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A special report from the
Policy Advice Division of Inland Revenue

Taxation (Canterbury Earthquake Measures) Act 2011

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This special report provides early information on changes contained in the Taxation (Canterbury Earthquake Measures) Bill enacted on 24 May 2011.

This special report precedes coverage of the new legislation that will appear in a *Tax Information Bulletin* to be published later this year.

Tax relief for employers' welfare contributions to employees

Changes included in the Taxation (Canterbury Earthquake Measures) Act 2011 provide an exemption for certain welfare contributions made by an employer to employees as a result of the two major Canterbury earthquakes. The exemption may be applied to:

- accommodation;
- “sundry” fringe benefits when the employer cannot reasonably estimate which employees received which benefits; and
- the first \$3,200 per earthquake of monetary remuneration and fringe benefits of the kind where the employer can reasonably be expected to know which employees received which benefits.

Background

Under existing tax law (with a few limited exclusions), payments made from an employer to an employee and fringe benefits provided to an employee are taxable, either as monetary remuneration or by way of fringe benefit tax (FBT).

Following the major Christchurch earthquakes of 4 September 2010 and 22 February 2011, a number of employers made *ex gratia* welfare contributions of cash or benefits to their earthquake-affected employees. Several requests were made asking that these contributions not be subject to taxation.

On 28 March 2011, the Minister of Finance and the Minister of Revenue released details of changes to tax legislation agreed to by Cabinet, including three inter-linked tax exemptions for employers and their employees for earthquake-related employer welfare contributions.

Key features

Income tax exemption

New section CZ 23 of the Income Tax Act 2007 provides that income (which could include accommodation benefits) derived by an employee from an employer is exempt income if:

- it was provided by the employer for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes of 4 September 2010 or 22 February 2011, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011;
- otherwise it would have been taxable income;
- it was derived in the eight weeks after each of these earthquakes;
- it was not paid in substitution for wages or salary;
- the amount provided does not depend on the seniority of the employee;
- the employee is associated with the employer, it was also available to an unrelated full-time employee; and
- the employer elects to treat the income as being exempt income of the employee.

Extent of the exemption

All accommodation benefits as defined in section CE 1(2) are exempt.

In relation to each of the two major earthquakes the first \$3,200 paid to each employee, other than accommodation benefits, is also exempt.

Fringe benefit tax exemption

New section CZ 24 of the Income Tax Act 2007 provides that benefits received by an employee from an employer are exempt from FBT if:

- it was provided by the employer to employees for the purpose of relief of employees from the adverse effects of the Canterbury earthquakes of 4 September 2010 or 22 February 2011, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011;
- otherwise it would have been a fringe benefit;
- it was received by the employee in the eight weeks after each of these earthquakes;
- it was not provided in substitution for wages and salary;
- its provision and amount does not depend on the seniority of the employee;
- the employee is associated with the employer, it was also available to an unrelated full-time employee; and
- the employer elects to treat the benefit as not being a taxable benefit.

Extent of the exemption

All “sundry benefits” are exempt – for example, benefits that were provided at a drop-in centre. Often, if not always in this case an employer would have no idea which employee had received what benefits. Accordingly, if the employer cannot estimate the value of these benefits provided to each employee, they are treated as exempt.

If the employer can estimate the value of a benefit that an employee has received in relation to one of the two earthquakes, it will be exempt FBT to the extent that the \$3,200 employee exemption for that earthquake has not been used to exempt employee income.

Application date

These amendments are treated as coming into force on 4 September 2010.

Working for Families: family scheme income – “other payment” category

The “other payments” category in the definition of “family scheme income” has been amended to ensure payments given to support people affected by events such as the Canterbury earthquakes in September 2010 and February 2011, and other similar events in the future, are excluded from the definition of family scheme income for up to 12 months.

Background

The Taxation (GST and Remedial Matters) Act 2010 introduced a more comprehensive definition of “family scheme income”. This new definition of family scheme income applies for Working for Families (WFF) tax credits, and community services cards for those with dependent children, from 1 April 2011. The definition will also be used for student allowance parental income test purposes when the necessary regulations come into force later this year.

People adversely affected by the Canterbury earthquakes have received payments from relatives and employers to help them to recover from the earthquakes, replace damaged items and meet everyday living expenses. Under the new definition of family scheme income, these payments could be potentially included in family scheme income, affecting the recipient’s entitlements to various benefits including WFF tax credits.

Key features

The Taxation (Canterbury Earthquake Measures) Act 2011 ensures that payments given to support people adversely affected by the Canterbury earthquakes, and similar events in the future, are excluded from the definition of family scheme income.

Section MB 13(2) of the Income Tax Act 2007 has been amended so that payments made to relieve the adverse effects of emergency events declared by the Commissioner are excluded from the “other payment” category in the family scheme income definition for a specified period of up to 12 months.

New section 91AAS of the Tax Administration Act 1994 authorises the Commissioner to make a determination declaring an event, which meets the requirements of paragraphs (a) and (b) of the definition of “emergency” in section 4 of the Civil Defence Emergency Management Act 2002, an emergency event for family scheme income purposes. The requirements of these paragraphs generally relate to a state of emergency caused by natural disasters. The determination also specifies a period of up to 12 months from the date of the event.

The Commissioner will make the determinations in relation to the Canterbury earthquakes and the determinations will be published in a future issue of the *Tax Information Bulletin*.

Application date

The amendments come into force on 1 April 2011.

Extension of the redundancy tax credit

As part of Budget 2010, the redundancy tax credit was cancelled with effect for redundancies after 30 September 2010, the date that the 33% tax rate applied from. Following the 4 September 2010 earthquake this was reconsidered, and cancellation was delayed so that it applied to redundancies after 31 March 2011.

As a consequence of the 22 February 2011 earthquake, the cancellation of the redundancy tax credit has been further delayed so that it will now apply to redundancies after 30 September 2011. If the redundancy is on or before 30 September 2011, the tax credit will apply according to subpart ML.

On 1 April 2012 subpart ML and the section YA 1 redundancy definition will be repealed.

Application dates

The extension is treated as coming into force on 1 April 2011, the previous date of cancellation.

The cancellation is effective 30 September 2011, and the relevant legislation is itself repealed on 1 April 2012.

Tax relief for donated trading stock

This item provides information on the tax treatment for businesses that have made, or are contemplating making, donations (or supplies for less than market value) of trading stock for relief from the Canterbury earthquakes.

Changes introduced in the new Act provide that:

- an anti-avoidance rule applying to disposals of trading stock at below market value does not apply to disposals of trading stock by a person to a person who is not an associated person for the purpose of relief from the adverse effects of a Canterbury earthquake in the period beginning on 4 September 2010 and ending on 31 March 2012; and

- a gift by a person to a person who is not an associated person shall not constitute a dutiable gift if the gift is of trading stock, and made for the purpose of relief from the adverse effects of a Canterbury earthquake, and made within the period beginning on 4 September 2010 and ending on 31 March 2012.

Background

Under the current rules (with a few limited exclusions), a person who disposes of trading stock for no consideration, or an amount that is less than the market value of the trading stock at the time of disposal, is treated as deriving an amount equal to the market value of the trading stock at the time of disposal.

Gift duty is also payable on dutiable gifts made by a person if they exceed an aggregate value of \$27,000 in a 12-month period. For gift duty purposes, a gift is something given, other than by will, when the person making the transfer (the donor) does not receive fully adequate consideration in money or money's worth.

Following the Christchurch earthquake on 22 February 2011, several public calls were made to Ministers and officials seeking legislation to provide tax relief for donated goods, especially trading stock donated by businesses.

On 28 March 2011, the Minister of Revenue and the Minister of Finance released details of proposed changes to tax legislation agreed to by Cabinet, including an exemption so that businesses do not have to pay tax or gift duty on trading stock they have donated within four months of either the 4 September 2010 or 22 February 2011 Canterbury earthquakes.

In response to feedback received following this announcement, Cabinet agreed to extend the eligible period for the tax relief so that it covered the period beginning on 4 September 2010 and ending on 31 March 2012.

Key features

Donations of trading stock for relief of Canterbury earthquakes

New section GZ 3 of the Income Tax Act 2007 provides that section GC 1 (Disposals of trading stock at below market value) does not apply to the disposal of trading stock by a person to a person who is not an associated person:

- for the purpose of relief from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
- in the period beginning on 4 September 2010 and ending on 31 March 2012.

The meaning of trading stock in new section GZ 3 is that contained in section EB 2 of the Income Tax Act 2007.

Exemption for certain gifts of trading stock

New section 73B of the Estate and Gift Duties Act 1968 provides that a gift by a person to another person who is not associated under the Income Tax Act 2007 will not be subject to gift duty if the gift is:

- of trading stock as defined in section EB 2 of the Income Tax Act 2007;
- made for the purpose of relief from the adverse effects of a Canterbury earthquake, as defined in section 4 of the Canterbury Earthquake Recovery Act 2011; and
- made within the period beginning on 4 September 2010 and ending on 31 March 2012.

Application date

The application date for the changes providing tax relief for donated trading stock is 4 September 2010.