

TaxTeamTalk

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This issue at a glance

Welcome to our new brand

Budget at a glance

PAYE

Changes to FBT rates

GST opportunity

Removal of depreciation on buildings

GST and Crown funding

IRD investigations

Honoraria and reimbursements

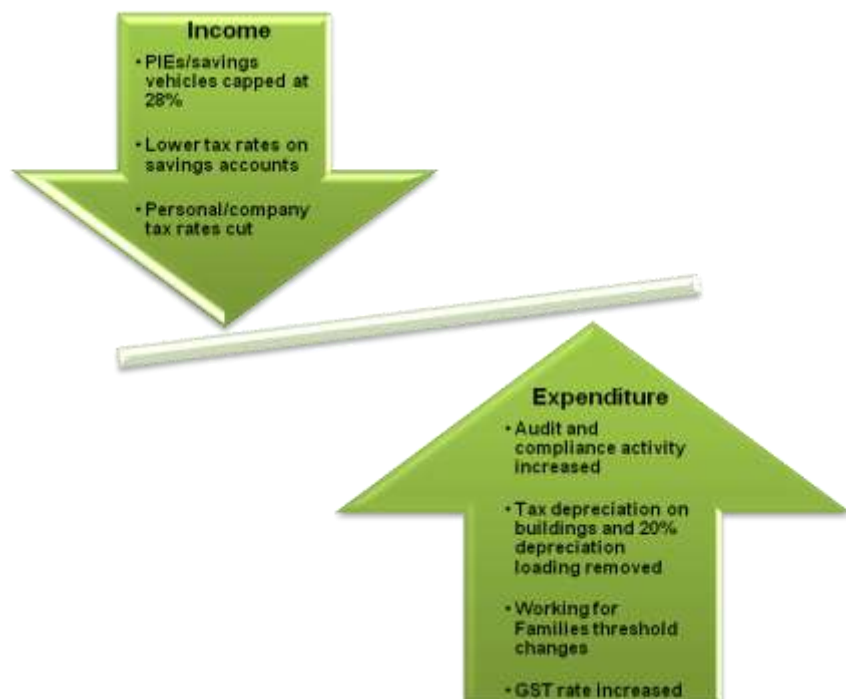
Welcome to our new brand

We've changed our look, but not our character! TaxTeam is the new name for Toovey Eaton & Macdonald Ltd, and comes with a fresh new look, together reflecting the technical expertise and trusted advice you've always been able to rely on.

With a well-established and well-respected niche business, we felt the time was right to reflect this in our brand. We knew it was important to keep the equity that was already in our name. The new name 'TaxTeam' is a composite reflection of our core business, how we approach that business internally, and the way we work with our clients.

The Budget at a glance

Budget 2010 substantially changed the Government's tax revenue-base by shifting it away from taxes based on income and towards taxes based on expenditure. The diagram below summarises some of these key changes.



This newsletter takes a considered approach to Budget 2010, and raises matters that you may not have considered as yet.

PAYE

Personal tax rates will be cut across the board from 1 October 2010.

As these cuts come into effect in the middle of the 2010/11 income tax year, Council will need to use the correct PAYE deduction tables when determining PAYE liabilities.

For high-income earners, the tax rate falls from 38% to 33%. As this occurs on 1 October 2010 the average rate for the 2010/11 income year is 35.5%.

Bonuses and allowances paid before 1 October 2010 will be taxed at the 38% rate (via PAYE tables), although the 35.5% rate will apply for the year. Staff may be over-taxed as a result.

Salary sacrifice agreements may need to be revisited, as tax savings will have diminished. There will also be a chance for tax planning around events such as the timing of payments on termination or retirement.

Changes to FBT rates

So that the FBT rates continue to align with the personal tax rates, the flat and alternate rates of FBT have been reduced to 49.25% and 43%. The attributed rates of FBT that apply from the 2011/2012 income year onwards have also changed.

In light of these changes, it is more important than ever to remain vigilant and use the correct rate of FBT to calculate the liability for 2010/11 and subsequent income tax years.

The table below shows the correct rate of FBT to use under both options for each quarter in the 2010/11 income tax year.

Any benefits historically obtained by undertaking an attribution calculation have diminished, so Council should consider undertaking a cost-benefit analysis to establish whether this is still worthwhile.

Can Council alter how benefits are provided to take advantage of the lower rates?

Is the time-consuming attribution calculation still worth pursuing now that the difference between the upper rate and attributed rates has diminished?

Quarter	Flat rate (%)	Alternate rate (%)
30/6/2010	61	49
30/9/2010	61	49
31/12/2010	49.25	43
31/3/2011	49.25	Attributed rates

GST opportunity – bringing forward rates-invoicing

Reliance on the normal time-of-supply rules *may* allow Council to bring invoicing forward to take advantage of the lower rate of GST. However, in *excessive cases*, where it is clear that normal practices have been restructured to bring forward a material volume of transactions, the IRD has indicated that the general anti-avoidance provisions *may* come into play.

What constitutes *excessive* is unclear at this stage, but, if every local authority decides to bring their invoicing forward, the amount of tax revenue at stake will be substantial, so the IRD may seek to test the issue in court.

Tax avoidance is an uncertain area generally dealt with on a case-by-case basis, so local authorities contemplating issuing invoices earlier than usual to crystallise the time of supply before 1 October 2010 must be able to demonstrate that they are complying with the 'black letter of the law', and that reasonable care has been taken in adopting that position.

Tax avoidance is an uncertain and fact-specific area. Make sure Council has its own independent tax advice.

Removal of depreciation on buildings

To discourage people from investing in property primarily for tax reasons, the Government has changed the depreciation rate of buildings with an estimated useful life of 50 years or more to 0%.

However, deductions will still be available in relation to *fit-outs* that are not considered to be part of the building.

This new rate will apply from the 2011/12 income year, and will apply to *all* buildings, regardless of when they were purchased. For local authorities, this will be from 1 July 2011.

As the IRD and taxpayers generally have differing views on whether an item is a *fit-out*, there has historically been a lot of uncertainty in this area. Clear guidelines around what constitutes a *fit-out* are therefore more important than ever.

As a guide for taxpayers with residential rental properties, the IRD issued Interpretation Statement IS 10/01: *Residential Rental Properties – Depreciation of Depreciable Assets*.

However, no such guidelines exist for taxpayers with commercial properties, so the IRD has indicated that the treatment of *commercial fit-outs* will be reviewed, and any amendments to clarify the law will be made before 12 April 2011.

If properties are held in CCO structures or outside core Council, this change may impact on the deferred tax calculations for Council's 30 June 2010 group accounting disclosures.

GST and Crown funding

As anticipated, Budget 2010 confirmed that the rate of GST will increase to 15% from 1 October 2010. But what effect will this have on funding that Council receives from the Crown?

To reflect the rate-change, local authorities will generally be able to uplift amounts specified in:

- Any existing agreements;
- Any fee, charge or amount specified in any Act or regulation; or
- Any maximums or minimums specified in any Act or regulation.

However, grants made by a public authority are an exception to this rule. This is because public authorities should be deciding for themselves whether the level of a grant should be increased to cover the additional cost of GST, or whether the recipient should bear this cost.

Local authorities expecting to receive grants during the transition period, or that are currently applying for such funding, should take the GST rate-increase into account when budgeting and considering funding requests.

Where any fee, charge, or amount is set by an Act or regulation, the amount *must* be uplifted by the additional GST cost unless a new fee is set.

IRD investigations

The Minister of Finance recently announced that, for every \$1 spent by the IRD on tax compliance, the Government obtains an additional \$5 of tax. In light of this, the Government has provided the IRD with approximately \$120 million of extra funding over the next four years to use towards tax compliance audits.

Although indications in the general media are that this will be spent on chasing property investors, the IRD also intends to step up Local Government audit activity substantially. The IRD's 2009/10 Compliance Focus Report stated that the focus for local authorities would be on GST compliance. We have been advised that this will be repeated in the 2010/11 Report, together with a focus on PAYE and FBT.

In light of these announcements, it is more important than ever to ensure that current practices and procedures meet Council's various tax obligations, particularly around GST.

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Honoraria and reimbursements

There has always been ambiguity around the tax treatment of payments made to Local Government elected representatives, because tax legislation does not specifically state that such payments are honoraria, but the IRD has historically accepted them to be.

The *Taxation (Annual Rates, Trans-Tasman Savings Portability, KiwiSaver, and Remedial Matters) Bill 2009* proposes to update tax law to match the IRD's view on this matter, by including a provision stating that a *payment* to a Local Government elected representative *for work or services performed* should be taxed at 33%.

It is intended that this provision will only apply to *payments made for the services performed*, not to any reimbursements.

In order to prepare for the change in law, Council should separate all reimbursements and allowances from payments for elected representatives' services, if this is not already the case. This will ensure full tax compliance.

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