

# Tax Alert

A focus on topical tax issues – October 2009



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## Time to take the credit

You may be progressing your Research & Development (R & D) tax credit claim preparation, but what are the deadlines for filing the claim with the Inland Revenue?

An R&D tax credit claim containing the claim figure will ordinarily be included in your tax return for the 2009 income year. If required you will then have a further 30 days from the due date of the tax return to file a detailed statement providing further information in support of the amount claimed. This information must be submitted electronically to the Inland Revenue, and the return will be held back from processing until the detailed statement is submitted. For most taxpayers with a valid extension of time (EOT), the return will fall due by 31 March 2010.

If you want to change the amount of R&D tax credit claimed in your income tax return, the usual four-month response period in which you can amend a tax return by issuing a notice of proposed adjustment (NOPA) is extended to two years from the date the tax return was filed, solely in respect of R&D claims. A NOPA in respect of other issues is subject to the usual timeframes.

## What if I miss the boat?

If you are entitled but have neglected to claim a R&D tax credit amount in your 2009 income tax return, you have another two years from the due date of the tax return to submit a detailed statement - this could be up to 31 March 2012 if you have an EOT. This must be done via the NOPA process if you wish to have the tax return reassessed to include a claim for an R&D tax credit.

This additional time may sound attractive, but is not necessarily the most beneficial method. There are important potential factors that must be considered:

- There will be cases where delaying the submission of a detailed statement could have an adverse affect on the value or accuracy of the claim itself. If you defer the preparation of your detailed statement, you may have trouble substantiating your claim. Where you are unable to recall accurately the detail of the work done and provide supporting evidence of the claim figure, or key staff have moved on, the value of the claim could be reduced.

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- In addition, if you are in a loss making position, you will have to wait to receive any refund whilst if you are in a tax paying position, you will face a delay in receiving the benefit through a reduction in your residual income tax.
- Furthermore, there could be administrative costs of filing a NOPA and working through the revised use of money interest calculation, which could erode some of the benefit sought.

**When should I claim?**

Our recommended approach is to prepare the claim as soon as possible in order to ensure that the value of it is maximised whilst minimising the time required for the claim process. The Inland Revenue's approach to investigations of R & D tax credit claims is still in the early stages, and further knowledge of areas likely to be challenged will be useful in ensuring that these are directly addressed in the claim. We are able to provide guidance on this area by providing insight from our experiences with the Inland Revenue.

For further information please contact the Deloitte R&D tax team.

## Thank you very much for your kind donation...

In this article we take a look at some common questions employers are asking about the new payroll giving rules.

**Q What is payroll giving?**

A Broadly it is a scheme whereby employees can choose to make regular donations from their pay to a charitable organisation thereby receiving the tax benefit in real time as a credit against their PAYE deductions.

**Q Do employers have to implement payroll giving?**

A No, it is a voluntary scheme. The rules only apply to employers who choose to offer payroll giving to employees. Further the scheme is voluntary for employees also and so where an employer offers payroll giving, employees are free to choose whether to participate or not.

**Q Are all employers able to offer this?**

A No. Only employers who electronically file an employer monthly schedule and the PAYE income payment form are able to participate.

**Q How is the tax credit calculated?**

A The tax credit is calculated by multiplying total donations made by the employee in a pay period by 331/3%. This tax credit is then deducted from the amount of PAYE for the person. Note that the tax credit cannot exceed the amount of PAYE on the employee's pay for the pay period.



**For example:**

The employee receives \$400 per week and makes regular contributions of \$10 each pay. The employee is on a 21 percent tax rate.

Employee's (donor) weekly gross pay	\$400.00
Less payroll donation	\$10.00
Employee's (donor) residual weekly pay	\$390.00
Less PAYE on \$400	\$67.91
Tax credit @ 33.3 percent	\$3.33
Employee's net pay	\$325.42
Charity receives	\$10.00
Inland Revenue receives	\$64.58

**Q If an employee has other payroll deductions, are there any rules around priority?**

A Yes. Employees can only make payroll donations after meeting other tax and legal obligations such as student loan, KiwiSaver and child support payments each pay-period. Employers will be able to rely on assurances from employees that they have satisfied any other tax obligations that need to be met from salary and wages.

**Q What compliance is involved for participating employers?**

A The rules have been kept deliberately non-prescriptive in order to give employers flexibility to establish a scheme that works best for them in order to manage compliance costs. At a minimum, employers will need to:

- calculate and deduct the tax credit;
- hold the payroll donation in trust for the employee until it is transferred;
- include the relevant particulars of the tax credit in the employer monthly schedule and PAYE income payment forms;
- keep records of payroll donations made; and
- transfer the amount of payroll donation to the selected donee organisation within two months

Practically of course there is a little more than this for employers to consider. For example, employers will need to develop a policy on payroll giving and decide on the level of education they provide to employees. Compliance costs will be managed if employers can select and limit the number of donee organisations that the employees can contribute to. Employers might consider setting a minimum payroll donation threshold

and or minimum time periods for donations. There is always the option of using an intermediary to manage this. Employers may well be approached by donee organisations to be the preferential donee organisation that is supported. Some large organisations may even set up their own charitable donee foundation which will then decide how the payroll donations will be used.

**Q What is involved in holding payroll donation monies "on trust"?**

A This is likely to be similar to the rules for PAYE intermediaries who must establish a trust account. This involves setting up a separate bank account with a registered bank which is named as a trust account. The donations made into this account are held for the benefit of the employee until they are transferred. The Companies Act and Insolvency Act specify that where an employer goes into liquidation or into insolvency, any donations not yet passed on will have the same priority for return to the employee as unpaid wages.

**Q Who is responsible for checking out whether donee organisation is a qualifying one?**

A The employee is required to ensure the recipient of the donation is a qualifying donee organisation and will be required to supply the employer with sufficient details of the recipient to enable a transfer to be made.

**Q What about employees who choose not to participate or are not able to donate via payroll because their employer has not implemented a payroll giving scheme?**

A Employees who do not participate in payroll giving can still claim a tax credit (formerly known as a tax rebate) on donations through the current end of year process which involves completing a tax credit form (IR526) and sending it to Inland Revenue with supporting receipts.

These rules come into force 3 months from the date of royal assent. Royal assent was received on 6 October 2009 and so these rules come into force on 6 January 2010.

## Contracting with non-residents? Don't overlook NRCT

It is reasonably common for New Zealand businesses to engage non-residents to perform work or provide services in New Zealand. For example, a non-resident contractor might visit New Zealand to assist with installation projects or to provide services. In certain situations New Zealand companies may have obligations to withhold tax (generally at 15%) from contract payments made to non-residents. We refer to this tax as "non-resident contractor tax" or NRCT. The rules stem back to "think big" projects in the late 1970s when a lot of non-resident contractors were engaged to carry out contract work in New Zealand. Over time the rules have been extended.

The liability will arise where any work is physically performed in New Zealand or any services are rendered in New Zealand. It will also arise if a non-resident provides personal property for use in New Zealand (for example, provides the lease of any type of equipment for use in New Zealand). Generally the payer must withhold the amount of tax from contract payments made to the non-resident contractor and pay this to Inland Revenue.

The following types of payments are specifically excluded from these rules:

- royalties as defined;
- payments that merely reimburse a non-associated party for costs; and
- payments that are for labour-only building work

The tax is not required to be withheld by the payer in the following circumstances:

- Where the non-resident has full relief from tax under a double tax agreement and is present in New Zealand for 92 days or fewer in a 12-month period; or
- Where the total contract payment paid in a 12-month period is \$15,000 or less; or
- Where the non-resident produces a valid certificate of exemption to the payer. For example, a non-resident is able to apply to the Commissioner for an exemption certificate where the non-resident and income type is eligible for treaty relief under a double tax agreement.

Generally it is the longer term, large value contracts that are at most risk here. Failure to withhold this tax will result in the Inland Revenue grossing up the payment made to the non-resident contractor. The Commissioner can recover any deficient tax from the payer, the non-resident or both concurrently. Where a non-resident contractor has left New Zealand, the Commissioner is likely to seek payment from the payer because that will be the easiest route of collecting the tax. Therefore the New Zealand party to such contracts needs to be mindful of these rules and inquire of any exemptions that may be relevant, determine what rate applies or if exemption certificates should be applied for before any payments are made. It also pays to be aware of this issue when negotiating contract payments so any taxes can be taken into account.

As an aside, Inland Revenue has issued a draft interpretation statement on this topic (Non-resident contractor schedular payments) in the context of the rewritten 2007 Income Tax Act as terms have changed. The Income Tax (Withholding Payment) Regulations 1979 which previously dealt with these rules have been repealed and the rules are now located within subpart RD of the Income Tax Act 2007. This has consequently led to changes in terminology, for example, withholding payments are now termed "schedular payments".

The following examples are typical situations which would fall within these rules (subject to any exemptions that may then apply depending on facts).

- A non-resident expert is engaged to come to New Zealand to install new plant and machinery
- A New Zealand company contracts with a non-resident to lease equipment for use in New Zealand
- A New Zealand company engages the services of an Australian company to undertake consultancy services which are performed in New Zealand

If you would like further information on these rules please contact your usual Deloitte tax advisor.

## Claiming missed GST — the one that (nearly) got away?

By Thuan Nguyen, Jeanne du Buisson and Allan Bullock

We frequently become aware of significant amounts of GST which clients are owed from earlier periods due to various accounting system errors but which have not yet been recovered from the Inland Revenue.

There are two main methods by which these GST refund amounts from earlier periods can be reclaimed from the Inland Revenue, being a prior period adjustment under section 113 of the Tax Administration Act or a current period adjustment under section 20(3) of the GST Act.

A recently released "Questions we've been asked" (QB09/04) aims to clarify Inland Revenue's position on when each method should be applied.

The document confirms that a claim for input tax in a later period should first be made under section 20(3) and input tax claims that cannot be made under this provision should be made under section 113, if possible. While there can be some debate on some of the technical aspects of the approach the Inland Revenue is suggesting, the end result of the proposed approach matches what has generally occurred in practice in most situations.

Generally, GST registered persons have two years to claim input tax in a current period before the right to claim the GST is forfeited under section 20(3). However, there are certain situations where this claim period can be extended beyond the two year period, such as where there is a clear mistake.

Alternatively, taxpayers may seek to use section 113. This provision gives the Commissioner discretion to amend an earlier period assessment as he thinks necessary to ensure its correctness. The document discusses that while the Commissioner is not prevented from exercising his discretion under section 113 to allow an input tax claim in an earlier period, he will generally not do so if section 20(3) could be used to make a current period claim for the GST amount. This is because a specific mechanism to correct the failure to claim already exists by virtue of section 20(3). The document does state the Commissioner will consider exercising his discretion under section 113 in certain limited circumstances to allow adjustments for earlier periods.

In practice it can be difficult to force the Commissioner to exercise his discretion to re-open an earlier period that is in a refund situation, however section 113 prior period adjustments should be carefully considered if, in addition to GST refunds, there are also additional GST liabilities due for earlier periods, as these amounts can be offset to reduce penalties and use of money interest charges.

### Conclusion

When GST has not been claimed in an earlier period from a practical perspective, section 20(3) should generally be used in the first instance to make a current period claim for earlier unclaimed GST amounts, as there is no requirement for the Inland Revenue to exercise its discretion.

Regardless of the method used, to recover outstanding GST amounts from Inland Revenue, it is useful for GST registered businesses to ensure the GST is recovered as soon as possible, to both maximise cash flow and minimise the risk of certain procedural difficulties delaying or preventing GST refund payouts.

Therefore it is useful to regularly review your GST system to ensure all available amounts of GST are being claimed as early as possible.

If you have any queries on amending a GST assessment, please contact your Deloitte advisor or one of our specialists in the Indirect Tax Team.

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## The corporate bond market and impact of AIL and NRWT

New Zealand's corporate bond market has recently experienced strong growth with the total value of corporate bonds on issue increasing since 2005 from \$12 billion dollars to \$23 billion dollars today. It is said that a well-functioning bond market has a number of important signalling and support roles which affect the performance of the wider financial system. However there is concern that the current approved issuer levy [AIL] and non-resident withholding tax [NRWT] rules may hinder further development of this market because AIL and NRWT increase the cost of issuing bonds to non-residents. In response, Inland Revenue Officials have released an issues paper to canvass thoughts on the design of a possible exemption on interest paid on corporate bonds that meet certain criteria. Submissions, which close on 30 October 2009, are sought on the extent to which AIL affects bond issuance and the way that businesses raise funds, relative to other factors. For more information on the detail of suggested changes please contact your usual Deloitte Tax advisor.

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## What's coming up?

On 25 September 2009, the Revenue Minister, Peter Dunne, released the updated 2009-10 tax policy work program. In the next three months, we can expect a new tax bill and several issue papers for consultation. The next new tax bill will be introduced in November and it is likely to include the following issues:

- Amendments to the student loan scheme to simplify administration aspects
- Remedial amendments to the binding rulings system which follows consultation on the issues paper released in August 2009
- Further refinements to the KiwiSaver scheme. The document comments that these include possible opting out rules
- Measures to progress the Trans-Tasman retirement savings portability issue which was announced in July 2009

The following issues papers are expected to be released for consultation before the end of this year:

- Disputes – this paper will address concerns about the disputes process and challenge procedures
- Non-portfolio FIF issues – a paper to extend the active income exemption to non-portfolio FIF branches and entities
- GST – Business to Business – this paper follows the one released last year and further refines specific proposals aimed at protecting the tax base and improving the GST rules

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