

AGENTS ANSWERS

Inland Revenue's tax agents' update



Issue No 245 • May 2021 • IR787

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.

Tax treatment of Resurgence Support Payment (RSP)

The RSP is a payment to help support viable and ongoing businesses or organisations due to a COVID-19 alert level increase to level 2 or higher, for a period of 7 days or longer.

GST-registered businesses must return GST on payments received under the RSP. These businesses will be able to claim input tax deductions for expenditure funded by payments under the RSP.

Payments received under the RSP are not subject to income tax. Expenditure funded by payments under the RSP is not deductible for income tax.

The payment must be used to cover business expenses such as wages and fixed costs. Where the RSP is used to cover the payment of wages then standard PAYE deductions, and reporting, are required.

Client list report and filing statistics

As of 1 May 2021, the income tax section of the Client list report and the EOT dashboard now display 2020-21 income year details. This means you no longer have access to the 2019-20 income tax information however, you can still check your 2019-20 return filing statistics by changing the date in the drop down in the EOT display for each client list.

2021 Income tax – more information required

From late May to end of July 2021 we will be sending "Income tax – more information requests for individual clients" (excluding IR3 filers). If you have your clients' mail redirected you will receive this letter, otherwise, your clients will receive this themselves.

You are required to review, add any additional information income or expenses (if appropriate), and complete your clients' income tax assessments. This can be done through myIR.

If you are using Gateway Services software to send income tax returns to Inland Revenue, you may also be able "finalise" or "amend" the "more info request" in your software. Talk to your provider as to whether they offer this functionality.

We encourage you to confirm these in a timely manner so your clients are aware of their end of year tax position promptly and receive any refund they may be entitled to (including Working for Families).

What's new for 2021

- From the 2021 year onwards any PIE income and tax will be included in your clients' end of year income tax assessments. This is calculated using prescribed investor rates (PIR), rather than income tax rates. Recent law changes mean that where PIE tax has been overpaid or underpaid it will form part of the overall income tax assessment and be offset against any income tax over or under payment.

(continued on next page)

- Scheduling payment clients who have received the COVID-19 Wage subsidy will receive a 2021 IR3 individual income tax return as they are required to declare this income.
- If your clients receive joint investment income, we will allocate this from the information the investment income provider has returned. Where an investment provider only holds one IRD number, 100% of the income will be allocated to that IRD number. It is important that your clients advise their investment income provider of their IRD number so income can be correctly allocated. You can also update the ownership percentage of the investment income in myIR providing the client has this income showing.

You can find out more about the end of year process:

- at our webpage ird.govt.nz/roles/tax-agents/individual-income-tax-for-clients-of-agents, or
- by watching our webinar at ird.govt.nz (keyword: webinar)

Debt campaign for clients with debts under <\$10k

Following the SMS debt pilot in December last year and consultation with tax agent professional bodies and IR's Tax Agent Cohort, from 1 June 2021, we will begin contacting clients of agents directly about outstanding arrears if:

- the debt is more than 60 days overdue, and
- the amount of the debt is between \$200-\$10,000, and
- the debt is assessed (ie **not** missed provisional tax instalments), and
- the client account is active, and
- there is no active tax pooling indicator on the client's account.

We will contact customers by phone or SMS message. Any letters issued will continue to follow standard client mail redirect rules.

This allows agents, who deal with client debt, 60 days from the due date to organise a payment plan (via instalments or in full) with their client directly. However, if the debt is not under positive arrangement after 60 days, we will start recovery action directly with the client.

It's important that we continue to take action on these debts to uphold our responsibility to the NZ Government and help support COVID-19 initiatives.

Sale/purchase of a business or property - purchase price allocation

From 1 July 2021 new rules require both parties to the sale and purchase of 2 or more assets with different tax treatments to allocate the same amounts for each asset. These amounts will normally be in line with the market value.

If there is no agreement on amounts allocated and certain thresholds are exceeded, the seller will have 3 months from the date of settlement to determine an allocation and notify this to both the buyer and Inland Revenue. If after 3 months the seller has not made a notification, then the buyer has 3 months to notify the seller and Inland Revenue.

Notifications to Inland Revenue can be made through myIR and should include the phrase "**Purchase price allocation**" in the subject line.

The notification should include both parties' names, IR number, date of agreement and settlement, transaction value and price allocation at the level of asset classes that are subject to particular income or deduction rules.

When neither party determines and notifies an allocation, then the Commissioner may determine the allocation.

You can view the special report on our Tax Policy website at taxpolicy.ird.govt.nz/publications/2021/2021-sr-arferm-act

Feasibility expenditure

From the 2020/2021 income year new rules apply for feasibility expenditure.

For total expenditure related to completing, creating or acquiring property (business assets) of \$10,000 or less in a year, an immediate deduction is available. This is the de minimis rule.

For the same type of expenditure totalling more than \$10,000, where the property is subsequently abandoned before it is completed, created or acquired, a deduction of the expenditure can be spread equally over 5 years from the year the property is abandoned.

For abandoned property that is later completed, created or acquired within 7 years of the last year of the spread, all deductions (excluding deductions claimed under the de minimis rule) will be treated as income in the income year of completion, creation or acquisition. This is referred to as the "clawback".

You can view the special report on our Tax Policy website at taxpolicy.ird.govt.nz/publications/2021/2021-sr-arferm-act

Loss carry forward – new business continuity test for companies

From the 2020/2021 income year a new business continuity test applies to losses carried forward. The existing loss carry forward rules requiring 49% shareholder continuity continue to apply. Companies that meet the shareholder continuity test do not need to meet the business continuity test.

The business continuity test allows a company to carry forward losses after a change in ownership (where there has been a breach in shareholder continuity) so long as the underlying business continues. That is, there is no "major change" in the business activities for either 5 years after the change in ownership or the period when the losses are used up (whichever is earlier).

Whether there is a "major change" will depend on the extent the same assets, activities and operations continue to be used to generate income for the company.

The commentary from the Supplementary Order Paper to the Taxation (Annual Rates 2020 21, Feasibility Expenditure, and Remedial Matters) Bill contains details of the new business continuity test and is available at: taxpolicy.ird.govt.nz/publications/2021/2021-commentary-arferm-bill-supplementary

Further details will be published in the Tax Information Bulletin in the coming months.

The Commissioner's Position on NZ IFRS 15 Revenue from Contracts with Customers

The Commissioner has considered the impact of *New Zealand Equivalent to International Financial Reporting Standard 15 Revenue from Contracts with Customers* (NZ IFRS 15), which applies from 1 January 2018, on the meaning of "derived" and "incurred" for taxation purposes. It is considered that NZ IFRS 15 does not change the meaning of "derived" and "incurred" for taxation purposes and as a result, does not change the law of taxation because:

- There have been no significant changes to the New Zealand case law on when income is derived and expenditure is incurred.
- Case law has made it clear that the time that income is derived may differ for tax and accounting purposes, because each are looking to achieve different things.
- Historically the test of when income is derived has been more influenced by accounting standards. However, since the move to a global-gross approach (from a net approach) in the income tax legislation, it is less likely that accounting standards will influence when income is derived for tax purposes.
- The test for when expenditure is incurred is a statutory test that is not influenced by accounting standards. Changing accounting standards cannot change the statutory test for deductibility.
- The Courts will not be prepared to accept an asymmetry of tax treatment where accounting standards would affect the income tax treatment of income derived but not the income tax treatment of expenditure incurred. This would particularly be the case where such a treatment would lead to deferred income with up-front expenditure and no matching of income and expenditure.

Tax technical items

We've recently published these items.

You can find all them on our website taxtechnical.ird.govt.nz/ Enter the number in the search box, eg RA 21/01.

RA 21/01: Diverting personal services income by structuring revenue earning activities through a related entity such as a trading trust or a company: the circumstances when Inland Revenue will consider this arrangement is tax avoidance.

This Revenue Alert was issued ahead of the introduction of the new top marginal tax rate. It reiterates the Commissioner's view on this matter which follows the Supreme Court's decision in *Penny and Hooper v CIR*.

From 1 April 2021 additional reporting obligations for trusts and new information gathering rules have been introduced to assist the Commissioner to identify any changes or increased use of trust structures to mitigate the impact of the new tax rate.

DEP106: General Depreciation Determination: Tax Depreciation Rates for e-scooters and e-bicycles used in the ordinary course of business, and e-scooters, e-bicycles and bicycles (pedal) used for short term hire of 1 month or less

DEP106 sets depreciation rates for e-scooters and e-bicycles used in the ordinary course of business and for short-term hire and pedal bicycles used for short-term hire.

IS 21/02: Income tax – Calculating income from personal services to be attributed to the working person

This Interpretation Statement provides guidance on **how** to calculate the amount of income from personal services that is attributed to the working person under the attribution rule in the Income Tax Act 2007.

The attribution rule may apply if an entity earns income from supplying services that are personally performed by an associated person (the working person). The rule is aimed at ensuring the appropriate amount of income is recognised as being the working person's income – so taxpayers in this situation can't use associated entities to achieve a tax advantage.

IS 19/02: Income tax – attribution rule for income from personal services

This previously published Interpretation Statement is related to IS 21/02. It provides guidance on when to calculate the amount of income from personal services that is attributed to the working person under the attribution rule in the Income Tax Act 2007.

CS 21/01: Commissioner's Statement – Income tax treatment of facilitation payments to farmers and debt remission on settlement of a loan

This statement sets out the Commissioner's approach to facilitation payments to farmers and debt remission arising from the settlement of loans to farmers.



Follow us on our LinkedIn page for tax professionals

We have a LinkedIn page dedicated to tax professionals. We share regular updates on tax law changes, upcoming due dates and more.

Follow our page today [linkedin.com/showcase/Inland-Revenue-NZ-for-tax-professionals](https://www.linkedin.com/showcase/Inland-Revenue-NZ-for-tax-professionals)