

# TaxTeamTalk

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## In this issue...

Introduction

Reimbursement of travel costs

Apportionment rules and the ticking time-bomb?

Top tips for an IRD audit

New GST rule—progress!

What's a home worth?

A hidden tax?

Into the cloud(s)

TaxTeam lead staff

## Introduction

As we near the end of another year, it is especially important for the DHBs to keep a close eye on their tax compliance as the IRD starts to increase its investigations.

## Reimbursement of travel costs

We are pleased to be able to confirm that we have recently resolved a GST compliance problem issue that was causing confusion and frustration for many DHBs.

The issue involved whether the Ministry of Health (“MOH”) would pay GST on reimbursements of travel costs incurred by DHB staff carrying out training pursuant to agreements with Health Workforce NZ. Where DHBs were issuing invoices to

MOH that included GST, MOH was refusing to process payment, and requesting that GST be shown as nil on the invoices. After meeting with MOH, we have been able to resolve the problem. Now, provided that DHBs issue a valid tax invoice that includes a charge for GST for the travel reimbursement, MOH will pay the GST-inclusive amount.

**MOH e-mailed DHB Chief Financial Officers in mid-October to confirm this.**

## Apportionment rules and the ticking time-bomb?

The GST apportionment rules still hang like a dark cloud over mixed-use assets acquired by health providers on or after 1 April 2011. These are assets used for both taxable and exempt supplies (e.g. a computer system used for general business *and* exempt staff accommodation). This is particularly relevant for DHBs.

Although unlikely to cause more trepidation than the last 10 minutes of the Rugby World Cup final, the “first adjustment period” for most DHBs in relation to such assets will end on 30 June 2012. In preparation for this, DHBs need to:

- Have a methodology in place for determining the percentage use of the assets in making taxable supplies;
- Perform an interim calculation to confirm that the methodology being used to determine that percentage is sound, to minimise the significant work required at the end of June (when, typically, annual reporting priorities create additional time pressures);
- Make an adjustment at 30 June 2012 for assets sold before year-end, even though the calculation period differs; and
- In the context of land, with any calculation to be made for an adjustment period, consider whether the land is used “concurrently” for both taxable and exempt supplies. The technical meaning of this concept is still not necessarily clear!

**DHBs will need to have an action plan for this.**



## Top tips for an IRD audit

As Sun Tzu said, “Every battle is won or lost before it is ever fought”. This also applies to IRD investigations.

We know that the IRD is currently investigating the Health sector’s tax compliance, with several DHBs currently subject to IRD inquiries. Preparation is everything—here are our top 10 tips for winning the battle!

1. **Know your exposure.** Is the real cost to your organisation tax dollars, time, or political/public perception?
2. **Know your strengths.** Most public sector organisations are overly conservative, and probably overpay tax. Make sure you identify these overpayments.
3. **Demonstrate your strengths.** If the real cost of an investigation is business interference, spend some time educating the IRD about your business and its processes. It will be worth the investment.
4. **Know your enemy.** The IRD usually has a number of key goals in mind for an audit. Assess what these are, and help the IRD achieve its aims quickly.
5. **Use your allies.** Many organisations prefer to use external advisors to manage the audit process. This often brings rewards in the long run.
6. **Keep lines of communication open.** It is imperative that key stakeholders are aware that IRD audits are often routine. Management needs to maintain a ‘no surprises’ approach and ensure that stakeholders stay informed.
7. **Plan the battle and keep to it.** Set key deadlines. Regular (i.e. daily) feedback from the IRD is vital to keeping the audit plan on track.
8. **Support your forces.** It is important that staff are aware of the IRD’s powers, do not feel isolated or exposed, and do not breach rules around privacy, etc. Technical staff support is essential.
9. **Remember, it’s a battle and the war is never over!** View the outcomes positively and use an IRD investigation as an opportunity to agree ongoing tax compliance matters.
10. **Control your forces.** Good tax policy and procedure documentation will provide clear guidance to staff before an IRD investigation begins. The battle can be won before it is started.



## New GST rule—progress!

In our August 2011 edition, we discussed a new GST rule that, among other things, may prevent you claiming GST on goods or services that you contract and pay for, then direct to be provided to another person.

The rule is known as the “nominee rule”. The example we gave is where an organisation purchases flowers from a supplier to be sent to an employee, but this applies equally to funder arm expenditure.

As a result of the concerns that we raised with the IRD about the nominee rules, remedial legislation has been introduced in the latest tax Bill, which, if enacted in its current format, should mean that the GST is once again claimable on such goods and services. There is obviously some risk in continuing to claim GST input, before the law is changed—the conservative approach would be to defer such claims until the legislation is enacted.

**Importantly**, the remedial legislation continues to alter the previous rules relating to claiming GST input tax. In fact, we consider that the remedial legislation as drafted will provide opportunities for taxpayers, to enhance their GST position.

**Call us if you would like to discuss these new rules.**



## What's a home worth?

The provision of accommodation to employees at low or nil cost is a benefit that is (peculiarly) taxed under the PAYE rules instead of the FBT rules. But how do you calculate the taxable value of that accommodation?

Let's take the example where the needs of the employee's job involve them living in employer-provided accommodation, such as junior doctors. Should the taxable amount be based on market value of rent at that location? Should that amount change depending on whether the employee is living in the house alone or with his family?

The IRD is currently considering a number of issues around the valuation of accommodation benefits and has requested submissions thereon. We will be submitting that discount factors should be applied for certain accommodation provided by an employer.

**If you would like to be a party to this submission, please contact us.**



## A hidden tax?

The 2011 Budget altered the treatment of Employer Superannuation Contribution Tax ("ESCT").

ESCT has been around for a number of years, but it is a tax that has been easy to avoid legally and, for those who did pay it, easy to calculate. That is all set to change. From 1 April 2012, the following changes to the ESCT rules will apply:

- The 2% exemption that currently applies to employer contributions to KiwiSaver and other complying superannuation funds will be removed. This means **all** employer contributions will be subject to ESCT.
- The current default ESCT rate of 33% will be removed, which means that ESCT will need to be calculated at each employee's marginal tax rate.

Given that the changes will be effective early next year, you may wish to consider the following:

- Have you determined whether the change will mean that contributions to your employees' superannuation funds will decrease? Or will you meet the increased cost as the employer?
- Have you told employees about the change?
- Do you need to adjust any policy documentation in line with this change?
- Will your payroll system need to be updated to ensure that the new calculations can be performed correctly?
- Have you planned for a review of your systems?

**Employers should review all existing contracts to evaluate the impact of these upcoming changes, and amend their payroll systems accordingly.**

## Into the cloud(s)

All New Zealand businesses are required to physically store their business records in New Zealand, unless the IRD has specifically agreed otherwise.

Many businesses, however, have set up their IT infrastructures using cloud computing; an internet-based computing service that provides users with access to servers, software, applications, storage and networking, or any other aspects of computing over the internet.

Given that many of these servers are not physically located in New Zealand, a number of businesses are *inadvertently* operating outside of tax law.

A recent Bill proposes to simplify the process by allowing data storage companies to apply for IRD approval on their clients' behalf. This aims to remove barriers that may discourage taxpayers from using electronic filing systems such as cloud computing.

**Have your IT people considered this?**

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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 technology.