

TAXTEAM TALK

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INTRODUCTION

Welcome to another tax newsletter from Toovey Eaton & Macdonald Ltd ("TEAM"). The new Government has wasted little time in making business tax changes, and indications are that these will be ongoing. At the same time, unprecedented IRD audit activity in the public sector reinforces the need for tax compliance to be treated with high importance.

TAX CHANGES

The recent tax changes include a package of tax measures aimed at making it easier and less expensive for businesses to pay taxes.

If your tertiary institution is subject to FBT (discussed further below), a number of them will apply:

- § The value of minor fringe benefits (e.g. vouchers, flowers, gym memberships) that can be provided to employees without attracting FBT has been raised, up to a maximum threshold of \$300 per employee per quarter, and \$22,500 per employer per year. This change applies from 1 April 2009.
- § The FBT prescribed interest rate has been reduced from 10.90% to 8.05%. This change applies from 1 January 2009.
- § The use-of-money interest rate for underpayments of all tax types has been reduced from 14.24% to 9.73%. The rate for overpayments will reduce from 6.66% to 4.24%. These changes took effect from 1 March 2009.

Other changes that may assist tertiary institutions' subsidiaries are as follows:

- § The PAYE once-a-month and FBT annual filing and payment thresholds have been raised from \$100,000 to \$500,000. You may be able to file and make PAYE and FBT payments less often, reducing compliance costs normally incurred.
- § As the GST six-monthly return filing threshold has been increased from \$250,000 to \$500,000 of annual taxable supplies, you may be entitled to file GST returns less often; again, reducing compliance costs. You may also be eligible to adopt the payments basis accounting method for GST, as this threshold has been raised from \$1.3 million to \$2 million.

We *strongly* recommend that you review and amend your tax policies and procedures accordingly, and ensure that your Finance team is aware of these changes.

IRD INVESTIGATIONS

In the past, tertiary institutions were generally relaxed about the idea of an IRD investigation, as the likelihood of being subjected to one seemed minimal.

However, it's time to be vigilant, as tertiary institutions now face a real risk of an IRD investigation! As the leading tax advisor to the tertiary sector, the IRD has entered into dialogue with us, and informed us that it intends to step up its investigation activity in the tertiary sector, with a number of investigations already scheduled to commence a little later in the year.

How exactly would your institution be affected by an IRD investigation? In addition to the potential monetary costs, it will also incur significant non-fiscal costs during the process of the investigation.

Monetary costs include core tax liabilities on issues identified by the IRD, as well as tax penalties and

interest that may arise. If your institution's tax compliance has been less than exemplary, the financial ramifications could be significant in these tough economic times.

Non-fiscal costs include significant disruption to staff in dealing with IRD enquiry, management costs in ensuring that the IRD conducts its investigation expeditiously, and communication costs in keeping all stakeholders informed. And don't ignore the *political risk* arising from any tax non-compliance.

Given that you currently have a window available to you to eliminate penalties, now is the time to act! Make sure systems and procedures are tax-compliant, any tax returns are filed on time, and the associated tax payments are calculated correctly and paid on time. If you are unsure how tax-compliant your institution is, it is best to engage a tax specialist to conduct a compliance review that addresses all matters of major concern to the IRD.

RETENTION OF FBT EXEMPTION

As you are aware, tertiary institutions, including polytechnics, are now exempt from income tax, and are no longer required to register with the Charities Commission ("the Commission") to obtain the exemption. However, uncertainty remains regarding the FBT status of polytechnics.

The IRD has not yet determined a final view on whether the FBT exemption will continue to apply to polytechnics. The IRD's initial view is that polytechnics will not qualify for the FBT exemption, due to the fact that they are not entitled to register with the Commission as a charitable entity.

We have been in consultation with the IRD on this matter, and submitted that polytechnics can still retain their FBT exemption by qualifying as a "charitable organisation", as defined under the Income Tax Act 2007, meaning that there is no requirement for them to register with the Commission to retain such exemption.

We will update you further on this matter as soon as the IRD provides us with a response. However, in the meantime, as confirmed by the IRD, we suggest that polytechnics defer accounting for FBT until the position is finalised.

RELOCATION EXPENDITURE

The IRD has released a draft determination on relocation expenditure, which was issued when the Tax Bill implementing its tax exemption was before Parliament. Whilst the Bill is still to be enacted, the exemption will be backdated to the 2002/03

income year.

The likely enactment date for the Bill is August 2009.

TEAM has made submissions on this determination on behalf of both NZVCC and ITPNZ, and we eagerly await the amendments to the determination and the

enactment of the legislation. For those tertiary institutions that have previously paid tax on relocation expenditure, once the legislation is enacted, you should be able to have that tax refunded. We will be happy to assist with this, if required.

MAKING THE MOST OF DONEE STATUS

As a result of changes to the tax legislation that came into effect from 1 July 2008, tertiary institutions that are established under Part 14 of the Education Act 1989 are regarded as "donee organisations". As such, donations that are made to qualifying tertiary institutions will qualify the donor for a tax credit for

donations made. Furthermore, the thresholds that did apply to donations have been lifted, and donors are now able to gift up to the extent of their net income and claim a tax credit to the full extent. Now is the time to approach likely philanthropic ex-students or members of your communities for donations!

OFFSHORE OPERATIONS

A number of tertiary institutions are delivering courses overseas. It should not be overlooked that operating offshore may well have tax implications!

It should also not be taken for granted that, just because tertiary institutions are exempt from income tax in New Zealand, income that is derived overseas will necessarily be exempt from income tax in the country where it is earned. Also if your tertiary institution is employing staff

in an overseas jurisdiction, there may well be PAYE implications in New Zealand *and* overseas, or, in the worst-case scenario, both—meaning that, potentially, the employees' income is taxed twice!

If your tertiary institution is considering setting up an offshore operation, then it is imperative to address the tax issues early. Trying to 'mop-up' tax affairs after the event is inefficient and expensive!

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