

## TAXTIME

### What's Ahead for 2012?

Reflecting on last year's tax programme, there are a number of policies that are likely to come into force this year, and some that are not.

Capital gains tax and the R&D tax credit are not likely to be introduced in 2012, but will no doubt continue to be debated.

What is likely is the Taxation (International Investment and Remedial Matters) Bill will be passed. It contains significant changes to the tax treatment of inward and outward cross-border investment. We are also likely to see an extension of the active income exemption to interests in non-controlled foreign entities (foreign investment funds), or FIFs.

The Taxation (Annual Rates, Returns Filing and Remedial Matters) Bill is also likely to be passed early in the year. Proposed changes of note in this Bill include:

- Allowing an immediate income tax deduction for the costs of an unsuccessful software development project; and
- Treating a profit distribution plan as giving rise to a taxable dividend.

The Taxation (Income-sharing Tax Credit) Bill, which allows spouses, civil union and de facto partners with dependent children, to split their income, reducing their joint effective tax by having more income taxed at lower marginal rates,

will be put back on the table as part of National's coalition agreement with United Future.

The Inland Revenue Department's ("IRD") discussion document on the GST treatment of certain services provided by New Zealand businesses to non-resident businesses is likely to be progressed. Currently neutrality is compromised where a New Zealand business provides a service to a non-resident business, but another person, such as an employee of the non-resident, receives the services in New Zealand. The most favoured solution is a relaxation of GST registration requirements for non-resident businesses. This would enable the overseas business to register for GST (and claim back the GST content).

The tax treatment of interests held by New Zealand tax residents in overseas superannuation schemes is to be reviewed.

The application of the IRD's interpretation statement on the general anti-avoidance provision will no doubt be seen this year.

#### *How it affects you*

Many of these changes will impact on how we do business. If you would like more detail on any of the proposals, please contact your advisor.

- From WHK's Sharp-As Tax

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# Changes to GST

There have been significant legislative changes to GST that became effective from 1 April 2011. These are discussed briefly below.

## Compulsory zero-rating

Any transaction involving the sale of land by a GST-registered person will be zero-rated provided the purchaser is:

- GST registered;
- Intending to use the land in making taxable supplies; and
- Not intending to use the land as a principal place of residence or any person associated with the purchaser.

The above conditions must apply at the time of settlement of the transaction. If the purchaser does not satisfy these conditions, the vendor has to return output tax of 15% of the sale price.

## Nominations

Often, the vendor enters into a sale and purchase agreement with a purchaser or “nominee” who is not a party to the contract before the settlement date.

Where such a transaction involves the supply of land, the supply is always treated as a supply from the vendor to the nominee.

Where the contract is for a supply of goods other than land, then the following rules operate:

- If the purchaser pays the full consideration, then the supply is to the purchaser.
- If the nominee pays the full consideration, then the supply is to the nominee.
- If both the purchaser and nominee pay part of the consideration, then the supply is treated as being made to the purchaser unless the purchaser and nominee agree otherwise in writing. This will not apply if the purchaser has already claimed an input tax.
- If the purchaser and nominee differ in their GST registration

status, then the supply is treated as being made to the nominee.

These rules are intended to provide greater certainty and do not intend to apply to assignments, novations, or agency transactions.

## Dwellings

A “dwelling” now means the principal place of abode of a person and the definition of “commercial dwelling” includes farms-stays, home-stays, B&B’s and serviced apartments.

## New Apportionment Rules

Under the new rules, purchasers are now required to claim GST input tax only to the extent to which the goods or services are used in making taxable supplies as opposed to the old rule of claiming 100% or nothing based on the “principal purpose” test.

This requires the purchaser to make a fair and reasonable estimate (based on business plans or experience) of the intended taxable use of the goods and services at the time of acquisition. For example, if a motor vehicle is purchased, which will be used 60% for taxable activities (based on a valid logbook), then the purchaser can claim 60% of the GST on the purchase price.

The new apportionment rules also apply equally to land transactions between two GST-registered parties. For example, if the sale and purchase of land is zero-rated then the purchaser will have to account for output tax on the expected non-taxable use of the land purchased.

If at the end of the year the actual use of the goods and services differ from the estimated use at acquisition by more than 10% or \$1000, the purchaser is required to make an adjustment. There are no limits to the number of subsequent adjustments required for land but there is a limit to change-in-use to all the other goods and services.

## Payroll Giving makes donating easy

Have you considered introducing payroll giving into your workplace?

Your employees will be able to make a donation to an approved organisation directly from their pay. And the good thing is, employees receive their tax credit straight away. They won't need to wait until the end of the year and fill out a claim form.

Payroll giving is available to all employers who file their employer monthly schedule (IR348) and EDF (IR345) online using Inland Revenue's ir-File service.

You can find a list of approved 'donee' organisations on the IRD's website.

Since payroll giving was introduced in 2010, nearly \$4 million has been given to New Zealand charities and this amount is rising steadily.

Interested? Payroll giving is worth thinking about. If you offer it to your employees, you'll be helping charitable organisations continue their good work in our community.



*We care about your Business Prosperity*

# Relocating Employees - Tax Consequences

Two years ago changes were made to the Income Tax Act to specifically ensure that payments by employers when relocating their employees, and providing them with overtime meal allowances are exempt from income tax and fringe benefit tax when certain criteria are met.

The changes meant that employers and employees made efficient employee relocation decisions by ensuring that tax considerations do not distort their decisions. For relocation expenses to be deductible to the employer, but tax-free to the employee, all of the following criteria need to be met:

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 home must not be within reasonable travelling distance of the new work place (unless accommodation is provided as an integral part of the job).

- The expense needs to be on the list of eligible relocation expenses.
- The payment needs to reflect the expenditure incurred.
- The expenditure has to be incurred within certain time limits.

For an overtime meal allowance to be tax-free, the employee must have worked a minimum of two hours beyond their ordinary hours on the relevant day and:

- Either the employee's employment contract needs to specify that the employee is eligible for a payment in relation to overtime hours worked, or an employer has to have a policy or practice of paying an overtime meal allowance; and

The allowance needs to reflect the actual expenditure incurred by the employee or, alternatively, the allowance could be a reasonable estimate of the expected costs likely to be incurred by the employee or group of employees.

## How it affects you

If you are relocating staff or paying overtime meal allowances, and you are not sure whether the criteria for the allowances to be tax-free are met, contact your advisor.

- From WHK's Sharp-As Tax

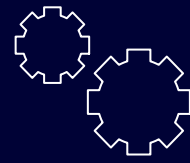


## question time >>

**Q: Do I need Employment Agreements for my Staff?**

**A: Yes, you do!**

Under the law, you as the employer must provide your employees with a written employment agreement, no matter what kind of job they do. An employment agreement sets out the terms and conditions of their job. An employment agreement is agreed to by both the employer and the employee. It contains the Terms & Conditions of Employment and your employees entitlements. Your employee can get advice regarding it before signing it. A Labour Inspector has the power to ensure your Employees are given an Employment Agreement.



## FBT SOLUTIONS

Are you finding it a hassle to prepare your FBT returns? We have a solution for you. We can prepare and complete your FBT returns for you either quarterly or annually. Leave the hassle and stress of completing these confusing forms out of your life and let yourself concentrate on the areas of your business that you do best. Call us for a quote and more information.



## WEB SOLUTIONS

Did you know that you can create your own Employment Agreements online? Go to [www.dol.govt.nz](http://www.dol.govt.nz) and under Tools and Resources you will find Employment Agreement Builder. This interactive tool allows you to create a lawful employment agreement for each of your employees that you are required by law to have. If you find this sort of thing to hard give us a call and we can do it for you. Call us for assistance and we'll be happy to help.



## PROHUB SOLUTIONS

Have you got a Customer Database? Every business needs to have a database where they can enter details of their customers and what they purchase from you etc. Then you can set a follow-up date to follow up each customer at a set time in the future so you can go back to each customer and see if they would like to purchase more of your products. This ensures your business grows and gains repeat business. As we all know it's 5 times easier to get more business from existing customers than it is to gain 1 new customer. Contact us today for more information on how this program could help your business prosper.



## Capital or Taxable Distributions?

Often, when a company sells its business, there's a goodwill component in its sale price which is generally treated as a capital gain and therefore tax-free on distribution if the company is wound up.

If some of the technicalities are not observed in winding up, the distribution of this capital gain may not be regarded as exempt dividends for tax purposes.

There are two ways of liquidating a company. One way is to appoint a liquidator by way of a formal resolution after which the distribution may be made any time tax-free. The other way is to write to the Companies Office and seek removal of the company from the Companies Register.

Removing the company from the register is by far the easier and low cost method. However, the Income Tax Act exempts distributions of capital gains from being taxed only if they are made in the course of liquidation. A strike off or

an election to remove a company from the register does not constitute a "liquidation", and therefore the capital distributions will not qualify as tax-free distributions.

The premise is that "liquidation" commences only when the company makes its election to be removed ie a resolution is passed first to distribute the assets in order to remove the company from the Companies Office Register.

One also has to watch out if the business, along with its assets, is sold to an "associated person" as defined in the Income Tax Act. The transaction may be at market value but if the two parties are associated, any capital gain on the transaction will not be tax-free even if the company is placed in liquidation.

This area, like many other areas of tax law, is not straight forward and you should seek professional advice if you are thinking of selling your business and winding up your company.

### Quick Quote

The real measure of your wealth is how much you'd be worth if you lost all your money ~ Unknown



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