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Technical tax area Te wahi mo te take hangarau

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 [2006 No 3]

ACC attendant care payments

Sections CE 12, CF 1(2)(g), CW 28B, DF 4, LD 1B, OB 2 of the Income Tax Act 2004, 33A(1)(a)(iiic) and 33C of the Tax Administration Act 1994

Correction to TIB Vol 18, no 5, June 2006, ACC ATTENDANT CARE PAYMENTS

Application date

The provisions apply from 1 April 2008.*

(*Updated on 17 August 2007. The previously reported application date, 1 April 2007, was incorrect. Note that a taxation bill before Parliament at the time of this update extends the application date further, to 1 July 2008. That change is expected to be enacted in late 2007.)

Changes have been made to the Income Tax Act 2004 and the Tax Administration Act 1994 to withhold tax on ACC attendant care payments made by the Accident Compensation Corporation (ACC).

Withholding tax at source will replace the current practice of injured claimants or their caregivers deducting and paying tax on the payments by ACC.

Withholding payments regulations will be amended later this year to include the ACC attendant care payments into the withholding payment rules and to require the ACC to withhold 15% of any ACC attendant care payments.

Background

Attendant care payments are made by ACC to injured claimants for the provision of personal care to those claimants. Claimants may use ACC-contracted caregivers or independent caregivers.

Uncertainty about the correct tax treatment of ACC attendant care payments led to some inconsistent practices. When independent caregivers were used, the accepted practice was that all independent caregivers were considered to be employed by the claimants they cared for. As a result, claimants had to meet all employer PAYE obligations. However, if caregivers worked less than 20 hours per week, they had to meet their own tax obligations as

if they were self-employed.

Key features

New section CF 1(2)(g) of the Income Tax Act treats all ACC attendant care payments as income.

New section CW 28B of the Income Tax Act states that when a claimant uses all the money he or she receives as an ACC attendant care payment to pay for his or her attendant care, the ACC payment is exempt income of that claimant. The provision ensures that a claimant is not required to pay tax on the ACC payments that are applied fully for attendant care purposes.

Under new section DF 4 of the Income Tax Act, a claimant who does not pay the full amount of the money received from ACC to a caregiver will have to pay tax on the portion of the ACC payment not paid to the caregiver. Amendments to the definition of 'source deduction payment' in section OB 2 ensure that the claimant is not required to withhold any tax from an ACC payment that he or she makes to a caregiver.

New section 33A(1)(a)(iiic) of the Tax Administration Act states that claimants are not required to file returns of income if their only income for that tax year has come from ACC attendant care payments from which tax has been withheld.

New section 33C of the Tax Administration Act specifies that a caregiver whose annual income does not exceed \$9,500 is not required to furnish a return of income for that income year.

New sections CE 12 and LD 1B of the Income Tax Act provide the mechanism for a caregiver to recognise and take into account tax that has been withheld by ACC. Section CE 12 will require that the amount the caregiver received from the claimant should be grossed up by the amount of tax already withheld. Section LD 1B provides a tax credit for the tax amount already withheld.

Application date

The provisions apply from 1 April 2007.

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