

**2008 SOLGM Local Government  
Financial Management Seminar  
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**TOOVEY EATON & MACDONALD LTD**

# CHARITABLE ORGANISATIONS

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# Charitable organisations

- Background information
- Planning opportunities
- Existing 'trusts'

# Background information

- **Charities Act 2005**
- **Registering for charitable status**
- **Tax implications of failing to register**

# What is a charitable organisation?

- Test 1 – Charitable purpose
- Test 2 – Public benefit

# Test 1 – Charitable purpose

- **Common law identifies four categories:**
  - **Relief of poverty**
  - **Advancement of religion**
  - **Advancement of education**
  - **Other purposes beneficial to community**

# Test 2 – Public benefit

- Established for the benefit of:
  - The community; or
  - A significant portion of the community
- Test not required for relief of poverty

# Planning opportunities

- Funding for major infrastructure
- Non-tax benefits
- Council control of charitable organisations

# Non-tax benefits

- **Public perception**
- **Individual tax rebates for donations**
- **Company deductions for donations**

# Tax benefits

- Exemption from income tax
- Exemption from RWT
- Possible exemption from FBT

# Existing 'trusts'

- Identification and 'in trust' amounts
- Registration
- Action plan

# What is a trust?

- A trust is a legal relationship – the trustee holds property for the beneficiary
- Any kind of property
- Express or implied in terms of obligations

# Action points

- Existing council charitable trusts should be registered
- 'Orphan' endowments and gifts that generate income need to be identified and registered

# Effect of failing to register by 1 July 2008

- **Income tax exemptions lapse on 1 July 2008**
- **IFRS and public benefit entity reporting may apply**
- **Donors will not get tax relief for donations made**

# RESEARCH & DEVELOPMENT

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# What is the R&D tax credit?

- Tax credit regime
- To encourage investment in R&D
- Commenced 1 April 2008
- If 30 June balance date – 1 July 2008

# Potential value of R&D

	Tax status of entity	
	Tax-exempt	Taxpaying
R&D spend	1,000,000	1,000,000
Tax value of deduction	Nil	300,000
Value of credit	150,000	150,000
Net cost	850,000	550,000

# The claimant

- **The claimant must:**
  - **Bear the financial risk**
  - **Bear the technical risk**
  - **Have control over the R&D**
  - **Own the results**
  - **Have incurred > \$20,000 on qualifying R&D expenditure in year of claim**

# R&D expenditure

- R&D need not be successful
- However - eligibility depends on:
  - There being an eligible “business”
  - The “activity” constituting R&D
  - The “expenditure” being eligible

# **Business eligibility**

- **Specifically excluded are:**
  - **Crown Research Institutes**
  - **Tertiary institutions**
  - **District Health Boards**
  - **Associates thereof**
- **Any other New Zealand resident entity or individual potentially qualifies**

# Business eligibility

- Must have an intention to make a profit
- What does this mean for local authorities?
- Indicators of a business being carried on

# R&D eligible activities

- **Systematic, investigative and experimental activities that seek to:**
  - **Resolve scientific uncertainty; or**
  - **Resolve technological uncertainty; or**
  - **Constitute appreciable novelty of or use of technology.... AND**

# R&D eligible activities

- **With the purpose of:**
  - **Acquiring new knowledge; or**
  - **Creating new or improved materials, products, devices, processes or services**
- **Plus support activities to the above**

# R&D eligible activity examples

- Development of new production processes (e.g. new processes for roading )
- Development of new processes for clean water
- Creation of unique architecture

# R&D eligible activity examples

- Development of new systems from scratch (e.g. new library systems)
- Using existing technology in a unique way
- Merging many discrete systems into one
- Internet software development

# Excluded activities

- Exploring for minerals, etc.
- Research in the social sciences, arts or humanities (economics, language, literature, music, visual / performing arts, philosophy)

# Excluded activities

- **Market research or development**
- **Quality control and routine testing**
- **Cosmetic or stylistic changes**
- **Routine information collection**

# R&D eligible expenditure

- Essentially all R&D operating costs, *except:*
  - Overseas costs over 10% of total
  - Depreciation on property created by R&D
  - Interest costs
  - Purchase / lease of core technology (to prevent double-dip)

# R&D eligible expenditure

- **Non-qualifying R&D expenditure continued:**
  - **Funded by Government grant or co-funded**
  - **Intangible assets (other than right to use – i.e. lease)**
  - **Professional fees in determining eligibility for the credit**
  - **Max \$2m on in-house software (except)**
  - **Loss / gain on disposal**

# R&D practical considerations

- Identifying projects where there may be a component of R&D
- Contracts with third parties

# R&D practical considerations

- Ensuring that, if you cannot access the R&D credits, contractors engaged do and reflect this in their pricing
- Allocating grants to non-qualifying R&D expenditure

# TAX RISK MANAGEMENT

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# Tax risk management

## IRD's view:

- Board / Executive disconnected
- Tax risks not managed

# Tax risk management

## The word from the IRD:

- Documented tax risk management policies
- Robust processes
- Regular reporting
- Expect some investigations in the sector!

# Tax penalties

- If full voluntary disclosure made prior to audit notification, penalties will not be imposed for:
  - “Not taking reasonable care”; or
  - “Unacceptable tax position”

# Tax penalties

- Effective from 17 May 2007
- Proactively manage those tax risks!

**Any questions?**

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