

Tax Guide for Elected Members

July 2011



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Local Government New Zealand

te pūtahi matakōkiri

Introduction

Due to the unique nature of the relationship between you and Council, your tax obligations are not as straightforward as you may believe them to be.

TaxTeam and Local Government New Zealand ("LGNZ") have put together this tax guide to help you understand these obligations. The guide outlines:

- The Inland Revenue Department's ("IRD's") view of your tax status as an elected member.
- The income tax consequences of this status, including:
 - How your remuneration is taxed;
 - The tax obligations for you and Council regarding your remuneration; and
 - The types of expenses that you may incur and be able to deduct for income tax purposes.
- A summary of the obligations that you and Council face in respect of:
 - Fringe Benefit Tax ("FBT");
 - Goods and Services Tax ("GST");
 - KiwiSaver; and
 - Accident Compensation Corporation ("ACC") levies.

This guide is based on the law and the IRD's policy as at July 2011. It should only be used for general assistance, and is not to be regarded as providing definitive advice on your tax obligations as an elected member. If you have any queries about your tax position, please obtain professional advice (our contact details are on the back page), or contact the IRD.



Your tax status

The IRD's view of your income tax status

The IRD views the relationship between an elected member and a council as a statutory relationship of service, rather than an employer/employee relationship. As such, you are not an employee of Council for income tax purposes; your relationship with Council is more akin to that of a self-employed person.

What your tax status means

How your remuneration is taxed

Remuneration that you receive from Council is a form of schedular payment and *is* subject to withholding tax. The prescribed rate of withholding tax is 33%; although, as outlined below, there are exemptions and exceptions that may lead to a different rate.

One such exemption is where services are provided by a *company*. This exemption **does not** apply to elected members, even if you request that your remuneration be directed to a company that you may own or work for. This is because it is the elected member, not the company, that has been elected and is providing the services.

Tax obligations for you and Council regarding your remuneration

Tax code declaration form (“IR330”)

You are required to complete and provide Council with an IR330 for the remuneration that you receive as an elected member. When completing the IR330, you should use “WT” as your *tax code*, and “public office holders” as your *schedular payment activity*.

Once Council receives your IR330, Council will deduct withholding tax at 33% from your remuneration, provided that you do not have a *special-rate certificate* (see below).

If Council does not hold a valid IR330 for you, withholding tax *must* be deducted at 48%.

Individual tax returns

Your remuneration as an elected member must be declared on your personal income tax return for each year ended 31 March. Any tax that Council has withheld from your remuneration during the year is credited against your tax liability when you file your tax return.

Depending on the level of your total taxable income, you may have further *tax to pay*, or be entitled to a *tax refund* from the IRD.

The table below sets out the income tax rates for individuals for the 2011/12 income year.

INCOME THRESHOLD (\$)	NEW TAX RATES
0 - 14,000	10.5%
14,001 - 48,000	17.5%
48,001 - 70,000	30%
70,001 and above	33%

Provisional tax

If you are a provisional taxpayer, you should consider how the remuneration you receive from Council affects your provisional tax calculations.

Special-rate certificates (“IR 23BS form”)

If you have little or no other income, significant expenses or available tax losses, you may be able to obtain a special-rate certificate from the IRD. Holding a copy of a valid IR23BS on

file allows Council to withhold tax from your remuneration at a *rate lower than 33%*. If you obtain such a certificate, you should provide a copy to Council as soon as possible.

To establish whether you are entitled to such a certificate, please contact the IRD.

Allowances and reimbursements

For tax purposes, payments that you receive for the services that you perform (such as for attending meetings) are treated separately from any reimbursements and allowances that you receive.

Council is *only* required to deduct withholding tax from payments that it makes to you for any *work or services* that you perform.

Reimbursements that Council pays to you for the expenditure that you incur as an elected member while on Council-related business, or any allowances (other than travel time allowances) that you receive from Council are *not* subject to withholding tax.

Although reimbursement and allowance payments are generally not subject to withholding tax, you may *prima facie* have an income tax liability in respect of such payments; however, as you may be entitled to deduct the underlying expenditure that you incur, there should be no corresponding income tax liability.

Vehicle mileage allowance

You may receive a vehicle mileage allowance “mileage allowance” to compensate you for the expenditure that you incur while using your private vehicle for Council related business (i.e. for travel to and from your house to the offices of Council).

If the mileage allowance that you receive is *equal to or less* than the threshold specified by the Remuneration Authority, withholding tax is *not* required to be deducted from the payments. However, if the mileage allowance exceeds the threshold specified by the Remuneration Authority, withholding tax *may* be required to be deducted from the payment.

Travel time allowance

You may receive a travel allowance for the Council-related travel that you undertake as an elected member. Generally, the duration of the travel determines whether the travel allowance is payable, and the amount of the allowance.

As the travel allowance is *only* paid when you undertake Council-related travel, such payments are considered to be a *payment for the work or services that you perform*, and as such, subject to withholding tax.

Any travel allowance payments that you receive from Council should therefore have withholding tax deducted at the prescribed rate of 33%.

Communications allowance

You may receive a communications allowance to compensate you for the expenditure that you incur while using your private mobile phone, computer or ancillary equipment, or internet connection for Council related work. This allowance is generally only paid by Council when such business tools are *not* provided to you by Council.

As the communications allowance is *not* a payment for the *work or services* that you provide, Council should *not* deduct withholding tax from these payments.

Expenses

You are entitled to deduct expenses that you incur in generating your remuneration as an elected member.

Relevant expenses incurred by an elected member typically include home-use, computer, telephone, vehicle and other miscellaneous expenses. To claim a deduction, sufficient records must be retained to substantiate the expense.

However, this does not extend to your election expenses.

Home-use expenses

You are entitled to deduct home-use expenses *to the extent* that you use your home for Council business. Home-use expenses include costs such as heating, lighting, rates, interest on mortgage payments, house and contents insurance, rent, and depreciation.

However, the amount that you are entitled to deduct for these costs is proportionate to the *extent to which* you use your home for Council business.

If you have a room set aside in your home as an office, then your deductions are calculated using this formula:

$$\text{Deduction} = (\text{area of room} / \text{area of house}) \times \text{deductible expense}$$

If you have no separate office, and you use any room in your house for Council business for part of a day, then your deductions are calculated using this formula:

$$\text{Deduction} = (\text{area of room} / \text{area of house}) \times (\% \text{ of time used for Council-related business}) \times \text{deductible expense}$$

Computer expenses

If you use your home computer for Council work, you can claim a portion of the depreciation on the computer, and consumables expenses, based on the proportion of Council-related use to total use.

Telephone expenses

If you only have one telephone line at home and this is used for Council business, the IRD accepts a deduction of *at least 50%* of the cost of your telephone line-rental, plus the cost of any toll calls. You *may* even be allowed a deduction of more than 50% if a higher percentage of actual Council-related use of the telephone can be supported.

If you have two telephone lines at home, one that is charged at the domestic rate, and one that is charged at the commercial rate for Council business, the commercial rental is fully deductible.

These principles also apply if you use your personal mobile phone for Council-related use.

Vehicle expenses

You are entitled to deduct vehicle expenses *to the extent* that you use your vehicle for Council-related business.

Travel from your home to work (being the place where the Council meeting is held) is *not deductible*, as the IRD considers this to be of a private or domestic nature. However, if your home is the base of your work as an elected member (i.e. you conduct your Council business at home in a separate office, then travel to Council meetings), the cost of travel *may* be deductible.

Determining Council-related use

The deduction that you are allowed for the Council-related use of your vehicle is calculated using the following formula:

$$\text{Deduction} = \text{actual expenditure incurred} \times \text{business proportion}$$

The *business proportion* is the Council-related expenditure, and is determined by using one of four methods set out in the table overleaf.

Election expenses

You are not allowed to deduct *any* expenses that you incur while campaigning to become an elected member.

Miscellaneous expenses

You are allowed a deduction for any miscellaneous expenses that you might incur on Council-related business, such as photocopying, faxes, typing, and postage. In order to deduct such expenses, you must keep records of your expenses and keep receipts.

Other taxes

Fringe Benefit Tax

Any non-cash benefits that you receive from Council or as a result of your position as an elected member (e.g. the private use of a motor vehicle) will be subject to FBT. The onus is on Council to return FBT on such non-cash benefits.

If you receive any non-cash benefits due to your position as an elected member, such as gifts or koha (for example, tickets to a local concert at a non-Council venue), you are required to inform Council so that Council can assess whether it needs to return FBT.

Goods and Services Tax

For GST purposes, an elected member is not considered to be undertaking a taxable activity. This means that:

- You cannot register for GST as an elected member;
- The remuneration that you receive as an elected member will not include GST;
- You cannot issue a tax invoice to Council for the services that you provide as an elected member; and
- You cannot claim GST input tax in respect of any Council-related expenditure that you incur.

This applies regardless of whether you are registered for GST for other activities.

ACC obligations

ACC levies are *not* paid from the withholding tax deducted from your remuneration, so *you* are responsible for paying your own ACC levies.

The amount of your levy is based on your liable earnings and the relevant industrial classification code. There is no specific code for services provide by elected members, but ACC has confirmed that the appropriate code for elected members is *Business Management Services – CU 78550*.

Methods for determining business use of a vehicle

METHOD	AVAILABLE TO USE IF...	BUSINESS PROPORTION IS...
Logbook	You are able to satisfy the IRD that the test period is representative of the vehicle use throughout a year.	Based on the proportions of personal and Council-related use of the vehicle recorded in a logbook that is kept for a test period of at least 90 consecutive days. These proportions can be used as the basis of calculating your vehicle expenses for up to three years.
Actual records		Equal to the actual Council-related use of the motor vehicle based on records that must be maintained throughout each year that show the date, reason for, and distance of each journey.
Mileage rates	Your Council-related travel is 5,000 km or less per year.	The IRD's standard motor vehicle mileage rate* × distance.
Default	The above three methods do not apply.	The lesser of: <ul style="list-style-type: none"> the proportion of actual business use; or 25% of the total use of the vehicle.

- The IRD's current mileage rate is 0.74 cents per kilometre and is considered to be representative of the cost of running and maintaining a motor vehicle. For a full explanation of this policy please refer to the IRD's website (www.ird.govt.nz) and more specifically, the IRD's Operational Statement 09/01: Commissioner's statement of a mileage rate for expenditure incurred for the business use of a motor vehicle.*

Contact details

If you have any questions in relation to the information contained in this tax guide, you should contact the finance team of your Council in the first instance. If you then require professional advice, please contact either Richard Toovey or Phil Fisher of TaxTeam.

TaxTeam is a proud sponsor of the 2011 Local Government New Zealand Conference.

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