Current tax issues for not-for-profits.
Agenda

• Current tax issues
  • Employment issues
  • FBT issues
  • Deregistration of charities
• GST
• Changes in organisational structure
Setting the scene

• Philosophy behind the Government’s tax policies for the NFP sector;
  • Simplicity
  • Integrity
  • Fairness

• Remedial legislation not large scale, major policy settings are “about right”

• Focus on refining the coherence of the charitable tax exemption, resolving issues with donee organisations and tax incentives for charitable donations

• Currently no tax concessions to facilitate transitioning to an alternative legal structure
Employment issues
Employment issues: allowances issues paper

Released November 2012

• Covers a range of payments made by employers to employees, or made on their employees’ behalf

• Key issues:
  – Meal payments
  – Clothing allowances
  – Accommodation payments
  – Phone and internet allowances? (back to 50% rule of thumb?)

• Submissions closed on 1 February 2013

• Legislation or operational guidance with application from…?
Employment issues: meal payments - proposals

Working lunches and travelling on business

- Arguably taxable as private expenditure, but in practice employers do not tax

- Propose that payments for odd working lunches be tax free and that a 3-month rule apply for employees’ meal costs during work travel.
Employment issues: clothing payments - proposals

Uniforms, dry cleaning and laundry

- Uniform or specialist clothing (including dry cleaning etc) is currently treated as exempt, otherwise taxable.

- Proposed that only expenditure on uniforms, protective clothing and other specialist work clothing will be covered (i.e. items that are not suitable for wear outside work). Otherwise taxable, irrespective of quantity or maintenance required.
Employment issues: accommodation payments - proposals

• Proposal to introduce a brightline test

• Payments for temporary work travel to be tax free if no longer than 12 months and CIR to have power to extend in exceptional circumstances

• Where accommodation is provided at or near their work, value should be taxable based on rental value of that property

• If more than one permanent workplace for same job, one option is to not tax employee expenditure in relation to one workplace

• Does not support “net benefit” position where two properties maintained

• What do employers do in the meantime?
Employment issues: Commissioner's statement on accommodation

- Issued in December 2012

- Sets out Commissioner’s position on current tax treatment (i.e. what happens in the meantime before the policy changes are implemented)
  - Generally taxable and subject to PAYE except for overnight or “temporary accommodation”
  - Created significant uncertainty in relation to historical positions adopted by taxpayers
  - Suggests voluntary disclosures may be required
  - Since released further guidance to define a “temporary shift” for work purposes (in practice less than 6 months)
Fringe benefit tax
FBT exemption for “charitable organisations”

CX 25:
(1) A charitable organisation that provides a benefit to an employee does not provide a fringe benefit except to the extent to which –
   (a) The employee receives the benefit mainly in connection with their employment; and
   (b) The employment consists of the carrying on by the organisation of a business whose activity is outside its benevolent, charitable, cultural, or philanthropic purposes ...

For these purposes a “charitable organisation” means a ‘donee organisation’, i.e.

an association, fund, institution, organisation, society, or trust not carried on for the private pecuniary profit of any individual, whose funds are applied wholly or mainly to charitable, benevolent, philanthropic or cultural purposes within New Zealand.

Note – it does not include a local authority, a public authority, or a university

Significantly, the exemption does not rely on registration as a charity

No prescribed process for being granted ‘donee’ status
FBT and charitable organisations – recent changes

CX 25 – new provisos:

(2) Subsection (1) does not apply, and the benefit provided is a fringe benefit, if a charitable organisation provides a benefit to an employee by way of short-term charge facilities and the value of the benefit from the short-term charge facilities for the employee in a tax year is more than the lesser for the tax year of—
   (a) 5% of the employee’s salary or wages:
   (b) $1,200.

(3) For the purposes of the FBT rules, a short-term charge facility means an arrangement that-
   (a) enables an employee to obtain goods or services that have no connection with the employer or its operations by—
      (i) buying or hiring the goods or services:
      (ii) charging the cost of the goods or services to an account:
      (iii) providing consideration other than money for the goods or services; and
   (b) requires the employer to provide some or all of the payment or other consideration for the goods or services; and
   (c) Is not a fringe benefit under section CX 10

Application from 1 April 2014
Tax consequences for deregistered charities
Tax consequences for deregistered charities

• Consultation paper released in July 2013

• Deregistration from the charities register means income tax exemptions in the Income Tax Act 2007 no longer apply

• Timing of tax status change – varies depending on the reason for deregistration

  • Prospective if deregistered voluntarily or for failing to file accounts

  • Potentially retrospective to time of establishment if the entity is found not to have a charitable purpose (or from 1 July 2008 if charitable status confirmation received from IRD before that date)
Tax consequences for deregistered charities

• Issues to consider:
  • Opening value of depreciable property
  • Consideration for financial arrangements
  • How to treat distributions of income accumulated
  • Continuing application of FBT exemption for charitable organisations
  • Donee organisation status
  • Deregistration and re-registration
  • Penalties and UOMI
GST
Common GST issues

- Not holding a valid tax invoice when claiming input tax.
- Accounting for output tax in the wrong period.
- Not accounting for GST on the full value of the supply when receiving a deposit.
- Inadequate documentation to support rebates / commission / prompt payment discounts.
- Incorrectly classifying supplies e.g. treating a supply as zero-rated when it should be subject to GST at the standard rate.
- Not reconciling the GST returns to the financial statements.
- Accounting for GST on fringe benefits incorrectly.
- Not making a GST adjustment for non-deductible entertainment expenditure.
- Incorrectly applying apportionment methods.
- Failing to run an accrual report to pick up invoices that are received/processed late.
IR questionnaire on GST – sample questions

• Accounting software used, systems, preparation and review procedures

• Sources of income and GST treatment

• Whether exempt or zero-rated supplies are made

• Whether buyer-created invoices are used

• Procedures for claiming input tax

• Specific questions on operating and finance leases

• Bad debt write off policy

• Whether any input tax adjustments are made
Changing organisational structure
Issues to consider

- Common structures used by not-for-profits
  - Incorporated society
  - Mutual association
  - Trust
  - Charity
  - Company
  - Branch
  - Co-operative
Issues to consider

• Changing organisational structure creates similar issues to that which exists when a business is sold or a charity is deregistered

• Examples
  • Asset transfer values
  • Depreciation recovery
  • Continuity issues
  • Debt remission issues
  • Employment issues – employee entitlements
  • GST deregistration

• Is some form of rollover relief required / transitional provisions?