Introduction

Due to the unique nature of the relationship between you and Council, your tax obligations are not as straightforward as you may believe them to be.

TaxTeam and Local Government New Zealand (“LGNZ”) have put together this tax guide to help you understand these obligations. The guide outlines:

• The Inland Revenue’s view of your tax status as an elected member.
• The income tax consequences of this status, including:
  • How your remuneration is taxed;
  • The tax obligations for you and Council regarding your remuneration; and
  • The types of expenses that you may incur and be able to deduct for income tax purposes.
• A summary of the obligations that you and Council face in respect of:
  • Fringe Benefit Tax (“FBT”);
  • Goods and Services Tax (“GST”); and
  • Accident Compensation Corporation (“ACC”) levies.

It also contains a Frequently Asked Questions (“FAQ’s”) section that covers some common queries received from elected members.

Your tax status

Inland Revenue views the relationship between an elected member and a council as a statutory relationship of service, rather than an employer/employee relationship. As such, you are not an employee of Council for income tax purposes; your relationship with Council is more akin to that of a self-employed person.

This guide is based on the law and Inland Revenue’s policy as at September 2013. It should only be used for general assistance and is not to be regarded as providing definitive advice on your tax obligations as an elected member. If you have any queries about your tax position, please obtain professional advice (our contact details are on the back page) or contact Inland Revenue.
How your remuneration is taxed

Schedular payment

Remuneration that you receive from Council is a form of schedular payment and is subject to withholding tax.

The prescribed rate of withholding tax is 33% although, there are exemptions and exceptions that may lead to a different rate.

Tax obligations for you and Council regarding your remuneration

Tax code declaration form ("IR330")

You are required to complete and provide Council with an IR330 for the remuneration that you receive as an elected member. When completing the IR330, you should use “WT” as your tax code and “public office holders (fees)” as your schedular payment activity.

By way of example, refer to the correctly completed IR330 extract below.

Inapplicability of the company exemption

One such exemption is where services are provided by a company. This exemption does not apply to elected members, even if you request that your remuneration be directed to a company that you may own or work for. This is because you have been elected, and provide the services, in your personal capacity.

Individual tax returns

Your remuneration as an elected member must be declared on your personal income tax return for each year ended 31 March. Any tax that Council has withheld from your remuneration during the year is credited against your tax liability when you file your tax return.

Depending on the level of your total taxable income, you may have further tax to pay, or be entitled to a tax refund from Inland Revenue.

The table below sets out the income tax rates for individuals for the 2013/14 income year.

<table>
<thead>
<tr>
<th>INCOME THRESHOLDS</th>
<th>TAX RATES (excl. ACC earners' levy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 - $14,000</td>
<td>10.5%</td>
</tr>
<tr>
<td>$14,001 - $48,000</td>
<td>17.5%</td>
</tr>
<tr>
<td>$48,001 - $70,000</td>
<td>30%</td>
</tr>
<tr>
<td>$70,001 and above</td>
<td>33%</td>
</tr>
</tbody>
</table>

Certificates of exemption and special rate certificates

If you have little or no other income, significant expenses or available tax losses, you may be able to obtain either a certificate of exemption or a special rate certificate.

If Council holds a copy of a valid certificate of exemption or special rate certificate on file at the time of payment, it is able to withhold tax from your remuneration at a rate lower than 33%.

As such certificates are only generally issued for a specified period of time, it is your responsibility to provide Council with a current certificate, as otherwise Council is entitled to deduct withholding tax at 33%.

If you obtain such a certificate, you should provide a copy to Council as soon as possible.

To establish whether you are entitled to such a certificate please contact Inland Revenue.

Provisional Tax

If you are a provisional taxpayer you should consider how the remuneration you receive from Council affects your provisional tax calculations.
Allowances and reimbursements

Reimbursements that Council pays to you for the expenditure that you incur as an elected member while on Council-related business, or any allowances (other than travel time allowances) that you receive from Council, are not subject to withholding tax.

A **travel time allowance** is only paid when you undertake Council-related travel. Such payments are considered to be a payment for the work or services that you perform and, as such, are subject to withholding tax.

**Allowances not subject to withholding tax**

- **A vehicle mileage allowance** is generally paid to compensate you for the expenditure you incur while using your private vehicle for Council-related business.

  If the mileage allowance that you receive is equal to or less than the threshold specified by the Remuneration Authority, withholding tax is not required to be deducted from the payments.

- **A communications allowance** is generally paid to compensate you for the expenditure that you incur while using your private mobile phone, computer or ancillary equipment, or internet connection for Council-related work.

  As this is not a payment for the work or services that you provide, Council should not deduct withholding tax from these payments.

**Expenses**

You are entitled to deduct expenses (other than election expenses) that you incur in generating your remuneration as an elected member. To claim a deduction, sufficient records must be retained to substantiate the expense. Some typical types of expenses include:

**Home-use expenses**

These can only be deducted to the extent that you use your home for Council business. Examples of such expenses include heating, lighting, rates, interest on mortgage payments, rent, and house and contents insurance.

If you have a room set aside in your home as an office, then your deductions could be calculated using this formula:

\[
\text{Deduction} = \left( \frac{\text{area of room}}{\text{area of house}} \right) \times \text{deductible expense}
\]

If you have no separate office, and you use any room in your house for Council business for part of a day, then your deductions could be calculated using this formula:

\[
\text{Deduction} = \left( \frac{\text{area of room}}{\text{area of house}} \right) \times (\% \text{ of time used for Council-related business} \times \text{deductible expense})
\]

**Vehicle expenses**

These can be deducted to the extent that you use your vehicle for Council-related business. Travel from home-to-work (i.e. the place where the meeting is held) is not deductible unless your home is the base of your work as an elected member, in which case, the cost of travel may be deductible.

The deduction that you are allowed for the Council-related use of your vehicle is calculated using this formula:

\[
\text{Deduction} = \text{actual expenditure incurred} \times \text{business proportion}
\]

The business proportion is the Council-related expenditure and can be determined by using a number of

**Telephone expenses**

If you have two telephone lines at home, one that is charged at the domestic rate, and one that is charged at the commercial rate for Council business, the commercial rental is fully deductible.

If you only have one telephone line at home and this is used for Council business, Inland Revenue has historically accepted a deduction of *at least 50%* of the cost of your telephone line-rental, plus the cost of any business calls.

You may even be allowed a deduction of more than 50% if a higher percentage of actual Council-related use of the telephone can be supported.

These principles also apply if you use your personal mobile phone for Council-related use.

**Computer expenses**

You can claim a portion of the depreciation on the computer, and consumables expenses, based on the proportion of Council-related use to total use.

**Miscellaneous expenses**

Can be deducted if incurred on Council-related business, so long as you keep records of your expenses and keep receipts.
Other taxes

Fringe Benefit Tax

Any non-cash benefits that you receive from Council or as a result of your position as an elected member will be subject to FBT. The onus is on Council to return FBT on such non-cash benefits.

If you receive any non-cash benefits due to your position as an elected member, such as gifts or koha (for example, tickets to a local concerts at a non-Council venue), you are required to inform Council so that Council can assess whether it needs to return FBT.

ACC Obligations

ACC levies are not paid from the withholding tax deducted from your remuneration, so you are responsible for paying your own ACC levies. The amount of your levy is based on your liable earnings and the relevant industrial classification code. The appropriate code for elected members is Business Management Services - CU 78550.

Goods and Services Tax

For GST purposes, an elected member is not considered to be undertaking a taxable activity. This means that:

- You cannot register for GST as an elected member;
- The remuneration that you receive as an elected member will not include GST;
- You cannot issue a tax invoice to Council for the services that you provide as an elected member; and
- You cannot claim GST input tax in respect of any Council-related expenditure that you incur.

This applies regardless of whether you are registered for GST for other activities.

FAQs

If I ask Council to redirect my remuneration to my company, does Council still need to deduct withholding tax?

Yes, Council is still required to deduct withholding tax.

If I am registered for GST for other purposes, can I invoice Council through that entity and charge GST?

No. This is because your engagement as an elected member is specifically excluded from the taxable activity that you are GST-registered for.

Can my business claim GST input tax on the expenses that I occur as an elected member?

No - for the same reasons as outlined above.

Does Council have to use the Inland Revenue’s prescribed mileage reimbursement rate?

Council has the option of using Inland Revenue’s prescribed mileage rate (currently 77 cents) or any other method that is based on a reasonable estimate of motor vehicle costs.

If I am enrolled for KiwiSaver, does Council have any KiwiSaver obligations (i.e. to make employer contributions etc)?

As you are not an ‘employee’ for KiwiSaver purposes, Council does not have any KiwiSaver obligations.

If I am part of a delegation that is sent overseas for Council-business, will I be reimbursed for my costs (i.e. flights, accommodation, food etc)?

In most instances yes, provided that you are authorised to incur such expenditure on Council’s behalf, and retain sufficient records (receipts etc) to substantiate the expenses.

If my spouse joins me, can I also be reimbursed for the costs that my spouse incurs?

In most instances, we would not expect you to be reimbursed for such expenditure; however, as this is largely dependent on each individual Council’s policy, we recommend that you confirm this with your respective Council.

Jeff Eaton  
(04) 494 2391  
Jeff.Eaton@taxteam.co.nz

Richard Toovey  
(04) 494 2394  
Richard.Toovey@taxteam.co.nz

Michelle Macdonald  
(04) 494 2393  
Michelle.Macdonald@taxteam.co.nz

Phil Fisher  
(04) 494 2396  
Philip.Fisher@taxteam.co.nz