

# TAXTEAM TALK

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## INTRODUCTION

Welcome to another tax newsletter from Toovey Eaton & Macdonald Ltd ("TEAM"). In this edition, we set out recent tax developments of interest to the Health sector.

## RELOCATION PAYMENTS

As you will be aware from our previous newsletters, TEAM has been leading the lobbying for a change in legislation surrounding the tax treatment of relocation expenses of employees. We are pleased to advise that our efforts have finally come to fruition!

The amendments to the tax legislation announced in late 2007 have now been included in the latest Tax Bill.

Broadly, relocation payments (whether made on account of an employee, by reimbursement, or by way of an allowance based on an estimation of expected expenses) will become exempt income of the recipient employee, thus making them tax-free.

### Included in the Bill

In respect of relocation payments, the Bill confirms the following:

- § Amendments will apply from the 2002–03 income year (when the Commissioner of Inland Revenue ("CIR") issues a Determination to that effect). As a result, tax suffered in the past may be recoverable.
- § The employee's relocation must be as a result of:
  - ú Taking up employment with a new employer;
  - ú Taking up new duties at a new location with the existing employer; or
  - ú Continuing in the current position, but at a new location.
- § The employee's existing home must *not* be within reasonable travelling distance of the new workplace, unless accommodation is provided as an integral part of the job.
- § The expenses must be of a type contained in a CIR Determination (to be announced).
- § Employers, rather than employees, will receive the tax credits that arise in relation to past relocation payments that were subject to PAYE deductions, where the relocations payments were grossed up by the employer and included as taxable income of the employee.

### The Devil is in the detail

Unfortunately, the Bill is short on detail, with most of the vital detail to be included in the CIR Determination. We expect the Determination to address what qualifies as a "reasonable travelling distance", and to set out the types of expense that will qualify for the exemption.

Whilst the Determination cannot be issued as 'final' before the legislation is passed, the IRD has confirmed that it anticipates releasing the Determination in draft prior to the legislation being passed, so that it will be fully operative when the legislation is enacted.

### Hot tip!

If you have paid tax (PAYE or FBT) on employee relocations since the 2002-03 income year, you should start to collate records of payments made to ensure that, when the Bill is enacted, a refund application can be made promptly.

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## CHANGES IN REDUNDANCY PAYMENT

In December 2007, the Government introduced a redundancy payment rebate to make the taxation of redundancy payments fairer for people who are pushed into the higher tax bracket as a result of receiving the lump-sum payment.

The rebate is calculated based on the flat rate of 6 cents per dollar of redundancy payment, up to a maximum payment of \$60,000 per redun-

dancy. Therefore, the rebate itself is capped at \$3,600. This means that a person receiving a redundancy payment of \$30,000 will be able to claim a \$1,800 rebate, whereas someone who receives a redundancy payment of \$60,000 or more can claim a rebate of \$3,600.

The rebate applies to redundancy payments received from 1 December 2006, and can be claimed from 1 April 2008.

## RECENT PENALTY CHANGES

Changes to the tax penalty regime have been introduced in the Taxation (Business Taxation and Remedial Matters) Act 2007, and will apply to tax positions taken on or after 1 April 2008, unless specified otherwise. The main changes are as follows:

### *Late payment penalty*

From 1 April 2008, all taxpayers start with a clean slate in respect of late payment penalties. The IRD will notify taxpayers the first time that their payment is late, rather than imposing an immediate late payment penalty. If, within two years of the due date of the first late payment, another late payment occurs, the penalty will be imposed as usual from the day after the due date.

### *GST late filing penalty*

From 1 April 2008, a \$250 late filing penalty (for those on an invoice basis) will be imposed for failing to file a GST return on time. The penalty will not be imposed the first time that a GST return is filed late. Instead, the IRD will issue a warning that any subsequent late returns in the 12 months following the first breach will be penalised.

### *Shortfall penalty – unacceptable and abusive tax position*

For tax positions taken on or after 1 April 2008, the shortfall penalty for taking an unacceptable tax position will only apply to tax positions relating to income tax—GST and withholding taxes are removed from the scope of this penalty. The abusive tax position penalty minimum threshold has also been removed, with effect from 1 April 2008 (previously \$20,000).

### *Voluntary disclosure and shortfall penalty reduction*

For voluntary disclosures made on or after 17 May 2007, a 100% reduction in shortfall penalty for not taking reasonable care, or for taking an unacceptable tax position or interpretation, is available, provided that the voluntary disclosure is made before notification of a pending tax audit or investigation. Where a DHB is notified of a pending audit, but voluntarily discloses the tax shortfall prior to commencement, a reduction of 40% of the shortfall penalties may be sought.

## TAX RISK MANAGEMENT

A recent article by a Chief Advisor from the IRD provided an interesting insight into the IRD's views on tax risk management strategies and the operation of large organisations. The article noted a perception that the Board and Executive of organisations are disconnected when it comes to considering tax matters and consequently, most organisations do not actively manage tax risks. Further, the article noted that the IRD would be more actively challenging large organisations as to:

- Whether they have documented tax risk management policies;
- Whether there are robust processes in place to ensure that tax risk management controls are operating effectively; and
- Whether there is regular reporting on tax issues to the main board or board committees.

DHBs are viewed by the IRD as large organisations, and as such, you should reflect on the robustness of your organisations tax risk management strategy.

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