

# TAXTEAM TALK

## TOUGH TIMES—TAX CAN HELP

Welcome to another tax newsletter from Toovey Eaton & Macdonald Ltd (“TEAM”). The preparation of LTCCPs in troubling economic conditions inevitably leads to a focus on obtaining value for money.

From a tax perspective, this means that local authorities must use tax rules to their advantage and not unnecessarily incur tax liabilities and tax compliance costs. This newsletter sets out important points in this regard.

## PROPOSED TAX CHANGES

The Taxation (Business Tax Measures) Bill 2009 has recently announced tax changes to comply with tax obligations. It is essential that your council is aware of these changes:

- § Council will be able to provide minor fringe benefits (e.g. vouchers, flowers, gym memberships) without attracting FBT up to a maximum threshold of \$300 per employee per quarter, and \$22,500 per employer per year. This change will apply from the 2009/10 income year.
- § The use-of-money interest rate for underpayments of tax will be reduced from 14.24% to 9.73%. The rate for overpayments will reduce from 6.66% to 4.24%. This change will apply from 1 March 2009.
- § For, say, a CCTO that incurs less than \$10,000 of business-related legal expenses, these will be *fully*-deductible in the year incurred, regardless of whether the legal expenses are capital in nature.
- § If Council or a CCTO is a provisional taxpayer, the uplift rates will be reduced for the 2008/2009 and 2009/2010 income years, from 105% to 100%, and the 110% rate to 105%. For transitional taxpayers, including Council, the rates will be reduced from 100% to 95%, and from 95% to 90%.

Other changes that may assist small CCTOs are:

- § As the PAYE once-a-month and FBT annual filing and payment thresholds have been raised from \$100,000 to \$500,000, the CCTO 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 taxable supplies, the CCTO might be entitled to file GST returns less often; again reducing compliance costs.

Taking into account the proposed changes summarised above, we *strongly* recommend that you review and amend Council's policies and procedures, and ensure that your Finance team is aware of these changes. A full summary of changes can be found on our website.

## IRD INVESTIGATION

In the past, councils were generally relaxed with the idea of an IRD investigation, as the likelihood appeared minimal. However, it's time to be vigilant, as councils now face a real risk of an IRD investigation. In the past few months, the IRD has been increasing its audit activity in the sector, and we are predicting more ahead.

How exactly will Council be affected by an IRD investigation? Not only will it incur fiscal costs arising, but it will also incur significant non-fiscal costs during the process of the investigation.

Fiscal costs include core tax liability on issues identified by the IRD, as well as tax penalties and interest that may arise from a tax shortfall. If Council has not generally been tax-compliant, the financial ramifications can be significant in these tough economic times.

Non-fiscal costs include as 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. Also, don't ignore the *political risk* arising from any tax non-compliance.

If Council has not yet received formal notification from the IRD of the tax investigation, then now is the time to act! Make sure that Council's systems and procedures are tax-compliant, that any tax returns are filed on time, and that the associated tax payments are calculated correctly and paid on time! If you are unsure how tax-compliant Council is, then it is best to engage a tax specialist to conduct a compliance review that addresses all matters of major concern to the IRD.

## VOLUNTARY DISCLOSURE—A RED FLAG

It is not uncommon for local authorities to make errors in GST and FBT return filing. With the diversity of operations and internal pressures faced by the sector, it is almost inevitable. How should these errors be rectified?

In our view, it is incumbent on all public sector institutions to be transparent and to notify the IRD expeditiously. Provided that corrective action is taken with 'all cards on the table', resolution should not be problematic.

However where the proposed corrective action is, itself, incorrect, then warning bells will ring at the IRD!

Be safe and obtain appropriate professional advice regarding voluntary disclosures.

## BUT I GIVE MY MONEY TO CHARITY!!

It has come to our attention that some mayors and councillors have publicly stated that they wish to decline their remuneration increase, and, rather, have the amount paid to charity.

Remember, from a tax perspective, if the elected representative *directs* where the payment goes, this is the same as receiving payment! Withholding tax will apply.

Advice should be sought to ensure that the charity concerned receives full benefit.

## GIFT DUTY—A TAX ON THE UNAWARE?

Organisations controlled by local authorities that do not carry on a trading undertaking *can* qualify as a charity. Why would such organisations bother, if they don't make profits?

The answer is that registering as a charity means that donations received from the public qualify for

tax deduction/rebate. Also, any such entity is exempt from gift duty.

Imagine a wealthy ratepayer decides to donate substantial funds to your council. Failure to have a charitable entity to receive the amount could mean an immediate gift duty leakage.

## TRAFFIC INFRINGEMENT FEES

The IRD has been disputing the GST output tax treatment of traffic infringement fees derived by local authorities. For many local authorities, traffic infringement fees form part of their main operating revenue, and consequently, the GST output tax treatment of the fees can be critical!

Without the certainty provided by a private binding ruling, treating infringement fees retained as exempt from GST could be disputed by the IRD. To avoid any potential penalties and use-of-money interest arising from the dispute, a private binding ruling would thus be necessary.

In 2005, a private ruling was obtained by TEAM that exempts traffic infringement fees retained by 19 local authorities from GST output tax. This ruling is due to expire on 30 June 2009.

TEAM is currently seeking to renew the 2005 private ruling in relation to the GST output tax treatment of infringement fees. If your council is not already subject to the ruling and wishes to be included, please do not hesitate to contact us.

## LOCAL GOVERNMENT TAX TRAINING

In light of recent IRD audit activity in the Local Government sector and the new developments in the tax arena, tax compliance has never been more important, particularly where manual processing is involved. Since 2004, TEAM has been carrying out full-day tax workshops *specifically* for local authorities, which focus *solely* on practical and topical sector issues, and aim to ensure that finance managers and staff responsible for tax compliance understand

current tax matters and can be confident in ensuring that their local authority is tax-compliant.

TEAM will be running these workshops throughout April, in Hamilton, St Arnaud, Christchurch, Wanganui and Napier. If you are interested in attending one of these sessions and would like more information, please contact Emma Drysdale via e-mail to [emma.drysdale@taxteam.co.nz](mailto:emma.drysdale@taxteam.co.nz), or telephone (04) 471 6454.

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