

TAXTEAM TALK

THIS ISSUE AT A GLANCE

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INTRODUCTION

Welcome to another tax newsletter from Toovey Eaton & Macdonald Ltd ("TEAM"). In this edition, we set out three items of significance to the Tertiary 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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INCOME TAX, GIFT DUTY AND FBT IMPLICATIONS OF BUDGET 2008

The Good News

Some important tax changes announced in the Budget have now been enacted. Again, these reflect the outcome sought by TEAM's lobbying for the Tertiary sector.

Principally, tertiary institutions are now statutorily entitled to an income tax exemption. Specific tax legislation states that:

"An amount of income derived by a tertiary education institution that is established under Part 14 of the Education Act 1989 and is not carried on for the private pecuniary profit of any individual is exempt income."

Previously, tertiary institutions were required to register with the Charities Commission ("the Commission") in order to maintain their income tax and gift duty exemptions post 1 July 2008. A disparity occurred when the Commission allowed universities to register, but declined polytechnics. The introduction of the above law means that tertiary institutions are no longer required to register with the Commission in order to maintain their income tax exemption.

In addition, gifts made to a tertiary education institution will be specifically exempt from gift duty, due to amendments to the gift duty legislation. Further, legislation allows tertiary institutions to gain donee status automatically by virtue of being considered an organisation to which a charitable or other public benefit gift can be made.

Uncertainty still remains

Universities have always been subject to FBT, while polytechnics and wānanga have been exempt. Due to the Commission's stance against polytechnics and wānanga, and the current wording of legislation, it is likely that polytechnics and wānanga will become subject to FBT. We are currently in consultation with the IRD on this issue.

Legislation also fails to address whether subsidiaries of tertiary institutions are entitled to income tax and gift duty exemptions. Given that the Commission is allowing registration of subsidiaries (including polytechnic subsidiaries), we recommend that all subsidiaries of tertiary institutions apply to the Charities Commission in order to maintain their respective income tax and gift duty exemptions.

ACCOMMODATION – GST TREATMENT

The IRD recently released a discussion document on GST neutrality in business-to-business transactions. Amongst other matters, this document seeks to provide clarification between residential and commercial dwellings, and, accordingly, provide further guidance between the GST-taxable/-exempt boundary.

The GST treatment of the supply of student accommodation has long been an ambiguous area. The release of this discussion document represents an opportune time to submit your views on how student accommodation should be treated.

If you would like to lobby on this matter, call your TEAM tax advisor prior to 31 July 2008.

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