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Welcome to our second edition of BDO Know How! Our newsletter is designed to be your bimonthly source of updates on topical business issues and includes some interesting business issues and opportunities. We hope you find something of interest in this edition. Feedback, as ever, is always welcome. Please email editor@bdo.co.nz

We would also like to take this opportunity to wish you, your colleagues and families a very happy Christmas and a prosperous New Year.

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GST OFFSETS



Hiding away in the Tax Administration Act is a handy little section, 173M. It is a relatively obscure and largely unknown provision that allows someone with a tax liability to offset that liability with someone who has tax refundable. We've mainly seen it used in transactions involving GST.

Used primarily with larger transactions, (plant, equipment, boats etc) applying the section saves the vendor having to cash flow the GST on sale, and alleviates the purchaser having to justify their refund to Inland Revenue and wait, sometimes weeks, to have it released.

So how does this work?

The section simply says this:

173M Transfer of excess tax to another taxpayer

(1) A taxpayer or their agent may request that the Commissioner transfer all or part of the excess to another taxpayer.

(2) A request may be made for a transfer between a taxpayer and—

- ▶ (a) a company in the same group of companies; or
- ▶ (b) a shareholder employee of the taxpayer; or
- ▶ (c) a company in which the taxpayer is a shareholder employee; or
- ▶ (d) a partner in the same partnership; or
- ▶ (e) a relative; or
- ▶ (f) a trustee of a family trust of which the taxpayer is a beneficiary; or
- ▶ (fb) a tax pooling intermediary's tax pooling account; or
- ▶ (g) another taxpayer not listed in paragraphs (a) to (fb).

There's no real point reading the section other than subparagraph (g) which says, it basically applies to anyone!

So in simple terms a request is made to the Commissioner (in writing normally) for the tax refund to be offset against tax payable.

A trap for young players can arise when the person entitled to a refund has tax arrears owing. In this case, Inland Revenue will take the refund and apply it to the tax arrears, leaving nothing to be offset with the vendor's tax liability. Accordingly, it is best to confirm these matters in writing when the parties are not related to ensure any possible refund is not snaffled up by Inland Revenue first.

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The following article has been written by our guest contributor **Rob Barland** of *The Tax Trading Company* (www.taxtrading.co.nz)

PROVISIONAL TAX DOESN'T HAVE TO RUIN YOUR HOLIDAY



Here at BDO we work hard with you to try to minimise your compliance costs associated with the provisional tax system. Despite our combined best efforts, the system makes it difficult to estimate provisional tax perfectly every time. Whether you've overpaid or underpaid your provisional tax, it costs you money. Thankfully, Inland Revenue's Tax Pooling system allows you to significantly reduce the interest and eliminate the penalties associated with the unders and overs that can occur. It does this by allowing tax payers to trade their payments with each other within a tax pool – reducing your interest costs (if you've underpaid) or increasing your return (if you've overpaid). And Inland Revenue gets their tax paid simply. Everybody wins.

Tax pooling, which allows you to buy, sell, or finance tax, has some poignant applications worth considering at this time of year.

Finance your January 15 tax payment and stay at the beach:

The January 15 provisional tax payment is inconvenient for many businesses. For an upfront fee (around 6%) you can delay payment to a time more convenient to you or your staff, meaning you can all stay at the beach and know it's taken care of. You'll get up to 12 months to pay and at maturity you only have to pay for what you need.

Save on your 2014 tax bill and give yourself extra time:

This is something to consider over the coming months. Your 2014 tax returns are due in by March. For those with tax still to pay, tax pooling can provide some great savings (reducing interest and removing penalties) and give you an extra 75 days after 7 April to pay.

More generally, the benefits of using tax pooling include:

- ▶ Getting more than double the Inland Revenue rate on overpaid tax
- ▶ Saving up to 3% on underpaid tax
- ▶ Eliminating late payment penalties (5% - 17% saving)
- ▶ Swapping payments between payment dates for optimal tax savings
- ▶ Refunds paid on demand within 3-5 days (Inland Revenue can take 8 – 10 weeks)
- ▶ Freeing up cash flow by financing tax at attractive lending rates (around 6% p.a)
- ▶ Using tax pool deposits to cover missed GST/PAYE/FBT payments
- ▶ Greater flexibility and control managing tax payments for multiple entities
- ▶ Greater flexibility and control with audit buffers



EMPLOYERS TAKE NOTE: PUBLIC HOLIDAYS

As the number of days until the Christmas holidays decrease, it's timely for employers to ensure that they are familiar with the rules around public holidays for their employees.

For the 2014/15 Christmas holiday season, the four public holidays are:

- ▶ Christmas Day Thursday 25 December, Boxing Day Friday 26 December, New Year's Day Thursday 1 January, and the Day after New Year's day, Friday 2 January

An employee is not entitled to more than four public holidays over this period.

What do I need to do for those employees who are not working a public holiday?

Employees who take the day off on a public holiday, but would otherwise have usually worked that day, are paid as if it is a normal working day for them. This rule also applies for businesses which have a closedown period including public holidays.

An employee who doesn't usually work that day has no entitlement to payment.

What do I need to do for those employees who choose to, or are requested to work, a public holiday?

Employees who work on a public holiday are entitled to payment of time and a half for the hours worked. In addition, if the day worked is a normal 'working day' for the employee, then they are also entitled to a full day alternative holiday. Employees who don't use their alternative holidays within 12 months can agree with their employer to exchange the holiday for payment instead.

If an employee is employed specifically to work on a public holiday, there is no entitlement to an alternative holiday, but they must be paid time and a half.

Employment agreement reminder.

Employment agreements must specifically state that an employee is entitled to time and a half for working a public holiday. We suggest employers ensure their employment agreements are compliant with this requirement of the Holidays Act 2003.

Equity Crowdfunding Updates

The Financial Markets Authority have issued a licence to Crowdfarm Limited, trading as Crowdcube, to provide crowd funding services. This brings the number of licensed Equity Crowdfunders to 3.

PledgeMe Limited ran an equity crowdfunding campaign for its own business PledgeMe, and raised \$100,000 within 23 hours and 27 odd minutes of launching. This was the fastest equity crowdfunding raise in New Zealand to date.



HEALTH AND SAFETY LEGISLATION

The Health and Safety Reform Bill has been introduced to Parliament, representing a major change to New Zealand's workplace health and safety system. It is likely that the Bill will come into force in the second half of 2015.

All organisations will be interpreting and approaching the legislation differently. Given the broad nature of the legislation, flexibility will be needed by organisations so that implementation is tailored to suit each business. Though WorkSafe New Zealand ("WSNZ") have provided guidance in some areas, where guidelines do not exist, the level of interpretation and the potential for differing practical applications is greater.

Key Risks in the new legislation include:

- ▶ New levels of accountability for health and safety management, with the requirement for "officers" (including directors, chief executives and some senior managers) of a business
- ▶ The need to exercise due diligence to ensure that the "person conducting a business or undertaking" ("PCBU") complies with the PCBU's duties under the Act.
- ▶ A tiered penalty regime with a significant increase in the maximum liability levels. The most serious offending will have a maximum penalty of \$3,000,000 for a body corporate, and
- ▶ \$600,000 or five years imprisonment (or both) for individuals.

BDO has significant experience in developing and auditing workplace Health and Safety policies and systems. Please contact your local BDO adviser in the first instance for assistance regarding the new changes.

To find out more about BDO, please
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