AGENTS ANSWERS

Inland Revenue's tax agents' update

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Inland Revenue
Te Tari Taake

REMINDERS

We have several planning calendars to help you meet your obligations. Remember that if a due date falls on a weekend or public holiday, we can receive your return and payment on the next working day without a penalty being applied. But for provincial anniversary dates, this only applies if you're in the province celebrating the holiday, and only if you usually make tax payments over-the-counter at Westpac.

Payday filing version 2

As we've signalled in recent months, from 1 April 2021 we now require all employers to use the new payday filing format (Version 2) which provides more Employment Information and Employee Detail information.

We have been working with payroll software providers to help ensure they build Version 2 into their systems in good time. For employers who file through software, they should notice little change but should contact their payroll software provider if they have questions about the changes.

Similarly, for those who use Payroll Bureaus or an intermediary service, there will likely be no impact as their payroll service provider will have made the necessary changes.

For those filing on-screen through myIR or on paper, Version 2 has already been in place since April 2020.

Those who have their own inhouse software will need to build Version 2 into their systems.
If you have clients who are having trouble doing this they can find the developer kit at
ird.govt.nz/digital-service-providers/services-catalogue/returns-and-information/payday-filing

If they have any questions or need help to prepare for this change, they can contact us at
PaydayReporting@ird.govt.nz

Important note on amendments

Amendments to Employment Information (EI) must be made using the same version as the original file. For example, if an employer has filed through Version 1 they must amend through Version 1.

For more information

Employers who file through software can talk to their software provider about what's changed, or
visit ird.govt.nz/payday-filing-version-2

E-file decommissioning on 16 April

On 16 April 2021, E-File will be decommissioned. In preparation for this, we are no longer accepting E-File registrations.

E-File is being replaced with new gateway services which software providers are building into their systems. The software providers are deciding which aspects they will build before E-File is decommissioned on 16 April 2021.

We will have E-File available up until **4pm 16 April 2021** for submitting 2020 and earlier tax year returns. However, your software provider could move to the new gateway services before 16 April 2021. If you're unsure, check the timing with your software provider.

From this date we will also remove the E-File contact channels including the dedicated email and phone lines.

To ensure you get a confirmation receipt for returns filed on 16 April 2021, we recommend that you submit your returns by midday. If you file up to 4 pm and don't get a confirmation, you can confirm that the return has been received by using the new Return service to check its status or by checking the period in myIR from 17 April 2021 onwards.

If you try to file through E-File after 4pm on 16 April 2021 the returns will be rejected. You'll need to talk to your software provider. Regardless, you'll still be able to file via myIR. After 16 April 2021, if you need to amend a return that you've filed through E-File, you will be able to do this using gateway services or myIR.

Return Acknowledgements (RAs) and Notices of Assessments (NOAs) will not be generated by E-File for any returns that haven't been processed by 16 April 2021. However, the RA or NOA will be available through the Document Service in gateway services, and in myIR.

Talk to your software provider or visit **ird.govt.nz/efile** to find out more about this change.

Final date for second Resurgence Support Payment

With New Zealand now at alert level one, the final date to apply for the Resurgence Support Payment (RSP) for the period 28 February to 12 March 2021 is Monday 12 April 2021.

Note: Applications for the first RSP for the period 15 February to 22 February closed on 22 March 2021.

For more information about RSP, go to **ird.govt.nz/updates/news-folder/resurgence-support-payment**

For more information about all the support available to businesses, go to **business.govt.nz/covid-19/financial-support-for-businesses/**

Employee share schemes

As part of Inland Revenue's focus to help customers get it "right from the start" we are undertaking a program to help our customers with their Employee Share Scheme (ESS) Reporting.

We are issuing letters to employers (and their agents) who have been identified as possibly providing benefits under an ESS.

Broadly, an ESS is an arrangement for issuing or transferring shares in a company to past, present and future employees. The arrangement must be connected to the person's employment or service. Employers are required to provide employment information to Inland Revenue when they provide ESS benefits to employees. The current ESS rules have applied since 29 September 2018 to benefits provided under an ESS (subject to transitional provisions). Certain widely offered schemes are "Exempt ESS", subject to different tax and reporting rules.

The letters provide education on reporting, income, deductions and the transitional rules, and encourage employers to provide Inland Revenue with voluntary disclosures for any ESS benefits not reported or mistakes identified.

You can find more information on:

- the tax implications of an ESS at **ird.govt.nz/employing-staff/paying-staff/employee-share-schemes/ess-rules**
- voluntary disclosures at **ird.govt.nz/managing-my-tax/fixing-mistakes-in-my-return/make-a-voluntary-disclosure**

Employers and their tax agents can contact Inland Revenue through the following email address **ESSIncome@ird.govt.nz** if they wish to provide a voluntary disclosure.

Reminder for employers to review the Employer Superannuation Contribution Tax (ESCT) rate

Employers need to review the ESCT rate for each employee at the start of each tax year (1 April) and apply it in their payroll software.

Resources for help:

- Information about ESCT on our website at **ird.govt.nz/employing-staff/deductions-from-income/employer-superannuation-contribution-tax**
- a tool to help employers work out the ESCT rate for each employee at **ird.govt.nz/employing-staff/deductions-from-income/employer-superannuation-contribution-tax/work-out-esct-rate**
- Our Employer's guide IR335.

For employers who use payroll software, the extent to which the ESCT calculation is automated varies across software packages.

Employers should check with their payroll software provider for specific instructions how this is managed within their software, and the settings necessary to ensure the correct ESCT rate is applied for each employee.

We will be monitoring ESCT deductions later in the year and will get in touch with employers who may need assistance.

Reminder about new campaign for real estate sector

We have identified that real estate salespersons/agents are claiming a high level of expenses relative to their income.

We believe that people are claiming private expenses but not keeping logbooks or other business records to support a deduction.

We plan to provide education and offer webinars to real estate firms to help customers file the correct returns.

As part of your end of year client review, you may wish to ensure that your clients are keeping sufficient records to support expenses claimed.

If we are concerned your client has overclaimed expenses, we'll send you a letter asking your client to provide records to support expenses claimed. Please contact us if you have any questions at **realestate@ird.govt.nz**

If you have identified that errors have occurred then your client should complete a voluntary disclosure and submit it to us. You can find more information at: **ird.govt.nz/managing-my-tax/fixing-mistakes-in-my-return/make-a-voluntary-disclosure**

Check out our website for further details at **ird.govt.nz/Pages/Campaigns/Real-estate-agents**

New tax rate of 39% for earnings over $180,000

The new top individual tax rate (39%) for income of $180,000 and over came into effect on 1 April 2021.

Inland Revenue released a public statement on 12 March 2021 regarding the new 39% tax rate, which includes a warning against avoiding the new rate (read a copy of this statement over the page).

In addition, there are corresponding changes to PAYE and secondary tax rates, RLWT, ESCT, FBT, RSCT and Māori authority distribution non-declaration rates which also came into effect 1 April 2021. Employers and payroll software providers will need to ensure that payroll systems and processes are updated with the correct rates.

Although the new 39% tax rate will apply to all income over $180,000 earned by an individual from 1 April 2021, please note that payers of interest such as banks and other financial institutions, are not required to make the new 39% RWT rate available to their customers until 1 October 2021.

Public Statement issued 12 March 2021

From April 2021 a new marginal tax rate of 39% will apply to income earned by individuals over $180,000pa. There have been corresponding changes to FBT, ESCT, RLWT, RSCT, RWT and the non-declaration rate for Māori Authority distributions. These changes were introduced in the **Taxation (Income Tax Rate and Other Amendments) Bill**.

The new tax rate might be seen by some high-income individuals as providing an increased motivation to explore ways to reduce their exposure to the new rate, however, any activity undertaken with the primary intent of reducing a person's exposure to the higher 39% marginal rate is likely to be viewed as tax avoidance.

Inland Revenue has several published statements which address tax avoidance that are relevant to the introduction of the new 39% marginal tax rate. Transactions, restructuring and arrangements which exhibit features that are similar to, or align with, a scenario or arrangement contemplated in our externally published statements will always be of concern to us.

We will be utilising our information gathering and data analysis capabilities to identify changes in behaviour early and will engage with those customers to understand those changes in behaviour.

Examples of behaviours that might concern us include:

1. Restructuring of a personal service provider business into a company/trust coupled with a reduction in individual income;
2. Withdrawing funds from a company/trust as a loan rather than salary/dividend or other taxable distribution, especially where this results in an overdrawn current account;
3. Diverting income-distributions to low-income shareholders/beneficiaries if the benefit of the funds is still enjoyed by a high-income person;
4. Paying a spouse or family member a salary where no service is provided in return;
5. Adopting different tax treatment to bring forward income or defer expenditure;
6. Altering the timing (bringing forward or otherwise) of any income-based payment where it is linked to existing contractual terms or practice for the date for payment (bonuses, redundancy payments, vesting of share options, etc);
7. Any arrangement which alters or mitigates the application of the changes to the other impacted tax types.

Our existing published statements include:

- **Interpretation Statement IS 13/01** "Tax Avoidance & the interpretation of BG1 and GA1" outlines the Commissioner's view of the law on tax avoidance in New Zealand. This statement was recently reviewed by Inland Revenue and released for public consultation in December 2020 (with submissions due by 31 March 2021). See the updated versions here: **PUB00305** & **PUB00305 QB2** (use of discretionary trusts & marginal tax rates).
- **Revenue Alert 11/02** considers taxpayers who divert income from a business or activity to a trust or company and when Inland Revenue will consider the arrangement tax avoidance.
- **Revenue Alert 18/01** & **18/01a** discuss dividend stripping and when proceeds from share sales are at high risk of being treated as a dividend for income tax purposes.
- **Interpretation Statement 19/02** "Income tax – attribution rule for income from personal services" provides guidance on when the attribution rule for income from personal services in ss GB 27 to GB 29 will apply.
- **Interpretation Statement 18/01** "Taxation of Trusts – Income Tax" outlines the Commissioner's view on income tax law as it applies to Trusts, including specifying when income is required to be taxed in the hands of the beneficiary.

We intend to reissue Revenue Alert 11/02 shortly. The reissue does not reflect a substantial change to our approach, we have simply reframed the existing Revenue Alert in the context of the introduction of the new marginal tax rate on 1 April 2021.

Customers should think carefully about the application of these statements to their factual situation, seek advice, and if certainty is required, they should apply for a binding ruling.

Email: **agents.answers@ird.govt.nz**

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