

TaxTeamTalk

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This issue at a glance

Welcome to our new brand

PAYE

Changes to FBT rates

Preparing for the change in GST rate

GST and public authority funding

GST time of supply on international student tuition fees

IRD investigations

Honoraria

Welcome to our new brand

We've changed our look, but not our character! TaxTeam is the new name for Toovey Eaton & Macdonald Ltd, and comes with a fresh new look, together reflecting the technical expertise and trusted advice you've always been able to rely on.

Since 2002, we have commonly been referred to as "TEAM"—an acronym of the Directors' names that also reflects the importance we place on working together to produce practical, focused advice for our clients.

With a well-established and well-respected niche business, we felt the time was right to reflect this in our brand. We knew it was important to keep the equity that was already in our name. The new name 'TaxTeam' is a composite reflection of our core business, how we approach that business internally, and the way we work with our clients. The shadow illustrates our relationship with our clients, being 'by your side' as inseparable business companions. Our focus on personal interaction and commitment to helping our clients achieve their goals is what differentiates us.

Forthcoming tax changes

We are about to enter another period of significant change to tax legislation as a result of the May 2010 Budget. Many of these changes take effect from 1 October 2010.

This newsletter raises many of the issues that you need to be aware of, and that your organisation needs to have dealt with, prior to the legislative changes coming into effect.



PAYE

Personal tax rates will be cut across the board from 1 October 2010.

As these cuts come into effect in the middle of the 2010/11 income tax year, your organisation will need to use the correct PAYE deduction tables when determining PAYE liabilities.

For high-income earners, the tax rate falls from 38% to 33%. As this occurs on 1 October 2010 the average rate for the 2010/11 income year is 35.5%.

Bonuses and allowances paid before 1 October 2010 will be taxed at the 38% rate (via PAYE tables), although the 35.5% rate will apply for the year. Staff may be over-taxed as a result.

Salary sacrifice agreements may need to be revisited, as tax savings will have diminished. There will also be a chance for tax planning around events such as the timing of payments on termination or retirement.

Changes to FBT rates

Those tertiary institutions subject to FBT should note that the flat and alternate rates of FBT have been reduced to 49.25% and 43% so that the FBT rates continue to align with the personal tax rates. The attributed rates of FBT that apply from the 2011/2012 income year onwards have also changed.

In light of these changes, it is more important than ever to remain vigilant and use the correct rate of FBT to calculate the liability for 2010/11 and subsequent income tax years.

The table below shows the correct rate of FBT to use under both options for each quarter in the 2010/11 income tax year.

Any benefits historically obtained by undertaking an attribution calculation have diminished, so your organisation should consider undertaking a cost-benefit analysis to establish whether this is still worthwhile.

Can your organisation alter how benefits are provided to take advantage of the lower rates?

Is the time-consuming attribution calculation still worth pursuing now that the difference between the upper rate and attributed rates has diminished?

Quarter	Flat rate (%)	Alternate rate (%)
30/6/2010	61	49
30/9/2010	61	49
31/12/2010	49.25	43
31/3/2011	49.25	Attributed rates

Preparing for the change in GST rate

As anticipated, Budget 2010 confirmed that the rate of GST will increase to 15% from 1 October 2010.

There are numerous matters that your organisation will need to consider to prepare for this change, and we outline 10 key issues below:

1. The new GST rate of 15% applies from 1 October 2010. To calculate the GST component of a GST-inclusive amount, a fraction of 3/23 will need to be applied; i.e. \$115 GST-inclusive x 3/23 gives a GST component of \$15.
2. The normal time of supply rules continue to apply – the obligation to account for GST output tax arises on the earlier of:
 - Any payment being received; or
 - An invoice being issued – this is not necessarily a tax invoice as defined by the GST Act, but merely a “document notifying of an obligation to make payment”.

Specific time of supply rules continue to apply to periodic supplies (e.g. operating leases).

So GST must be accounted for at 12.5% on all supplies made prior to 1 October 2010, while all supplies where the time of supply is triggered on or after 1 October 2010 will be subject to GST at 15%. However, the Minister of Revenue announced on 23 July 2010 that certain new transitional provisions may be introduced to grandparent insurance contracts and finance lease that straddle 1 October 2010.

Students may want to pay their 2011 tuition fees prior to 1 October 2010 to beat the rise in GST. Is this something that your organisation will contemplate?

3. Credit notes issued after 1 October 2010 will need to reflect GST based on the rate of GST charged at the *initial* time of supply.
4. Finance systems will need to be able to cope with both 12.5% and 15% GST rates at the same time.
5. For all finance systems, it will be important to determine where GST is being imposed and alter the rate accordingly, and a targeted review of system interfaces should be carried out to ensure accuracy.
6. There are specific transitional provisions to deal with the GST rate-change, and the points to note are:
 - Unless an agreement specifically precludes it, any GST-inclusive prices in contracts are automatically increased by the GST rate.
 - All contracts entered into after 1 January 2011 will need to reflect the new GST rate, as the transitional provisions no longer increase the price automatically after that date; and
 - Crown/public authorities providing grants or subsidies are not required to increase this funding to reflect the new GST rate (discussed in more detail below).

7. The GST rate-change will affect pricing points, and it will be necessary to decide whether to absorb this or pass it on to the customer. For small amounts, it may be appropriate to absorb the cost, at least temporarily. On the other hand, the rate-change could be used as an

- opportunity to increase pricing points.
8. All current GST-inclusive published prices should be reviewed, as customers may incorrectly assume this to be the total price. To mitigate this risk, clarification should be provided, which could include a generic statement that all stated prices are correct at the time of going to press, but subject to change to reflect the increased GST rate.
 9. Students may enrol and pay for a course when GST is charged at 12.5%, then withdraw from that course and enrol in another on or after 1 October. The new enrolment should have GST charged at 15%.
 10. International Student Tuition Fees – depending on when the time of supply is triggered, the amount lodged by the student may be insufficient to cover the additional GST due (discussed in more detail below).

Your organisation must have fully dealt with each of the above matters as soon as possible, to ensure full compliance by 1 October 2010.

If you would like further elaboration on these matters, or have other concerns around the GST rate-change, please contact us.

GST and public authority funding

Tertiary institutions receive a significant amount of funding from public authorities such as the Tertiary Education Commission (“TEC”) and the Ministry of Research, Science & Technology (“MORST”).

As stated above, transitional provisions within the GST Act ensure that, to take account of the GST rate-increase, suppliers will generally be able to uplift amounts specified in:

- Any existing agreements;
- Any fee, charge or amount specified in any Act or regulation; or
- Any maximums or minimums specified in any Act or regulation.

However, grants made by a public authority are an exception to this rule. This is because public authorities should be deciding for themselves whether the level of a grant should be increased to cover the additional cost of GST, or whether the recipient should bear this cost.

We understand that both TEC and MORST will increase their funding to tertiary institutions to reflect the GST rate-change.

Nevertheless, as there is no explicit requirement for public authorities to increase funding, it is imperative that contracts with public authorities are reviewed, and that these discussions occur prior to 1 October 2010 to confirm funding levels.

Organisations expecting to receive grants during the transition period or currently applying for such funding should take the GST rate-increase into account when budgeting and considering funding requests.

GST time of supply international student tuition fees

A common issue in the tertiary sector is determining the appropriate GST time of supply treatment for international student tuition fees.

This is not a *new issue* arising because of the GST rate-change, but the increase in GST means that any exposure from getting it wrong has increased (effectively by 20%!).

Unlike with domestic students, delays can occur with international students between enquiring about study and having an actual placement confirmed. Consequently, international students are more likely to enquire (or have already enquired) about a study placement where the services are quoted with GST at 12.5%.

Further, in order to obtain a visa, international students must pay their tuition fees well in advance of actually enrolling, and before an invoice is issued. Potentially, the receipt of payment could trigger the time of supply and lock in the 12.5% GST rate.

When your organisation eventually issues an invoice (likely to be at 15%), the student would then have grounds to argue that they are under no obligation to pay the additional 2.5% GST.

Therefore, for international student tuition fees, your organisation must:

- **Understand, and consistently apply, its GST time of supply rules; and**
- **Make sufficient information available to mitigate any issues around increasing the GST-inclusive price to reflect the new GST rate.**



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IRD investigations

The Minister of Finance recently announced that, for every \$1 spent by the IRD on tax compliance, the Government obtains an additional \$5 of tax.

In light of this, the Government has provided the IRD with approximately \$120 million of extra funding over the next four years to use towards tax compliance audits.

Although indications in the general media are that this will be spent chasing property investors and high-income New Zealanders, the IRD also intends to step up tertiary sector audit activity substantially. The IRD's 2010/11 Compliance Focus Report states that the focus for the tertiary sector will be on GST and PAYE compliance.

In light of these announcements, it is more important than ever to ensure that your organisation's current practices and procedures meet its tax obligations, particularly around GST and PAYE.

Honoraria

The taxation of payments to members of council of tertiary institutions is often an thorny and emotive issue (for the council member, at least!).

Under the previous Income Tax (Withholding Payments) Regulations 1979, the term "honoraria" included "*payments to chairmen and members of council, Boards, committees and other like bodies*". However, presently, the term "honorarium" has a broader scope, as it no longer provides a particular reference to chairmen and members of councils. This was an unintended change as a result of the rewrite of the Income Tax Act 2007, and is being rectified by a provision within the Taxation (Annual rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill 2009. This provision states that a *payment to a chair or member of a committee, board or council* for work or services performed should be taxed as a schedular payment at 33%. This Bill has only recently had its second reading in Parliament, so is yet to be enacted. Once enacted, this specific provision is expected to have retrospective effect from 1 April 2008.

Council members are either elected or appointed to council in their personal capacity, so withholding tax should be deducted from payments to council members *irrespective* of whether their fees are paid to them as an individual or via a company. This view is supported by Cabinet Office Circular CO (09)5 *Fees Framework for Members Appointed to Bodies in which the Crown has an Interest* (3 July 2009).

TaxTeam lead staff



Richard Toovey
Director



Michelle Macdonald
Director



Jeff Eaton
Director



Phil Fisher
Senior Manager



Mike Brunner
Senior Manager

Level 6
44 Victoria Street
PO Box 44
Wellington
New Zealand

T 04 494 2390

F 04 494 2399

www.taxteam.co.nz