

CREATING A SUPER CITY: INTEGRATION ISSUES

PART 4: MANAGING THE TAXATION AND GIFT DUTY CONSEQUENCES OF THE TRANSITION

integrate /in-ti-greyt/ verb (-ting) to make up, combine, or complete to produce a whole or a larger unit

On 1 November 2010 each existing Auckland local authority will be dissolved and the functions, duties and powers of each of those authorities will become the functions, duties and powers of the Auckland Council. All property belonging to the local authorities will vest in the Auckland Council and all rights, liabilities, contracts, entitlements, and engagements will become those of the Auckland Council.

In addition, the Auckland Transition Agency will be dissolved on 31 October 2010 and its assets and liabilities on dissolution will become assets and liabilities of the Auckland Council.

The legislation providing for the dissolution of existing Auckland local authorities is currently silent on taxation matters. The Income Tax Act 2007 contains special rules exempting certain income of local authorities from taxation, and those special rules extend to the Auckland Regional Transport Authority and Auckland Regional Holdings, which are council controlled organisations for Local Government Act purposes and local authorities for income tax purposes. In addition, the Goods and Services Tax Act contains special rules deeming local authorities to supply goods and services in relation to rates and in relation to financial contributions.

By 1 November 2010 the ownership of the shares (or in some cases all the assets), and in a few cases the control, of a large number of council controlled organisations including Watercare Services, the other metropolitan water companies, Ports of Auckland, the Auckland Regional Transport Authority and Auckland Regional Holdings will need to be finalised. Given that the balance sheets of the 8 local authorities alone show \$27.2 billion in assets, and that there is currently an annual revenue of \$2.3 billion across those local authorities, the taxation consequences of the various dissolutions and transfers will become very important if they are to achieve the desired and anticipated efficiencies for the Auckland region.

Historically, tax issues have arisen during times of major structural reform. For example there was a celebrated series of tax cases involving the Auckland Harbour Board, arising out of the port company reform. There are a number of tax and gift duty issues unique to local authorities which will need to be addressed and which have been under discussion with the IRD for some time. In the interests of the Auckland region and of the country as a whole it will be desirable to create as much tax certainty as possible while the Super City takes shape.

The Transition Agency will need to ensure that the transition is tax neutral. For the purposes of our tax Acts the assets and liabilities that will be transferred to the Auckland Council should be treated as having been owned by the same person throughout. There should be no other tax consequences arising from transactions entered into by local authorities prior to the establishment of the Auckland Council. Tax certainty will be necessary in relation to the vesting of assets from one entity to another. In the past, this has been achieved by deeming that assets vested in an entity are deemed to have been treated as owned by the same legal person. Any transfers of funds, assets or property from one entity will need statutory recognition so that they are not dutiable gifts for the purposes of the Estate and Gift Duties Act 1968.

Our experience with the Local Government (Auckland) Amendment Act 2004 showed that it will be necessary to consider carefully whether specific amendments are required in terms of the definitions in the Goods and Services Tax Act 1985 and the Income Tax Act 2007 (and the preceding Income Tax Acts) to ensure that the Inland Revenue Acts operate as intended. For example, as mentioned above, some local government entities are treated as council controlled organisations for Local Government Act purposes, but as local authorities for the purposes of the Income Tax Act.

Without careful attention to the taxation consequences, the Auckland region could face substantial tax costs, for example, as a consequence of the deemed transfer of assets at market value and consequential depreciation recovery issues, or in relation to gift duty if assets are vested without consideration. Taxation considerations are yet another part of the complex set of transitional issues facing the region.

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