

TaxTeamTalk

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Introduction

As we near the end of another year, it is especially important for tertiary institutions to keep a close eye on their tax compliance as the IRD continues to carry out investigations.

GST on student accommodation

We have previously alerted you to changes to the definitions of “dwelling” and “commercial dwelling”, and the impact on the GST treatment of student accommodation.

views are being espoused by various tax professionals. This is frustrating, given that one of the intents of the legislation was to provide clarity. It is evident that the contrary has been the result!

We are also aware that auditors have challenged the GST treatment of at least one tertiary institution for their student accommodation following the GST changes.

For the latest advice, please contact us.

The changes (effective from 1 April 2011) continue to cause confusion as to their application. We are aware that differing

Apportionment rules and the ticking time-bomb?

The GST apportionment rules still hang like a dark cloud over mixed-use assets acquired by tertiary institutions 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 student accommodation).

Although unlikely to cause more trepidation than the last 10 minutes of the Rugby World Cup final, the “first adjustment period” for most tertiary institutions in relation to such assets will end on 31 December 2012. In preparation for this, tertiary institutions 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 December (when, typically, annual reporting priorities create additional time pressures);
- Make an adjustment at 31 December 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!



Tertiary institutions 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.

Given the significant number of IRD investigations arising within the local authority, health and Central Government sectors, and the likelihood that investigations will commence in the tertiary sector we thought it useful to set out 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 example we gave was where an organisation purchases flowers from a supplier to be sent to an employee, but this applies equally to, say, a payment for EAP services provided to staff. This rule is known as the “nominee rule”.

As a result of the concerns that we raised with the IRD about the nominee rule, 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.

Given that the Bill is unlikely to become law until sometime in 2012, concerns remain around exposure to penalties; i.e. what approach should one take now in terms of claiming GST before the proposed change is enacted?

Following discussion with the IRD, we have received written confirmation that the IRD will not start any audits specifically to consider issues related to the application of this rule.

However, the IRD also stated that:

“...if during the course of other audit activities, or as a result of a request initiated by a taxpayer, it becomes necessary for the Commissioner to alter an existing tax assessment, and as a result an incorrect (under current law) tax position taken in respect of section 60B(5) comes to the Commissioner’s attention, the law as it currently stands will be applied.”

This means that, if the IRD is auditing matters not specifically pertaining to the nominee rule, there will be scope for the IRD to:

- Review transactions subject to the nominee rule; and
- Impose penalties if the nominee rule has not been applied correctly – i.e. as the nominee rule currently reads.

If you have concerns about any such transactions, please contact us.

Overnight employees— implications

We know that many tertiary institutions providing student accommodation will hire staff, often described as Residential Wardens, to live on-site and provide assistance when required.

One of the issues to be considered is whether such staff are employees or independent contractors. This status has significant tax implications.

As discussed in our August 2011 newsletter, given a recent Court of Appeal decision, and subsequently-enacted legislation, *prima facie*, employees required to stay overnight at their place of work must be paid at least the minimum wage, even if they are sleeping during that time.

This law change may well affect the commercial rationale for your current practice. If you would like to discuss the implications of this further, please call 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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Vivienne Denby
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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.