

TAXTEAM TALK

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INTRODUCTION

The *Taxation (International Taxation, Life Insurance and Remedial Matters) Bill* became law on 6 October 2009.

The reforms are voluminous, and have ushered in changes to many areas of current tax law. We have included in this newsletter those changes that are the most topical for local authorities. For **major issues, such as the 'associated person' changes, we will provide a more comprehensive summary of the new rules in subsequent publications.**

Please contact us if you would like further information on any of these changes.

ASSOCIATED PERSONS

Changes to the associated person rules have generally broadened the scope of when two or more persons will be "associated" for income tax purposes. The changes are targeted primarily to land transactions, but have application for all income tax purposes. Association becomes crucial as it has the potential to "taint" one party with the tax status of the other.

There are now 11 tests for association:

- Two companies;
- A company and a person other than a company;
- Two relatives;
- A person and a trustee for a relative;
- A trustee and a beneficiary;
- Trustees with a common settler;
- A trustee and a settler;
- A settler and beneficiary;
- A trustee and a person with a power of appointment or removal;
- A partnership and a partner; and
- Two persons who are each associated with the same third person (i.e. tripartite test).

The implications for your local authority may be

significant, especially under the various trust association rules and the tripartite rules (note that *Council is a "company" for tax purposes, and may also have "trusts" within the ambit of its activities*).

The tripartite rules can be particularly insidious, in that they will, generally, associate two persons (e.g. A and B) if they are both associated with a common third person (e.g. C) under certain other association rules.

Another important change is the introduction of 'aggregation of interests' rules to the "two companies" and the "company and a person other than a company" tests, to prevent circumvention of these rules through fragmenting company holdings.

Further to extensive consultation and piquant public discussions, the Government has legislated certain limitations to the rules, essentially to protect genuine arm's-length transactions.

However, the widely-cast nature of the new associated person rules means that a greater level of care and consideration needs to be given to all land transactions, especially those entered into after 6 October 2009, as these rules have the capacity to trip the unwary.

TAX-POOLING RULES

The new laws extend the tax pooling regime currently used by provisional taxpayers to include all tax types (e.g. GST). Tax-pooling intermediaries generally offer more attractive use-of-money interest ("UOMI") rates for tax over- and underpayments than the prevailing IRD rates.

Taxpayers who have voluntarily disclosed tax are exposed to high UOMI costs on tax shortfalls, especially when the error occurred some time ago. The extension of the tax-pooling regime allows taxpayers to 'purchase' any excess tax paid by other taxpayers and held by the tax-pooling intermediary.

This can significantly reduce the UOMI arising from the error. Funds must be accessed within 60 days of resolution of a voluntary disclosure.

We strongly recommend utilising the tax-pooling regime in the event of an audit or voluntary disclosure. If you are interested in tax-pooling, please contact us for further details.

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RELOCATION PAYMENTS

Expenditure incurred in relocating employees can now be paid tax free.

To qualify for the tax exemption, an employee's relocation must be the result of; "taking up new employment with a new employer", "taking up new duties at a new location with their existing employer", or "continuing their current position but at a new location."

The value of the tax-exempt relocation expenditure is limited to actual costs incurred in relocating the employee, where those costs are included in a category specified by Determination of the Commissioner. We expect this largely to follow the draft Determination released by the Commissioner in late 2008, which

detailed a broad selection of common relocation expenditure that may be paid tax-free.

The relocation expenditure must be incurred by the end of the tax year following the year that the relocation occurs.

In a rare move for tax legislation, this exemption, somewhat generously, applies retrospectively to the 2002/03 income year. This is an excellent opportunity to recover any tax paid (either PAYE or FBT) on eligible relocation expenditure in the previous four years.

The enactment of the law in this regard is a major victory for TEAM as we, amongst others, made regular submissions to the Government and IRD officials on this issue.

PAYROLL-GIVING

The changes have introduced the "payroll-giving" system, a voluntary mechanism whereby employers that file their employer monthly schedules electronically may allow their employees to make charitable donations from their salary/wages to charities of their choice. Employees who make payroll donations will receive a tax credit equal to a third of their donation. The tax credit is set at a

third of the donation regardless of the donor's marginal tax rate, so people on lower incomes can benefit significantly from donating through payroll-giving.

The tax credit will be offset against the employee's PAYE, calculated on their gross pay, thereby reducing the amount of PAYE payable in that period; meaning that the employee is not required to claim

these tax credits at the end of the tax year.

As most local authorities will receive enquiries from their employees in this regard, it is important to agree appropriate policies as soon as possible.

Employers must pass on the payroll donation to the employee's nominated charity within three months.

VOLUNTEER REIMBURSEMENTS & HONORARIA

In a move to recognise the value of volunteers in the community, reimbursement for actual expenses incurred by volunteers in undertaking voluntary activities will be treated as 'tax-free', which means that they will no longer be subject to schedular deductions (formerly "withholding payments").

Where Council provides a payment to a volunteer that contains elements of both honoraria and reimbursement, the portion that only relates to honoraria will still constitute a schedular payment. Further, Council will be required to retain sufficient documentation to clearly distinguish the portion of the payment that constitutes reimbursement from the portion that

constitutes honoraria

A further feature of the new rules is that volunteers are not required to be New Zealand tax-resident (i.e. a person who stays in New Zealand for 183 days or fewer in any 12-month period). This means that a non-resident volunteer can receive a reimbursement and will not be required to file a New Zealand tax return, as long as they receive no other New Zealand income.

It is important to highlight that non-volunteer individuals (arguably, Mayors and Councillors) who receive reimbursement payments in addition to honoraria will still be liable for schedular tax on the entire payment.

OTHER

Other major changes introduced involve the international tax and life insurance rules. The major change to the international tax rules is the introduction of an "active income" exemption from attribution under the controlled foreign company (CFC) rules.

Please contact us if you would like to discuss these changes.

APPLICATION DATES

Topic of reform	Application date
Relocation payments and meal allowances	1 October 2001
Reimbursement and honoraria payments	1 April 2008
Associated-person rules (other than land)	2010/2011 income tax year
Land-related associated person rules	6 October 2009
Tax-pooling rules	6 October 2009
Payroll-giving	6 January 2010
International tax rules	Income years on or after 1 July 2009
Life insurance	Generally 1 July 2010

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