

8. UPDATE ON TAX AUDIT POSITION

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PURPOSE OF REPORT

1. The purpose of this report is to provide the Audit and Risk Committee with an update of the Inland Revenue Department's, (IRD) audit of the Council's tax position.

EXECUTIVE SUMMARY

2. The IRD conducted a risk assessment during 2005 of the Council's group of companies for the 2004 tax return period. Formal notification of a tax audit, following from the results of the risk review, was received 21 March 2006. This audit covered the 2004 tax year, and was focussed on the Council itself, but was extended to other group companies on some specific issues.
3. The IRD's review was comprehensive; income tax, GST, FBT, PAYE and withholding tax were considered, and 85 formal information requests were received.
4. On balance, the Council fared quite well under the audit. There are a few areas for improvement as detailed in the report attached as Appendix 1.
5. The outstanding issues remaining are the eligibility of donation deductions and hurt and humiliation payments.
6. The Council engaged Deloitte and Lindsay McKay, a top tax barrister, to assist with the donation deductions matter and its response was referred to the IRD's Adjudications Unit at the beginning of this month. The Council's exposure under the audit is up to \$6.8m income tax on \$20.6m of deductions, plus penalties and interest. In addition there is a further \$6m relating to the 2006 and 2007 financial years. .
7. The Council engaged Kensington Swan to assist with its response on hurt and humiliation and this is still being considered by the IRD.
8. The total proposed assessment on the settled issues is \$176k plus possible shortfall penalties. A detailed report on these issues is the attached report.

FINANCIAL AND LEGAL CONSIDERATIONS

9. There are no legal implications. If the Council is unsuccessful in its defence of the eligibility of donations there is a significant financial implication, however, both Deloitte and Lindsay McKay feel that the Council has a very strong case against the IRD.

STAFF RECOMMENDATIONS

It is recommended that the report be received.