

TAXTEAM TALK

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INTRODUCTION

Welcome to another tax newsletter from Toovey Eaton & Macdonald Ltd (“TEAM”). Once again, we set out a number of tax changes and points of interest that are significant to the Local Government sector.

If you wish to discuss any of the issues raised in this edition, our contact details can be found at the bottom of this page.

DONATION DEDUCTION – A ‘DOUBLE-WHAMMY’

Under proposed legislation, from 1 April 2008, companies become entitled to a *full* tax deduction for donations made. In the past, this was restricted to 5% of taxable income.

As local authorities are companies for tax purposes, they are entitled to this deduction (as are their corporate council-controlled organisations (“CCOs”).

However, recent activity by the Inland Revenue Department (“IRD”) is putting this

entitlement at risk, as the IRD is claiming that local authorities are ineligible for a donation deduction because of their “statutory framework”. TEAM is currently disputing this matter with the IRD.

The ‘double-whammy’ for local authorities is that they are not considered to be charities for tax purposes. As a result, there may be a decrease in gifts and donations received, as donors look for more tax-efficient gifting opportunities.

GST AND TXT-A-PARK PROVIDERS

The introduction of TXT-a-park and other electronic means of paying for pay-and-display car parks raises a number of interesting GST issues, including:

- § When the time of supply occurs;
- § Who can issue a GST invoice;
- § Whether any agent/principal relationship exists; and
- § The applicability of GST to any merchant service fees charged.

This matter needs to be addressed in the legal agreement with the telecommunications service provider. Local authorities should proactively address these GST matters when considering adoption of such services, to ensure that unintended GST consequences and related costs do not arise.

FBT DAY

Well over a year has passed since the changes to fringe benefit tax (“FBT”) legislation that now allow a local authority to elect the time on which

an FBT day commences. We note that very few (if any) local authorities have taken the opportunity to make an election.

Local authorities with a

large motor vehicle fleet that involves private use may be incurring unnecessary FBT liabilities, simply because no election has been made in this regard.

CHANGES TO THE COMPANY TAX RATE

From 1 April 2008, the company tax rate will reduce from 33% to 30%. This will have significant ramifications at both a council and group level. Immediate areas to consider are:

- § The impact on restructuring opportunities (i.e. company versus trusts);
- § Alteration to the Key Performance Indicators of CCOs; for instance, increase in after-tax returns;
- § Alterations to CCOs' dividend policies; and
- § Imputation record-keeping.

KIWISAVER AND COUNCILLORS

We have received several queries from local authorities regarding whether they have an obligation to make employer contributions in relation to the mayor and elected members. Some confusion has been added by the IRD, with its KiwiSaver Helpline providing incorrect information.

We can confirm that local authorities are *not* required to, and indeed *should* not, account for KiwiSaver contributions in respect of the mayor and elected members. The rationale for this is that the KiwiSaver Act 2006 states that an employee is

someone who is entitled to receive salary or wages, as defined by the Income Tax Act 2004.

This Act clearly states that "salary and wages" does not include a withholding payment, and, since the mayor and elected members receive honoraria (a category of withholding payment), they are not employees.

Accordingly, should the mayor or an elected member wish to join a KiwiSaver scheme, they may do so, but must do this by independently contacting a KiwiSaver provider directly.

CHARITABLE HOSPITAL TAX EXEMPTION

The IRD has proposed an amendment to the Income Tax Act 2004 relating to exempt income for local authorities. The amendment states that income derived by hospitals that are operated as charities by council-controlled trading organisations ("CCTOs") on behalf of local authorities will qualify for the charitable tax exemption, subject to the Charities Act 2005, and that the income derived by local authorities from such CCTOs will be exempt income to the local authorities.

TEAM supports the proposed changes, but questions why the exemption should only be extended to one narrow form of charitable activity. As such, TEAM has made submissions on the amendment, requesting that the exemption be extended to all CCTOs that undertake a charitable activity and are not run as a business in competition with other private sector organisations; for example, a charitable CCTO that raises funds for the benefit of the community. The acceptance of this proposed change could alter the way that funds are raised by local authorities for community activities.

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