

# Legal Insight

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*Legal Insight is a six monthly publication on topical legal matters for Taranaki dairy farmers.*



*My name is Margaret Joyce and with my husband Richard, We farm a dairy farm at Hurford Road, New Plymouth.*

*I also work as a legal Executive for Govett Quilliam, Lawyers, New Plymouth and specialise in rural matters affecting farmers.*

*It was great to see that farmers united together this year to squash the Government's proposed FART tax. At the back of this publication I have scanned a reproduction picture that my 11 year old son Nikolaus did from a cartoon picture he found in a farming magazine which he thought was rather funny. Well done to all those farmers who got behind Federated Farmers to stop FART tax being a reality.*

*I would like to wish you all a very Merry Christmas and prosperous 2004.*

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## Did you know ...

that Govett Quilliam's nominee company lends money out on first mortgages in respect of dairy farms. The criteria is usually 60% of a registered valuation that is supported by cashflow. Nominee company loans are interest only and reviewable every three years. The interest rate is competitive (currently 7.5%) and usually on a floating basis to follow market rates.

If you are interested in more information please contact me.

## GST, Income Tax and the Minor Subdivision - What is your Liability?

Many New Zealand dairy farmers will at some stage in their lives undertake a subdivision. There is certainly a lot of demand at the moment in Taranaki for people to move into the country buying one or two acres and setting up what is described as a lifestyle block.

Depending on where you are in New Zealand some farmers are seeing other opportunities in respect of the use of their land and perhaps selling off one or two acres of their farm land to a residential purchaser.

What many people may not realise is that the subdivision may make them liable for GST and for Income Tax.

In 1995 the Court of Appeal in *Newman v CIR* ruled that a minor one-off subdivision was not a taxable activity in terms of the GST Act. While this case confirmed that an exemption exists for minor one-off subdivisions the Courts did not give rules of when the exemption applies. Each case is to be considered on its facts.

So where is the line drawn? What constitutes a "minor one-off subdivision"?

The test is that a taxable activity in the GST Act is something that is carried on continuously or regularly. A minor one-off subdivision is not carried out on a continuous or regular basis and therefore falls outside the definition. But when does a subdivision become a continuous or regular activity? In deciding the Courts look at the following:

- (a) The number of sections created
- (b) The level of development undertaken
- (c) The financial investment
- (d) The time and effort involved

The greater each element, the more likely the subdivision will become a taxable activity.

In the Newman case the taxpayer was a residential subdivider who subdivided his property into two. He retained ownership of the section containing the existing house and continued to live there, but sold the bare section. The subdivision involved the minimum number of lots able to be created. As such it gives us little guidance on the threshold before the activity becomes a "taxable activity". What if you subdivided off three lots? What about four?

There has also been an increase more lately of farmers perhaps buying the nextdoor farm and subdividing the house that is surplus to requirements. You need to be careful when you do this that if you do not wish to pay GST that the area subdivided is only the house and its naturally surrounding curtilage. We have become aware of some cases where IRD have required GST to be paid on any area of land that extends outside the house's natural garden area.

Income Tax may also be payable on any profits derived from the sale of land. If the land was acquired for the purpose of re-sale or if an undertaking or scheme involving development or subdivisional work, not being work of a minor nature is undertaken by the owner, within ten years of the date of acquisition then income tax may be payable.

The key is that you should consult with your legal advisor and accountant at the time of proposing to subdivide. The only way of being sure of whether a subdivision is a taxable activity is to obtain an IRD ruling prior to commencement. While this incurs a cost, it may be a small price to pay compared with a

long and costly battle with the Inland Revenue Department.

## **Trusts - After the Property (Relationships) Act 1976**

A Trust has in the past and will remain in the future the single most effective asset-planning tool.

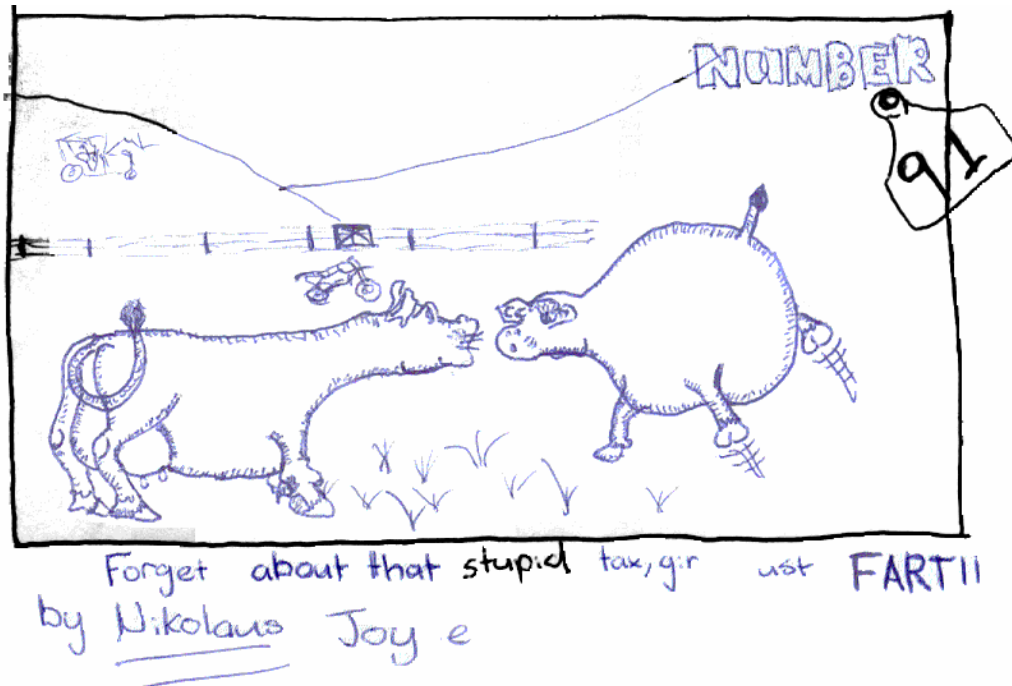
In the context of the Property (Relationships) Act a single person is someone who is not married and not in a de facto relationship (whether with a person of the opposite sex or the same sex).

The formation of a Trust by such a single person and the transfer of his or her assets to the Trust will not affect the current rights of any other party, and, therefore, such a person will have considerable freedom to structure his or her Trust to his or her best advantage. Since there is no spouse or de facto partner there is no need to consider anyone else's interests. The single person can be the sole settlor, a trustee, one of the discretionary beneficiaries and the person who holds the power to appoint and remove trustees. All other beneficiaries can be defined by reference to the person, and future spouses or partners may or may not be included as beneficiaries.

Where such a person subsequently enters into a de facto relationship or marriage there is unlikely to be an issue about whether the assets in the Trust are separate property or relationship property because they would not be owned by the person. Any debt owed to the person by the trustees of the Trust will in most instances be separate property. Since the assets would not be owned by the person any income or gains would not be relationship property.

The position is quite different in respect of married couples and de facto partners. Where relationship property is owned by one spouse or de facto partner, many issues can arise if that spouse or de facto partner proposes to transfer those assets to a Trust. There can be no certainty that the effect of the Trust to protect assets will not be negated at some time in the future.

If you are looking at forming a Trust to protect your farm assets it is important that you obtain specific legal advice before entering into any form of Trust.



## Mini Quiche

### Ingredients

1 small onion  
1½ cups grated cheese  
3 eggs

1 teaspoon Baking Powder  
2oz butter  
Parsley  
Ready rolled flaky pastry

### Method

Finely chop the onion and soften in a saucepan with the 2oz of butter. Mix eggs, cheese and baking powder and add the soften onion and melted butter. Add a bit of finely chopped parsley (if you have it) and a bit of salt and pepper.

Using a fork prick the sheet of pastry all over and using a circle cutter, cut out rounds and place in greased patty tins. Spoon mixture into pastry lined patty tins and cook in hot oven at 200° for about 10 minutes or until golden brown.