

5 May 2015

Public Rulings  
Office of the Chief Tax Counsel  
Inland Revenue  
Wellington

Attention: Susan Price, Director, Public Rulings  
Copy to: Grant Haley, Manager, Public Rulings

By email: [grant.haley@ird.govt.nz](mailto:grant.haley@ird.govt.nz)

Dear Ms Price

### *Draft Public Ruling: Goods and Services Tax – Directors’ Fees*

Thank you for the opportunity to provide comment on the draft update to BR Pub 05/13 on Goods and Services Tax (GST) and directors’ fees.

We consider it important to have clarity about the treatment of GST in relation to directors’ fees. This letter discusses the legislative changes to directors’ fees and GST, and the draft Ruling. We support the updating of the Ruling.

We question why the Ruling does not cover fees for other types of board members (rather than directors alone). We also suggest the Ruling could be reviewed under plain English terms with a view to making it clearer and easier to use.

### *About the Institute of Directors*

The Institute of Directors in New Zealand (IoD) is a non-partisan voluntary membership organisation committed to raising governance standards in New Zealand. We represent a diverse membership of just under 7,000 members drawn from NZX-listed corporations, unlisted companies, private companies, small to medium enterprises, public sector organisations, not-for-profits and charities. Our chartered membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

### *GST and directors’ fees*

We note that the revised Ruling updates a previous Ruling (BR Pub 05/13) about the treatment of GST and directors’ fees and essentially incorporates one substantive change. This change reflects an

amendment to section 6 of the Goods and Services Tax Act 1985 made under section 187 of the Taxation (Annual Rates, Employee Allowances and Remedial Matters) Act 2014.

Under section 6 of the GST Act, director services are not considered “taxable activity” (so are exempt from GST) unless director services are supplied in the course of or furtherance of the director’s taxable activity.

This means if a director contracts directly/personally with the company he/she is providing director services to, no GST is payable (unless director services are supplied in the course of or furtherance of the director’s taxable activity).

However when other parties are involved (e.g. a director provides services/contracts via a company, partnership or employer) the situation changes and the Ruling explains the treatment of GST in relation to directors’ fees for the various contracting arrangements, including when input tax credits can be claimed by the other parties and the company receiving the director services.

### Companies now able to claim input tax deductions for fees paid to directors who have to reimburse their employers

The amendment to the GST Act “allows a company to claim input tax deductions for fees paid to a director who is also an employee of a third party employer”. That is:

- If a director who is an employee is required to account (remit fees) to their employer, the employer will now be treated as supplying services to the third party (that is the company receiving the director services).
- The employer has to return GST (previously the case) but now the third party company will be able to claim a GST input tax deduction for fees paid to directors who have to reimburse their employers.

We support this change and that the Ruling is being updated to cover it.

### GST and fees for other board members

A further change to section 6 of the GST Act (under the Taxation (Annual Rates, Employee Allowances and Remedial Matters) Act 2014) extends the provision about “the deeming of director services supplied in the course and furtherance of a taxable activity” to apply to other board members, such as members of local authorities and statutory boards, councils and committees.

We note that this change is not covered in the revised Ruling. It is however discussed in a Tax Information Bulletin (Vol 26 no7, August 2014) which says that the change is intended to subject directors and members of boards to the same rules. It is not clear why this extension to cover other board members, and the reasons for it, were not covered in the revised Ruling.

We suggest IR provide guidance and clarity about the treatment of GST in relation to fees paid to other board members.

## Clarity and usability of the revised Ruling

It is important that directors and the companies have clarity about the treatment of GST in relation to fees paid to directors. This is also the case for fees paid to members of governing bodies of other organisations, e.g. incorporated societies, co-ops, not-for-profit organisations (if they pay fees), state-owned enterprises and Crown entities.

IR public rulings interpret how a tax law applies to taxpayers and specific types of arrangements. As such they form guidance for taxpayers for what can be complicated matters.

We found the revised Ruling overly complex and challenging to understand. We encourage IR to make the Ruling clearer and easier to use, for example by including flow charts and reducing technical language. We note that the commentary and diagram in the Tax Information Bulletin (Vol 26 no7) was easier to understand.

We also suggest IR provide definitions for the meaning of 'director' and 'company' in the Ruling.

## Professional directors

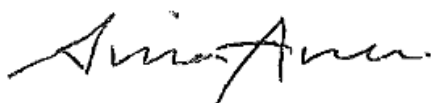
We understand that IR is looking at its policy regarding 'professional directors' and may issue a discussion paper later this year. We would welcome the opportunity to provide comment on policy IR may develop on this or other areas affecting directors and board members.

## Conclusion

We support the updating of the Ruling on GST and Directors' fees to reflect changes to the GST Act, however we would encourage IR to develop simple and user-friendly guidance on this matter, as discussed above.

We welcome the opportunity to discuss this submission and to assist IR in the development of guidance about director fees and the treatment of GST.

Yours sincerely



Simon Arcus  
**Acting CEO and Manager, Governance Leadership Centre**