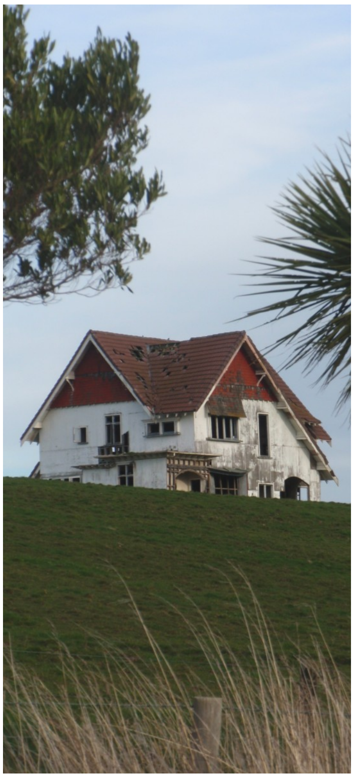
Oct/Nov 10

Tax Time

Special points of interest:

- Property Transactions and Tax
- Employees with a short-fall of PAYE
- GST increase from 1 October 2010
- Employment Disputes
- Quick Bits



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Property Transactions and Tax

Since the Budget announcement in May many property investors have either elected to reduce their exposure to the property market or taken the opportunity to acquire properties providing good returns at a discount.

Regardless of which way you have gone, care should be taken to understand the tax implications of any contracts, which will need to be revisited with the introduction of the new ADLSi/REINZ Agreement for Sale and Purchase form.

Consideration has always been given to the appropriate allocation between land and buildings. This is important in determining the depreciation recovery for the vendor and the depreciable claim for the purchaser. Given the changes to the depreciation rules, vendors may try to attach a higher value to the land in Agreements for Sale and Purchase to reduce the potential depreciation recovered on the property sale, which, given a purchaser will have no depreciation claim going forward, is unlikely to be challenged by the purchaser. However, where the allocation between land and buildings is artificial or non-commercial, we expect that the Inland Revenue Department ("IRD") is likely, in the current judicial environment, to attack this as tax avoidance.

For residential property developers and commercial property investors, the GST change on 1 October 2010 must be considered to ensure that the cost of the property acquired from a GST registered developer does not increase due to GST not being considered.

You will also need to consider the time of supply rules. Where time of supply has been triggered prior to 1 October 2010, the GST rate will be at 12.5% (as opposed to 15%). However, artificial transactions to bring forward time of supply will also most likely be viewed by the IRD as tax avoidance. Once again the standard is that you have a commercially realistic transaction.

The IRD has released a new guide (IR 364) entitled "Tax and your Property Transactions" and also has a new dedicated web site for tax on residential properties. Although the summaries are indicative of the relevant rules, they are not definitive and should not be relied upon as tax advice.

How it affects you

If you are involved in property investment or development, you should ensure that any allocation of value between land and buildings can be verified as a commercially realistic allocation. With the GST rate change and the changes to the standard Sale and Purchase agreement, we recommend that you get advice before you sign any agreement.

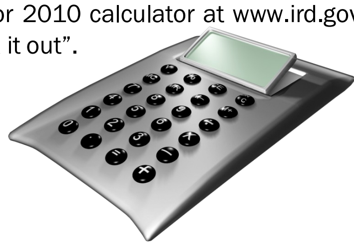
- From WHK Sharp-As Tax

Employees with a shortfall of PAYE

If your employees ask why they've not had enough PAYE and/or student loan repayments deducted throughout the year it may be a result of 27 fortnightly pays or 53 weeks within the tax year.

The PAYE system and PAYE tables are calculated on 52 weeks or 26 fortnights in a year. So your employee may have had a shortfall of PAYE because of when their wages were paid.

Your employees can find out if they're due for a tax refund or have tax to pay by using The IRD's Personal tax summary calculation for 2010 calculator at www.ird.govt.nz "Work it out".



GST Increase from 1st October 2010

What you need to do......
Completing the GST rate change adjustment calculation sheet

Follow the steps below to complete the GST rate change adjustment calculation sheet, once you have identified that:
you need to make the GST rate change adjustment, and
you know the supplies that qualify for the GST rate change adjustment

Download the *GST rate change adjustment calculation sheet (GST105)* from www.ird.govt.nz

Step 1 Select your GST accounting basis

Your accounting basis is printed on the front page of your return. It will be either:

- invoice basis
- hybrid basis
- payments basis

Step 2 Identify your qualifying supplies

If you use the ...	then your qualifying supplies are ...	and your non-qualifying supplies are ...
payments basis	all goods and services **purchased** on or before 30 September 2010 where full payment has not been made by 30 September 2010 all goods and services **sold** on or before 30 September 2010 where full payment has not been made by 30 September 2010.	
invoice basis	only secondhand goods **purchased** on or before 30 September 2010 from a non-registered person where full payment has not been made by 30 September 2010	any goods and services **purchased** or **sold** excluding secondhand goods.
hybrid basis	all goods and services **purchased** on or before 30 September 2010 where full payment has not been made by 30 September 2010	any goods and services **sold.**

The adjustment is only calculated on the amount that:

- remains unpaid on the goods and services, and
- has not been written off as a bad debt.

Step 3 Complete the adjustment calculation

Separate your qualifying supplies into a list of:

- creditors (qualifying supplies received, that is goods or services you have purchased but not paid for), and

debtors (qualifying supplies made, that is goods or services you have sold but not received a payment for).

The adjustment calculation is:

Total of creditors (A) **minus** total of debtors (B) **equals** difference between the two (C)

The difference (C) is **divided** by 51.75. The answer is the GST rate change adjustment **(D).**

Note - why we divide by 51.75

We have used the instruction "divide by 51.75" instead of "multiply by 4 then divide by 207 in our calculations to make it easier.

To calculate the adjustment you need to subtract the previous GST component of 1/9 from the new GST component of 3/23. So this equation is:

- 3 divided by 23
- less 1 divided by 9

equals 4 divided by 207

Multiplying an amount by 4 then dividing by 207 obtains the same result as dividing the amount by 51.75, for example:

- 1,000 multiplied by (4 divided by 207) equals 19.32, or

1,000 divided by 51.75 equals 19.32

If **A** is larger than **B** then the adjustment **D** will result in GST to pay.

If **B** is larger than **A** then the adjustment **D** will result in a GST credit.

Step 4 Account for your adjustment

If Box D is GST to pay

If you:

- **do not make** other adjustments you take the total from Box D and enter the amount directly into Box 9 or 9A of your GST return for the period ending 30 September 2010

do make other adjustments you:

take the total from Box D and enter the amount into the top "Other" adjustment box on your GST adjustments calculation sheet (IR372) for the period ending 30 September 2010, and then

take your total adjustments from your IR372 and copy them into either Box 9 or 9A of your GST refund.

If Box D is a GST refund

If you:

- **do not make** other adjustments you take the total from Box D and enter the amount directly into Box 13 or 13A of your GST return for the period ending 30 September 2010

do make other adjustments you:

take the total from Box D and enter the amount into the bottom "Other" adjustment box on your GST adjustments calculation sheet (IR372) for the period ending 30 September 2010, and then

take your total adjustments from your IR372 and copy them into either Box 13 or 13A of your GST refund.

Employment Disputes

Under current economic conditions, more disgruntled employees seem to be taking action against their employers. The nature of the claim and the cause of action can have distinctly different outcomes from a taxation perspective.

Compensation for humiliation, loss of dignity, or injury to feelings, under s 123(1)(c)(i) of the Employment Relations Act 2000 (or a similar provision under the Human Rights Act 1993) is not considered to be income under the Income Tax Act 2007 and, therefore, is a tax-free amount to the employee.

However, if a payment is called "compensation for humiliation, loss of dignity or injury to feelings", but in reality is for lost wages, holiday pay or other loss of income, then the Inland Revenue Department ("IRD") clearly has the ability to revisit this categorisation, and conclude that a settlement payment contains lost wages etc. Such payments are taxable income, and should have PAYE deducted.

An employer does run some risk in simply agreeing to a payment being categorised as one thing if that is not entirely genuine. Common sense and balance needs to prevail. It is important to note that even if the agreement is signed off under mediation, the IRD can still challenge the classification of the payment, with reference back to the original claim documents which invariably have every category of claim listed for completeness, and bargaining position.

An employer should ensure that the written agreement records any such payment under this heading as a gross payment. If the IRD disagrees at a later date about the true nature of the payment, any PAYE/tax obligation may fall to the employee.

From an employer's perspective, ordinarily we would consider that any payment made to an employee of this nature should be a deductible expense on the basis that it is a cost of doing business. However, recent comments by the Courts with regard to non-deductibility of fines may suggest that ultimately over time this type of expenditure may evolve towards non-deductible under a public policy view.

How it affects you

If you are an employer or an employee in this situation whereby an agreement is presented to you to sign, make sure that you are comfortable that the allocation of damages consideration to humiliation, loss of dignity, and injury to feelings is appropriate in the circumstances, and that there is not an element of lost wages or holiday pay contained therein.

- From WHK Sharp-As Tax

Quick Bits

- The IRD has identified two key compliance areas for 2011. The first is jobs for cash. The second is people on high incomes using interposed entities to reduce the tax they pay.
- A Bay of Plenty man who received nearly $15,000 in Working for Families tax credits over four years, that he knew he had no right to, has been sentenced to five months jail.
- The FBT prescribed rate used to calculate FBT on low-interest, employment-related loans increases from 6.00% to 6.24% from the quarter commencing 1 October 2010.
- Donations of $5 or more made by individuals towards earthquake relief will qualify for a donations tax credit. Companies will be allowed a deduction for certain donations made.

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