

TAXTEAM TALK

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INTRODUCTION

The *Taxation (International Taxation, Life Insurance and Remedial Matters) Act 2009* became law on 6 October 2009. One of the largest tax Amendment Acts in living history, it includes changes to many areas of current tax law. The more relevant changes for Crown Entities are discussed below.

Still the pace of tax change continues unabated. A discussion document proposing significant GST changes was released in November. The *Taxation (Annual Rates, Trans-Tasman Savings, Portability, KiwiSaver and Remedial Matters) Bill* was introduced into Parliament on 19 November 2009. And the Tax Working Group is set to report to Ministers before Christmas on a suite of radical changes to the tax system, to fund the move to a 30:30:30 tax rate structure.

Merry Christmas!!



GST ON LAND & OTHER HIGH-VALUE ASSETS

The IRD recently released a discussion document, "*GST accounting for land and other high-value assets*", proposing a number of significant amendments, including a proposal to guarantee GST business neutrality, and reduce revenue leakage accordingly, by ensuring symmetrical GST input and output tax treatment on major transactions.

The proposed amendments will be important to Crown Entities with land interests. The key proposed change introduces a Domestic Reverse Charge on land transactions, going concerns and goods and services with a GST-exclusive value of more than \$50 million, moving the compliance obligations in respect of these transactions to the purchaser, rather than the supplier. Although these changes should not result in any further GST

costs for Crown Entities, they will require system changes (and related compliance costs) to ensure the correct GST treatment.

Another key proposed change is to amend the existing change-in-use adjustment rules by apportioning GST input tax deductions according to an estimation of the relative use of the goods and services. Taxpayers must then monitor the use to ensure that it accords with the estimation.

The requirement to monitor the relative use of a good or service will add a further layer of complexity. In addition, although the amendments **may more accurately reflect the asset's use** (i.e. taxable vs. non-taxable) over its life, it is likely to increase compliance costs significantly.

Please contact us if you would like to discuss any of these proposed amendments further.

TAX-POOLING RULES

The new laws extend the tax pooling regime currently used by provisional taxpayers to include all tax types (e.g. GST). Tax-pooling intermediaries generally offer more attractive use-of-money interest ("UOMI") rates for tax over- and underpayments than the prevailing IRD rates. Taxpayers who have voluntarily disclosed tax are exposed to high

UOMI costs especially when the error occurred some time ago. The extension of the tax-pooling regime allows taxpayers to 'purchase' any excess tax paid by other taxpayers and held by the tax-pooling intermediary. This can significantly reduce the UOMI arising from the error. Funds must be accessed within 60

days of resolution of a voluntary disclosure. Crown Entities could use pooling to reduce UOMI costs and reduce their political risk accordingly.

We strongly recommend utilising the tax-pooling regime in the event of an audit or voluntary disclosure. If you are interested in tax-pooling, please contact us for further details.

RELOCATION PAYMENTS

Expenditure incurred in relocating employees can now be paid tax-free, in accordance with the Commissioner of Inland Revenue's recently-issued "Determination DET 09/04: Eligible Relocation Expenses". The determination details a broad selection of common relocation expenditure that may be paid tax-free, and is largely consistent with the draft Determination released by the Commissioner in late 2008.

To qualify for the tax exemption, an employee's relocation must be the result of "taking up new employment with a new employer", "taking up new duties at

a new location with their existing employer", or "continuing their current position but at a new location."

The value of the tax-exempt relocation expenditure is limited to *actual* costs incurred in relocating the employee, where those costs are included in a category specified in the Determination.

The relocation expenditure must be incurred by the end of the tax year following the year in which the relocation occurs.

In a rare move for tax legislation, this exemption, somewhat generously, applies retrospectively to the 2002/03 income

year.

This is an excellent opportunity to recover any tax paid (either PAYE or FBT) on eligible relocation expenditure in the previous six years.

The enactment of the law in this regard is a major victory for TEAM, as, amongst others, we made regular submissions to the Government and IRD on the issue. The Determination will appear in Tax Information Bulletin ("TIB") Vol 21, No 9 (Dec 2009), and further commentary on the background and key features of the related legislation is provided in TIB Vol 21, No 8 (Oct/Nov 2009).

PAYROLL-GIVING

The new legislation introduces the "payroll-giving" system, a voluntary mechanism whereby employers that file their employer monthly schedules electronically may allow their employees to make charitable donations from their salary/wages to charities of their choice. Employees who make payroll donations will receive a tax credit equal to a third of their donation. The tax credit is set at a

third of the donation regardless of the donor's marginal tax rate, so people on lower incomes can benefit significantly from donating through payroll-giving.

The tax credit will be offset against the employee's PAYE, calculated on their gross pay, thereby reducing the amount of PAYE payable in that period; meaning that the employee is not required to claim

these tax credits at the end of the tax year.

As most Crown Entities will receive enquiries from their employees in this regard, it is important to agree appropriate policies as soon as possible.

Employers must pass on the payroll donation to the employee's nominated charity within three months.

VOLUNTEER REIMBURSEMENTS & HONORARIA

In a move to recognise the value of volunteers in the community, reimbursement for actual expenses incurred by volunteers in undertaking voluntary activities will be treated as 'tax-free', which means that they will no longer be schedular payments (formerly "withholding payments").

Where a Crown Entity provides a payment to a volunteer that contains elements of both honoraria and reimbursement, the portion that relates to honoraria will still constitute a schedular payment. Further, the Crown Entity will be required to retain sufficient documentation to clearly distinguish the portion of the payment that constitutes reimbursement, from the portion that constitutes honoraria.

A further feature of the new rules is that volunteers are not

required to be New Zealand tax-resident (i.e. a person who stays in New Zealand for 183 days or fewer in any 12-month period). This means that a non-resident volunteer can receive a reimbursement and will not be required to file a New Zealand tax return, as long as they receive no other New Zealand income.

It is important to highlight that non-volunteer individuals (arguably, Committee members on various advisory boards) who receive reimbursement payments in addition to honoraria may still be liable for schedular tax on the entire payment, although changes in the legislation in this area have created uncertainty. We are in discussions with IRD officials on this, and have been advised that the IRD intends to include clarification on this by way of a supplementary order paper to the November Tax Bill.

APPLICATION DATES

Topic of reform	Application date
Relocation payments and meal allowances	1 October 2001
Reimbursement and honoraria payments	1 April 2008
Associated-person rules (other than land)	2010/2011 income tax year
Land-related associated person rules	6 October 2009
Tax-pooling rules	6 October 2009
Payroll-giving	6 January 2010
International tax rules	Income years on or after 1 July 2009
Life insurance	Generally 1 July 2010

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