

# TaxTeamTalk

Tertiary edition August 2011



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## Introduction

Welcome to another Tertiary sector newsletter. As tertiaries focus their attention on budgets for the 2012 year, it is also important to keep an eye on the proverbial (tax compliance) ball, with several key dates looming. In this issue, we look at various issues that you should be aware of.

## New GST rule—does it apply to you?

A new GST rule was introduced from 1 April 2011 that could mean you *cannot* claim GST input tax on some supplies. If you contract and pay for a good or service, then direct the good or service to be provided to another person, this new rule could apply to you!

For example, if you engage your local florist to deliver flowers to one of your employees, or pay an employee's study or professional membership fees, then, under this new rule, you *may* no longer be able to claim the corresponding GST input tax on the payment.

The new rule was introduced as part of the changes to the taxation of land transactions, but we have serious concerns around the drafting of the legislation and the extension of the rules beyond its intended scope.

We have expressed these concerns to the IRD, and the IRD has confirmed that the new rule has a wider application than originally intended.

As a result, we are hoping that legislative clarification will be provided in the tax bill that is expected to be introduced in September 2011 (although, given that this is an election year, it is unknown when any such changes will be enacted into law).

The IRD has indicated that any legislative amendments will have retrospective effect from 1 April 2011; however, in the interim, taxpayers are expected to apply the new GST rule. This will create an exposure, since financial systems are likely to be set up to claim the GST input tax automatically, and the breadth of arrangements that may infringe the new law is unclear.



**If you are concerned about the potential implications of this new rule, please contact us.**

## IRD compliance focus

The IRD has recently released its compliance focus for 2011-12, outlining the key compliance issues and emerging risks for the year.

Key areas that have been highlighted are:

- Continuing to ensure the integrity of GST and remuneration systems and processes, acknowledging that restructuring and organisational change results in increased risk;
- Expecting organisations to self-review, to check that they are meeting their responsibilities; and
- Focusing on charities that misuse their charitable tax-exempt status.

The challenge for the public sector is to have systems and processes that protect the integrity of tax reporting, and ensure that any errors are identified and corrected expediently.

**Given the current changes within the public sector, these systems and processes are more important than ever in maintaining tax compliance.**

## Employee accommodation

The PAYE treatment of accommodation provided to employees has been altered. Unfortunately, the amendments have provided little clarity.

The provision of accommodation to an employee is subject to PAYE according to the market value of the benefit to the employee, with these changes applying retrospectively from the 2008-2009 income year. This would at first seem more equitable than the pre-existing "market value of the accommodation" requirements. However, in practice, difficulty remains around determining the *market value of the benefit*—whether it is the market value of the accommodation or a subjective value of the benefit to the employee.

During discussions on the matter, it has become apparent that the IRD is also unclear as to how these rules apply. Within this uncertainty there are risks and opportunities.

**If your organisation provides accommodation to employees, we recommend contacting us to discuss the PAYE treatment.**



## Sleeping on the job?

A recent case raises a controversial issue around the interpretation of "work".

The Government, health and safety providers and unions recently held negotiations on the Court of Appeal decision that a community service worker whose contracted work-time included some hours of rest or sleep was working for the duration of that period, and should be paid at least minimum wage. Since these negotiations fell through, the case will now be heard in the Supreme Court on 13 September 2011.

The case involved an employee who was required to stay in an IHC household overnight to deal with any significant issues that might arise, as well as being responsible for monitoring the security of the household and being generally available to support the needs of its residents.

Under the employee's contract, the employer paid him a \$34 'allowance' for the night, plus his normal hourly rate for any time spent actually dealing with issues.

In coming to its decision on what constitutes "work", the Court of Appeal took into account the constraints placed on the employee's freedom, the nature and extent of his responsibilities, and the benefit that the employer received from his presence in the household.

The Court also dismissed the employer's argument that the legislation envisaged 'averaging' of the rate of pay over the entire pay period.

**This case has potential implications for any employer whose employees are required to be at the employer's (or the public's) disposal overnight. It also underlines that employers cannot contract out of legislation by agreeing private arrangements with employees.**

## Employee tax bills

We previously advised that employees who only receive income that is taxed under the PAYE regime may end up with a tax liability for the year ended 31 March 2011.

This could happen for a number of reasons, including the tax-rate change halfway through the 2010/11 year, or an extra pay period falling during the income year. Several of our clients advise that their employees are indeed receiving tax bills from the IRD for the first time.

Essentially, an employer's obligation to withhold PAYE correctly from employees' salary and wages that it pays to its employees is prescriptive. Provided that the payroll system is set up correctly, any underpayment of PAYE is likely to arise from one of the above reasons. However, employees can calculate their liability independently and inform the IRD if they think that a tax bill has been issued in error.

**It is important to have the facts before dealing with staff enquiries, or to communicate proactively to staff that they may have a year-end tax liability.**



## Restructuring payments

We have recently assisted a number of organisations in dealing with the tax implications of payments to staff on restructuring.

### Key points

TaxTeam has prepared a document outlining the key tax considerations relating to redundancies, which can be found on our website or is available in hard copy on request.

One point to note is that the redundancy tax credit introduced from 1 December 2006 will expire on **30 September 2011**. For redundancy payments made prior to that date, the recipient will be entitled to the credit, and employers should ensure that they provide any such employees with either:

- A signed letter showing the employer's name, the amount of the redundancy payment, and the date of the payment; or
- A payslip showing the amount of the redundancy payment.

Employees who receive a redundancy payment after 30 September 2011 will not be eligible for the credit.

### Hurt and humiliation

We also often see an increase in the number of payments for humiliation, loss of dignity, or injury to feelings ("hurt and humiliation") around times of restructuring, as employees become more demonstrative of unhappiness in the workplace.

For such a payment to be valid, however, there must not only be genuine hurt and humiliation, but the employer must have contravened the Employment Relations Act 2000 in dealing with the issue.

The IRD has suggested that payments exceeding \$5,000 are unlikely to be for hurt and humiliation, and would attract greater scrutiny. In our view, introducing an arbitrary sum has no foundation, since payments should be examined by reference to the *actual* hurt and humiliation suffered.

**In light of the IRD's comments, it is more important than ever to retain documentation on file to support any such payments.**



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## And introducing...



Tony Fuller  
Senior Manager

Tony has recently joined us from PwC Auckland, where he held the role of Tax Director. He has been a tax professional for 17 years, including a 15-month stint in Melbourne in 1999/2000 to coincide with Australia's introduction of GST.

Tony's specialist industries have included forestry, construction and film production.