise of members of the Taxation Department is called upon by the Bell Gully Corporate, Commercial, Banking and Finance, Property and Litigation Departments when they are advising on transactions or disputes. Taking tax and GST advice into account in a particular transaction ensures that clients are fully advised and can effect their transactions in the most beneficial manner.

We also advise on the drafting of tax and GST-related clauses in all commercial agreements. Applicable tax clauses in banking documents for lenders and borrowers, tax clauses in agreements for sale and purchase, and any tax clauses in property transfer agreements, are reviewed.

Negotiations/Litigation

We represent clients in negotiations and disputes with the IRD and in litigation at the High Court, Court of Appeal and Privy Council.

The Department has also obtained IRD product and private rulings on a range of commercial tax issues and business proposals and has successfully liaised with the IRD on behalf of clients in a range of other matters that may affect their business.

Policy development/Legislative drafting

Members of Bell Gully's Taxation Department have been involved in making submissions to parliamentary select committees and the New Zealand Government on taxation policy issues and proposed legislative changes. It is extensively involved in the preparation of new tax legislation and the amendment of current provisions.

A close involvement in the tax reform process means that we are familiar with the latest developments in taxation law and procedure and are able to quickly identify issues that may affect our clients. We are able to deal directly with the Tax Policy Unit of the IRD when new issues arise that need resolution for clients.

Publications

Members of the Taxation Department publish articles, deliver papers and present seminars on various topics relating to income tax and GST in New Zealand. We also publish regular newsletters on taxation issues which are distributed to our clients.

6. Recent experience

We have advised clients in the following industries:

- | | |
|-------------------------------|----------------------------------|
| – electricity | – banking and financial services |
| – telecommunications | – technology |
| – manufacturing | – chemicals |
| – trustee services | – fishing |
| – oil, gas and petroleum | – forestry |
| – healthcare | – household appliances |
| – pharmaceuticals | – dairy and agriculture |
| – print, radio and television | – aviation and shipping |
| – publishing | – insurance |
| – construction | – building products |

The more significant transactions or types of work that members of the Taxation Department have recently advised on have been:

- the purchase by ANZ of the National Bank;
- the purchase by Fairfax of INL's New Zealand publishing business;
- the implementation in Australia of AAMI's GST systems and procedures;
- the purchase of significant forest estates by US investment funds;
- the tax aspects of Air New Zealand's entry into a strategic alliance with Qantas;
- the establishment of securitised lending business by Bluestone Group in New Zealand;
- the sale of New Zealand Insurance to IAG;
- the separation of Fisher & Paykel into a healthcare listed company (in New Zealand, Australia and the NASDAQ) and an appliances listed company (in New Zealand);
- the restructuring of Fletcher Challenge Limited to dismantle its targeted share structure;
- the repatriation of surplus capital and restructure of the New Zealand operations post NZI/ State merger for General Accident;
- substantial tax dispute negotiation and resolution;
- advising foreign investors and arrangers on the impact of New Zealand's conduit tax regime on investment by New Zealand residents outside New Zealand; and
- obtaining IRD rulings confirming the treatment of various managed funds (including index funds).

7. Our Tax Team and Endorsements

AUCKLAND PARTNERS

Niels Campbell

Joanne Hodge

David Simcock

Willy Sussman (GST and indirect tax specialty)

Refer to attached profiles for contact details.

WELLINGTON PARTNERS

Graeme Smail

Endorsements

The expertise of the tax practice is recognised by independent commentators in their review of Bell Gully, which frequently rates as New Zealand's leading law firm.

World Tax 2005 ranks Bell Gully as the "leading law firm in New Zealand providing tax advice." It names Niels Campbell as a leading individual in capital markets and financial products, and cross-border structuring, and Willy Sussman as a leading individual in indirect taxes.

In the 2003 edition of the **Global Counsel 3000**, Bell Gully received more "leading firm" rankings for areas of expertise and more recommended lawyers than any other New Zealand law firm. Bell Gully's tax department was again highly recommended by the publication, with tax partners Niels Campbell, David Simcock and Graeme Smail included.

IFLR 1000 (2003) awarded the firm four "top tier" rankings in the key practice areas of banking and finance, M&A, project finance, and insolvency and restructuring.

Twelve Bell Gully lawyers feature in The **International Who's Who of Business Lawyers** with more partner listings than any other New Zealand law firm including Joanne Hodge (2002) and David Simcock (2003) for their expertise in corporate tax. They were nominated by their peers and clients as being outstanding practitioners in their field.

The Clients' Guide to New Zealand Law Firms, Butterworths, 2002, ranked Bell Gully in all 29 areas of corporate law- more top rankings than any other New Zealand law firm. Bell Gully's tax practice was rated Premier- the highest ranking attainable. Neils Campbell was described as "creative" and the "best in his field". David Simcock was recognised for "achieving excellent outcomes for clients". Peers also rated the tax practice in general highly, praising its "size of team, client base, experience" as well as its "full-time experts in the area."

Niels Campbell

Partner



Qualifications

BCom, LLB, University of Auckland

Admitted

1978 New Zealand

Contact Details

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Mobile: + 64 21 628 944

Email: niels.campbell@bellgully.com

Background

Niels Campbell is a tax partner in our Auckland office and is the Department Leader of the firm's Taxation Division. He was formerly a tax partner at Peat Marwick and has also worked with merchant banks in both Australia and New Zealand. Niels has considerable experience in taxation and financial planning with specific expertise in corporate taxation, financial modelling and the wide field of employee remuneration.

Niels was named as a leading individual in capital markets and financial products, and cross-border structuring by *World Tax 2005*. He was a "recommended tax practitioner" in the 2003/4 edition of *Global Counsel 3000*, and was also included as a leading practitioner in *The International Who's Who of Corporate Tax Lawyers 2004*.

Recent Experience

- Advising major corporates on financial structuring; implications of forward sales commodities; structuring offshore subsidiaries; reorganisation of corporate structures; project finance and amalgamations; letter stock structural issues.
- Advising major banks on numerous financial structures and proposals including development of financial investments; cross-border leasing and finance structures; securitisation of mortgages, and book debts; equity swaps and equity warrants; sub-participation proposals.
- Advising on structuring and successful implementation of Westpac's cross-border exchangeable share issues.
- Advising electrical sector on structures available under the electrical corporate regime, structuring of convertible note instruments, suitable amalgamation structures, and project financing.
- Advising on the structuring of employee remuneration; superannuation fund and repatriation of surplus funds;

Memberships & Publications

- Member of firm's 'Execom', Executive Management Committee;
- Past convener of the New Zealand Law Society's Taxation Committee;
- Regular presenter of papers on tax issues for the New Zealand Institute of Chartered Accountants;
- New Zealand tax reporter for the International Fiscal Association;
- Author of Employee Remuneration handbook;
- Included for the last 2 years in *Global Counsel 3000*, an independent listing of leading commercial lawyers throughout the world, as a corporate tax specialist.

Joanne Hodge

Partner



Qualifications

BCom, LLB University of Auckland

Admitted

1983 New Zealand

Contact Details

DDI: + 64 9 916 8942

Mobile: + 64 21 663 058

Email: joanne.hodge@bellgully.com

Background

Joanne Hodge is a Tax Partner. She joined the firm in late 1993 after being a tax partner with an international accounting firm. She advises on all aspects of corporate taxation for public and private companies and financial institutions. Joanne also advises on trusts and asset protection and on investment in New Zealand by non-residents.

Recent Experience

- Advised Harvard Management Company Inc on New Zealand tax issues applicable to its establishment of operations in New Zealand and the purchase of the forest assets of the Central North Island Forest Partnership.
- General tax advisory work relating to client transactions and on-going tax issues.
- Employee taxation issues, employee share schemes, options and convertible notes.
- Corporate reorganisations.
- Structuring and joint ventures involving either New Zealand or foreign participants in the acquisition of assets.
- Trans-Tasman tax issues.
- Advising merchant banks on securitisations, cross-border leasing and finance structures.
- Advising fund managers of unit trusts, group investment funds and superannuation schemes on their tax obligations; obtaining IRD rulings for index funds.
- Advising foreign individuals on New Zealand tax residency rules and tax compliance obligations.
- Obtaining rulings from the IRD on the tax treatment of business transactions.
- Establishment of trustee company operations in New Zealand for foreign trusts.
- Tax implications of public company separations and IPOs.
- Review and negotiation of tax clauses in agreements for sale and purchase.
- Assisting taxpayers in IRD investigations and disputes procedures.

Memberships

- Bell Gully Board Member.
- Member of the New Zealand branch of the International Fiscal Association.
- Regular presenter of papers on tax issues for the New Zealand Institute of Chartered Accountants.
- Included in the *International Who's Who of Business Lawyers 2002*, an independent listing of leading commercial lawyers throughout the world, as a corporate tax specialist.

David Simcock

Partner



Qualifications

LLB (Hons), BCom, University of Auckland
LLM , University of British Columbia

Admitted

1975 New Zealand

Contact Details

DDI: + 64 9 916 8945

Mobile: + 64 21 614 538

Email: david.simcock@bellgully.com

Background

David Simcock is the senior partner in the Auckland Taxation division of the firm. His areas of particular specialisation are corporate restructuring, tax efficient financing and tax litigation. David has also been involved in corporate advisory work as well as tax policy issues.

Recent Experience

- Advising TransAlta on its investment structures in New Zealand and Australia.
- Advising CGU on the reconstruction of its New Zealand Operations.
- Advising Fletcher Challenge on the reconstruction of the group into stand-alone entities.
- Advisory work relating to client transactions and on-going tax issues. These include structuring (or restructuring) corporate organisations, raising finance on a tax efficient basis, structuring joint ventures involving either New Zealand or off-shore participants and the acquisition and disposition of assets.
- Advising on the operation of foreign trusts in New Zealand and establishment of New Zealand trusts.
- Involvement in the resolution of disputes with the Inland Revenue Department.
- Counsel in litigation on a variety of matters, including assessments for insurance companies and superannuation funds (Piers case; National Insurance), GST (Wilson & Horton) and other income tax issues.

Memberships/Services

- Past Chairman of New Zealand Branch of the International Fiscal Association.
- Regular presenter of papers on tax issues at conferences for lawyers, accountants and people in commerce since 1980.
- David is named as a corporate tax specialist in *Who Who's Legal 2003/4*, an independent listing of leading international commercial lawyers, and as a recommended tax lawyer in *Global Counsel 3000 2003*.

Graeme Smail

Partner



Qualifications

BCom, LLB (Hons), University of Otago

Admitted

1980 New Zealand

Contact Details

DDI: + 64 4 915 6995

Mobile: + 64 21 687 368

Email: graeme.smail@bellgully.com

Background

Graeme Smail, a partner since January 1987, is a taxation and commercial law specialist in the Wellington office. He has specialised in taxation and commercial law since joining the firm in 1980. Graeme spent 18 months during this period with the London law firm of Linklaters & Paines, gaining experience in United Kingdom and international taxation and managed funds law. Since 1988 Graeme has also had an extensive legislative drafting practice.

Recent Experience

- Advising on taxation aspects of various acquisitions, dispositions and restructurings in the electricity industry.
- Taxation and commercial law advice on the joint venture acquisition of a fish products company.
- Advising, in the United Kingdom and New Zealand, various trustees and fund managers in relation to taxation and commercial aspects of the establishment and operation of unit trusts, open-ended companies, group investment funds, life insurance products, superannuation schemes and other forms of managed funds.
- Advising on securities and taxation law aspects of new property syndications.
- Advising on taxation aspects of the restructuring of a New Zealand bank resultant from its statutory management.
- Advising on taxation aspects of the distribution of a New Zealand company of its shares in a subsidiary and subsequent stock exchange listing.
- Advising various Maori groups on the taxation and commercial law aspects of establishment and operation of charitable and other trust structures.
- Acting as a consultant drafting much of New Zealand's taxation legislation in recent years, including in particular the trust regime, controlled foreign company regime, the foreign investment fund regime, the approved issuer levy (non-resident withholding tax) regime, the resident withholding tax regime, the life insurance company regime, changes to tax loss groupings and carry-forward rules, treatment of inter-group transactions, the limitation on deductibility of entertainment expenditure, the changes to taxation legislation consequent upon the Companies Act 1993, the transfer pricing rules, the thin capitalisation rules, the foreign investor tax credit rules, the conduit taxation rules and the project for rewriting the whole Income Tax Act into a plain English style.
- Advising on clarification of technical issues and resolution of disputes with Inland Revenue, including seeking formal and informal rulings and handling of challenge procedures preparatory to litigation.

Willy Sussman

Partner



Qualifications

B Juris, LLB, South Africa
CA, New Zealand

Admitted

1985 South Africa
1994 New Zealand
1999 Australia

Contact Details

DDI: + 64 9 916 8952
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Email: willy.sussman@bellgully.com

Background

Willy Sussman is a partner specialising in Indirect Tax. Willy is a Barrister and Solicitor of the High Court in New Zealand, a legal practitioner of the Supreme Court of New South Wales and a Chartered Accountant and member of the New Zealand Institute. He is also an advocate of the Supreme Court of South Africa.

World Tax 2005 named Willy as a "leading individual" in indirect taxes.

Recent Experience

- Advising on and implementing GST-efficient structures for numerous financial and insurance organisations.
- Advising on GST in relation to Forestry transactions.
- Successfully lobbying for changes to the GST legislation dealing with matters such as the zero rating of exported goods and financial services.
- Resolving disputes and negotiating settlements with the Inland Revenue Department.
- Advising Fairfax on GST matters relating to its acquisition of INLs publishing business.
- Advising on GST issues associated with securitisations.
- Advising on GST implications of partnerships and joint ventures.
- Advising AAMI in Australia on its implementation of GST in Australia.
- Advising on GST and debt factoring issues arising from significant policy changes affecting the industry.
- Advising America's Cup syndicates on GST issues relating to the challenge in New Zealand.

Since October 1998, Willy has been advising a broad range of Australian clients on GST issues. He has presented GST papers to professional bodies throughout Australia and was retained as a consultant on GST matters by the Sydney tax practice of Greenwoods and Freehills.

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