

# TaxTeamTalk

Special business continuity edition March 2011



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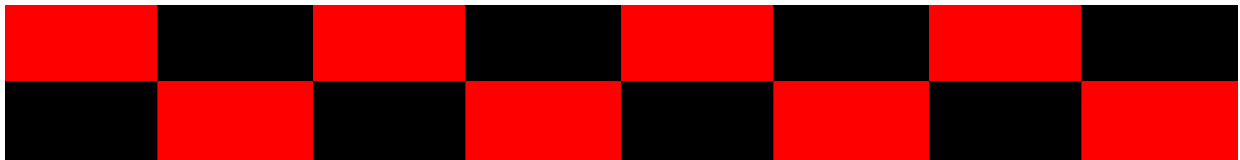
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## Introduction

Our hearts go out to all those affected by the devastating Canterbury earthquake on 22 February 2011, and we take this opportunity to express our admiration for the people on the ground working so hard to support the local community. *Kia kaha.*



Following the earthquake, many employers are facing tough decisions on the ability to resume normal business, and provide a safe and operational workplace for staff.

Some businesses may have only minor interruptions to normal service, while others may still be awaiting confirmation of the state of existing premises. In this bulletin, we discuss some of the tax implications of payments, allowances and concessions that may be provided to staff, and the special regulations that have been issued in response to the Canterbury earthquake.

**These issues may appear linked only to those affected by the Canterbury earthquake, but should be considered in the wider context of any potential business interruption that may occur.**

## Working remotely

With a large portion of the Christchurch CBD still cordoned off, businesses may need to allow staff to work remotely to regain capacity in the short term.

Under the fringe benefit tax ("FBT") rules, there are exemptions that allow staff to use business tools of less than \$5,000 value with any incidental private use not being subject to FBT.



Business tools vary greatly, and may range from office-based items such as laptops and mobile phones, to industrial assets such as trailers, shovels and generators.

Should allowances or reimbursements be made for the business use of private assets, such as broadband internet connections, personal computers and office space, these should be considered on the reasonable cost of such items and the percentage of business use expected.

The IRD has accepted that a 50% reimbursement or allowance for telecommunications costs and some home-office expenses can be made be tax-free.

**It is essential to hold supporting documentation for these payments.**

## Insurance payments

Many businesses are claiming on insurance to replace damaged fixed assets, and, in some instances, employees' health and life insurance policies may be called in.

The receipt of insurance claim proceeds is subject to specific GST rules. Where insurance proceeds relate to a loss incurred in carrying on business activities, GST output tax applies. You will be required to return GST output tax based on the date of receipt of the insurance proceeds. For example, if you receive insurance proceeds for a vehicle that was damaged by falling debris, GST output tax will need to be returned in the GST period applicable to the date of receipt.

If staff have been physically injured, some insurance policies may allow the proceeds to be paid directly to the staff member (or their family), while others will provide proceeds back to the organisation.

**Any such proceeds from health, life, or income-protection insurance should be carefully considered to determine the potential GST, PAYE or FBT implications.**

## Orders in Council

On 3 March 2011, three Orders in Council ("Orders") were issued involving the tax compliance of those affected by the Canterbury earthquake.

The first Order allows a temporary exception to the secrecy rules of the Tax Administration Act 1994. This exception authorises the Commissioner of Inland Revenue ("the Commissioner") to disclose information held by the Inland Revenue Department ("IRD") about a person to certain Government agencies, to enable that Government agency to provide assistance to, or fulfil any obligation in relation to, that person. Due to the importance of the secrecy rules, there are strict safeguards on the exception.

The second Order deems Canterbury earthquake support payments made up to 30 June 2011 on behalf of the Crown not to be taxable grants or subsidies for GST purposes. This means that no GST is payable on the payments.

The third Order will apply to taxpayers who are physically prevented from making a tax payment required by tax law. This will include taxpayers prevented from making PAYE payments to the Commissioner because staff or tax agents are unable to access the relevant building, or because the records have been destroyed. In these instances, the taxpayer may request that the Commissioner remit use-of-money interest charged on these late tax payments.

**We would like to acknowledge the IRD's sensitivity and proactivity in reacting to the devastation in Canterbury.**

## Relocations

Some employers may have capacity within other regional offices for employees to relocate to take up roles elsewhere within the organisation; and, in some instances, the employer's business premises may even be relocated.

Should this require the employee to relocate their personal residence, say, to Timaru, Dunedin or Wellington, the employee's relocation costs may be able to be met tax-free.

Where an employer directly incurs costs in relocating new or existing employees to another location, the expenditure is not subject to FBT, provided that the benefit qualifies under the IRD's *Determination DET 09/04: Eligible Relocation Expenses* ("the Determination").

Briefly, to qualify for the exemption from FBT, the following conditions must be met:

- The benefit must reflect the actual expenditure incurred (an allowance can be made, provided that a wash-up calculation is made).
- The benefits must be provided before the end of the income year following the year in which the employee starts the new job or moves to a new location.
- The employee's relocation needs to be as a result of the employee:
  - Taking up new employment with a new employer; or
  - Taking up new duties at a new location with the employee's existing employer; or
  - Continuing in the employee's current position, **but at a new location.**
- The employee's existing residence must not be within reasonable daily travelling distance of the new workplace.
- The benefit provided must be on the eligible list of items provided in the Determination.

**The ability to provide a tax-free relocation could bring welcome relief to staff affected by the Canterbury earthquake.**





## Employee / contractor distinction

Traditionally, any uncertainty around the employee/contractor distinction is likely to arise under exceptional circumstances, such as the Canterbury earthquake.

As a result of the Canterbury earthquake, there may be staff who are unable to relocate, or who become redundant. This may raise questions around one-off exit payments under a contract of service, or under employment law.

It is important to know the status of a staff member, to ensure that the correct tax treatment is applied to any payments made under these exceptional circumstances. As a reminder, employees are generally subject to the PAYE rules, and independent contractors *may* be subject to withholding tax from schedular payments that they receive.

Common law uses five tests to determine whether a contract is a “contract of service” (employee) or a “contract for services” (independent contractor). Briefly, the tests used to determine the status of a worker are:

- *The Control Test*—the degree of control exerted over the work of the employee or contractor (as to what work is performed and the manner in which it is performed).
- *The Organisation/Integration Test*—the degree to which the person is considered to be an integral part of the organisation; for example, if they perform work commonly performed by an employee.
- *The Independence Test*—the degree of independence that the person has from the organisation.
- *The Intention of the Parties Test*—as evidenced by any contract. Although a written contract may indicate the intention of the parties, it is not always determinative.
- *The Fundamental/Economic Reality Test*—whether the person who purports to be a contractor can be regarded as being in business on their own account.

**If you need assistance with this or any other matter discussed in this issue of TaxTeam Talk, please contact us.**

## Ex-gratia payments and special leave

As an employer, there are requirements to provide for the health and safety of staff under the Health & Safety in Employment Act.

Where the workplace has been severely damaged, is deemed unsafe for occupation, or is within a safety-cordoned area, an employer may consider it necessary to prevent employees from accessing the workplace.

Similarly, an employee’s family and home may have been severely affected. In these instances, an employer may choose to grant employees special leave, or provide an ex-gratia payment to those employees.

For Central Government entities in particular, the State Services Commission has encouraged reference to the special-leave provisions included in many Central Government policies.

**This is particularly important while decisions are made regarding longer-term business operations.**



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