

REPORT - FEBRUARY 2019

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The information contained in this report is not advice. We recommend that before readers decide to proceed with any of the matters raised below, that they contact their professional advisors.

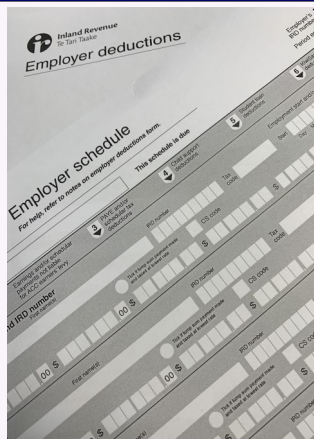
PAYDAY FILING

Payday filing becomes mandatory from 1 April 2019 for all New Zealand employers. The way employers report payroll information to the IRD is changing. Are you ready for it?

What is Payday Filing?

It replaces the employer monthly schedule (EMS), which is currently filed either in myIR or through the post. You, as an employer, will need to file the employer information (EI) return **EVERY TIME** you pay a staff. If you pay your staff weekly, you will need to file the EI every week; if you pay your staff fortnightly, you will need to file the EI every fortnight, and likewise for monthly payments.

The table below sets out how the payroll process will change with Payday Filing going live:



will be the easiest and quickest way to file, and online payroll products such as Xero Payroll and MYOB's Essentials Payroll will include this functionality. These products are now ready and meet the compliance requirements.

What Do You Need to do Now

1. Understand the changes that is coming (you have done this by reading the above!).
2. Check and ensure that your employer and employee details are up to date and correct in your Payroll System (if you are currently using one).
3. Review your payroll processes to ensure they are ready to comply with the new Payday Filing from 1 April 2019 – perhaps it is a good time to use a Payroll Software?
4. Get access to your myIR account (if you haven't already done so) – get ready for the electronic filing. Please note

Current Process	New Process
Employer Monthly Schedule (IR348) monthly	Replaced with Employment Information (EI) return completed with the payroll
Employer Monthly Schedule Amendments (IR344)	Replaced by correcting/updating employment information online
Set up of new employees on IR330 and KS2	Replaced with single online form that must be filed on, or before, any new employee's first payday – Information pulled through software <i>* IR330 serves as good record-keeping but does not need to be submitted to IR.</i>
PAYE reports sent to IR monthly	Payday information sent to the IR within: - 2 working days for electronic filers; or - 10 working days for paper filers.
PAYE payment due date	No change
Employer Deduction Form (IR345)	No longer required, however, you can still use this report to confirm the totals to pay to the IR

The mandatory electronic filing threshold is reducing from \$100,000 in PAYE/ESCT per year to \$50,000 per year from 1 April 2019. This means that businesses below this threshold have the choice to file electronically or via paper. The electronic method

that the first time you set up Payday Filing through your myIR account, you must be the owner of the myIR account to complete the setup.

5. Register for these free Payday Filing webinars:

Continued PTO

PAYDAY FILING (continued)

- ◆ Getting Employers Ready for Payday Filing (60 minutes): <https://www.cchlearning.co.nz/events/1732-getting-employers-ready-for-payday-filing-29-october-2018-on-demand/>
- ◆ Payday Filing for Employers (45 minutes): <https://www.cchlearning.co.nz/events/1511-payday-filing-for-employers-more-detail-14-may-2018-on-demand/>
- ◆ Payday Filing for Employers Update (60 minutes): <https://www.cchlearning.co.nz/events/1535-payday-filing-for-employers-update-28-may-2018-on-demand/>
- ◆ Using payroll software to payday file (60 minutes) – for employers planning to use, or currently using payroll software.: <https://www.cchlearning.co.nz/events/1754-using-payroll-software-to-payday-file-5-november-2018-on-demand/>

In addition, you can choose to switch to payday filing now. Review your payroll processes, plan and schedule when to shift. If you are currently using a Payroll System, you do not have to make the switch now, but please ask your software provider when they'll have payday filing compatible software. If you're using myIR to file, you'll need to notify IRD that you're switching to Payday Filing via your myIR login (the how to instructions are contained in this link: <https://www.youtube.com/watch?v=HPnVMtgPSwU>).

We recommend that you switch to payday filing from 1 March so that you have a full month to get bedded in. Hence, you should be registered before the end of February. Act NOW!

ANTI-MONEY LAUNDERING

Since 2013, financial institutions, such as banks, have had to comply with Anti-Money Laundering regulations. These rules have now been extended to other businesses providing financial services, such as real estate agents, accountants and lawyers.

Since 1 October 2018, accountants are required to collect and verify identification and other personal information about our clients, individuals who own or control clients, and individuals instructing us on behalf of clients. This is called "customer due diligence" or 'CDD' and is a type of background check very similar to what you would have experienced already when dealing with your bank.

The purpose of the AML/CFT Act is to detect and deter money laundering and the financing of terrorism, and maintain and enhance New Zealand's international reputation as a country difficult to launder money through. This contributes to public confidence in New Zealand's financial system.

To meet the requirements of the AML/CFT Act, Marsden Robinson Chow Ltd will be implementing processes and controls for on-boarding new clients, updating existing client identification and the reporting of suspicious activity and transactions.

CDD verification requirements are similar to banks and lawyers, and we must sight the source documents like a passport and drivers' licence and record that information, even if we have an existing relationship with you.

This process has been implemented for all new client relationships since 1 October 2018, and for existing clients as we are engaged to carry out any services that may vary from what is currently provided. Over time we are obliged to carry out CDD for all existing clients. Where practical, we will be looking to

Systems to Help

As mentioned above, online payroll products such as Xero Payroll and MYOB's Essentials Payroll will help you with the following:

- a. No more manual calculations - lowering the risk of errors;
- b. Tax rate changes and rules are updated automatically;
- c. Employee hours can be updated and tracked easily (no more manual checking and tracing which could mean hours of work);
- d. Tax forms are prefilled by the system – all you need to do is check the details and submit with a click! and
- e. Payments are processed automatically.

For details of Xero Payroll, please visit this link: <https://www.xero.com/nz/features-and-tools/accounting-software/payroll/payday-filing/>

For details of MYOB Essential Payroll, please visit this link: https://www.myob.com/nz/payroll-software/essentials-payroll?utm_source=Responsys&utm_medium=Email&utm_campaign=BD_CR_NZ_20180911_PayDay_Filing_Update_NZP_UpWb&rid=1583183268&mid=10197155&custid=ASSET_PROOF_6_CUSTOMER_ID

We are here to Help

Whether you require:

- ◆ further information on any of the above topics
- ◆ our help to review your payroll process
- ◆ our help to file your PAYE returns
- ◆ recommendations of accounting and payroll products

complete CDD in anticipation of any changes in services, to ensure this does not affect the timely delivery of these services to you.

To undertake the above, we may request proof of identification information or documentation from you like a passport, driver's license and address verification (e.g. utilities bill).

If you have any questions about this, please contact your friendly advisor.

GST ON LOW VALUE IMPORTS

GST is intended to be a broad-based tax applying to goods and services consumed in NZ, however under the current system not all goods and services are captured. Specifically, GST is not currently collected on imported goods worth \$400 or less. Historically, it was thought that the administrative cost of collection would outweigh the tax revenue collected, however the import market has grown, giving rise to increasing concern NZ suppliers are disadvantaged in comparison to offshore suppliers.

The Bill introduced into Parliament in December 2018, intended to be effective from 1 October 2019, proposes to apply GST to goods valued at \$1,000 or less (excluding tobacco and alcohol) that are delivered to a NZ address from overseas. Offshore suppliers will be required to return NZ GST if their total supplies to NZ exceed \$60,000 in a 12-month period.

So what does this mean for NZ consumers? They will likely have to pay GST on low-value goods imported from overseas, while NZ businesses are now on a more level playing field with their overseas competitors.

BAD DEBTS

Many of the costs associated with running a business can be claimed as a tax-deductible expense, but not all. The Income Tax Act dictates that to be deductible, expenses must be incurred in the course of deriving assessable income, or in running a business.

Bad debts are one such example. Bad debts are real losses suffered by a business, arising when credit has been extended to customers who are ultimately unable to pay the amount owed. The timing of a bad debt can be subject to a degree of subjectivity. Hence, although they are commonly recorded as an expense in the financial statements after a certain period of time, there is no automatic right to a tax deduction. The default position in the Income Tax Act is to deny a deduction for a bad debt, except where the debt has been written off during the income year or certain other legal steps have been taken to formally release the debtor from payment.



Do take this opportunity in reviewing your Debtors Ledger. If you want a deduction for any bad debts, they need to be written off your debtors ledger by 31 March 2019. Telling us when you bring your books in or making a provision for bad debts will not cut it!

Whether a bad debt deduction could be claimed was the subject of a recent High Court decision, *Boon Gunn Hong v Commissioner of Inland Revenue* [2018], where the taxpayer was ultimately unsuccessful.

The taxpayer was a barrister and solicitor working as a sole practitioner. He made loans of \$50,000 and \$122,280 respectively to two of his legal practice's clients, both of whom were facing financial difficulties. The court referred to them being made from a "benevolence on the conscience loan fund" intended to help clients facing financial difficulties. When the debtors became unable to pay, the taxpayer claimed a tax deduction for the bad debts in the 2011 year.

The Court denied the deduction on several grounds. Firstly, the Court considered the general principle requiring a connection between an expense and the income derived by the business. The taxpayer was not in the business of lending money nor was there a connection between the taxpayer's legal services business and the bad debts, hence the loans were not expenses incurred in deriving his assessable income.

Secondly, under the specific bad debt provisions, the taxpayer's own accounting procedures failed to show that the loans had been written off in the 2011 year. Furthermore, he had failed to establish that the debtors were legally released from making any further repayments. One debtor was only released from bankruptcy in 2013 and the other had not been adjudicated bankrupt at all.

The case had initially been heard in the lower courts, with the taxpayer charged shortfall penalties for taking a lack of reasonable care in forming his tax position. In addition to finding against the taxpayer, the High Court upheld the penalty, with the taxpayer also forced to pay the legal costs involved in taking the case to the High Court.

This case highlights the importance of ensuring the deductions claimed in your tax return are properly allowable under the Income Tax Act 2007. If you have any expenses that could possibly raise red flags it is important to take specialist tax advice to avoid the potentially costly consequences of mistakes.

GST & LAND SALES

In 2011 the GST Act was amended to prescribe that a supply of land between two GST registered parties was subject to a rate of 0% if the land was to be used by the purchaser to make taxable supplies and not as a principal place of residence.

Given the change reduced the GST rate to 0% it is fair to assume it should have simplified how GST applies, i.e. there wouldn't be any. However, in practice the change continues to cause problems both from a contractual and technical perspective. This led to Inland Revenue (IRD) issuing additional guidance in 2017. However, problems persist. Two examples are outlined below.

Under the GST Act, a purchaser is required to notify the vendor of their circumstances so that the vendor can establish whether or not to zero-rate the sale. In practice, this occurs by completing Schedule 1 of the Auckland District Law Society (ADLS) Sale and Purchase (S&P) agreement. However, there are instances where the schedule is not completed at all, in which case there is no 'agreement' between the parties regarding how GST applies.

If a GST registered purchaser does not complete the schedule and a vendor mistakenly charges GST at 15% because they assume the purchaser is non-registered, the purchaser will understandably apply to IRD for a GST refund. If IRD review the transaction and determine it should have been zero-rated IRD will decline the refund. Instead, the purchaser will need to seek a refund from the vendor. The vendor will also need to apply for a refund (of the GST) from IRD, to fund the repayment to the purchaser.

Another scenario is where Schedule 1 of the S&P has not been completed at all and the vendor incorrectly zero-rates a sale on the assumption that the purchaser is GST registered etc. In this situation, GST will need to be paid, but there is currently uncertainty regarding who is liable. A provision exists that deems the purchaser to be liable if a transaction has been incorrectly zero-rated. However, it is unclear whether this provision applies in all situations or only when the vendor and purchaser agreed what the GST treatment should be, which is later found to be wrong. If the vendor is held liable and the price has been expressed in the S&P as "including GST", the vendor is worse off. If the purchaser is held liable and the S&P was "including GST", it becomes a question of whether the purchaser can seek a partial refund of the purchase price from the vendor to fund their GST liability.

It is extremely important to ensure the S&P is complete and correct. Costly mistakes can be avoided simply by following due process. If you are unsure, please ask your advisor.

PARENTAL LEAVE

Until recently, new parents received paid parental leave for just 18 weeks, one of the lowest allowances in the OECD. Parliament originally voted to increase paid parental leave to 26 weeks back in 2016, however the previous Government vetoed the change. The increase will now take place incrementally, with the first increase from 18 to 22 weeks applicable to babies born from 1 July 2018, and a further extension to 26 weeks expected from 1 July 2020. The change also applies to those adopting, or becoming primary carer for a child.

The maximum payment has remained at \$538.55 before tax, however it is hoped that the increased leave period will benefit families more than just financially. It is hoped there will be a positive impact on parental bonding with their newborn, and will also assist with the World Health Organisation's recommendation of breastfeeding up to six months of age.

YOU VERSUS YOUR TRUST

It is common from a layman's perspective to not appreciate the relevance of treating separate legal entities as separate. Where expenditure is incurred to derive income, it is typically deductible for income tax purposes to the person that derived the income. Documentary evidence should be held that reflects this connection to ensure the expenditure comprises an allowable deduction. The High Court recently considered this issue in the decision of *Wong v Commissioner of Inland Revenue* (2018).

In *Wong v CIR*, the taxpayer was an accountant by profession. He derived income from a consultancy business and two rental properties. He was also trustee of his family trust that derived rental income from a third property. Mr Wong financed both the consultancy business and rental properties through a number of loans and credit facilities in his personal name.

Despite reminders from Inland Revenue (IRD), Mr Wong failed to file personal income tax returns for the 2013 and 2014 tax years and IRD raised default assessments for those years of \$84,273.10 and \$39,549.65, including penalties.

Mr Wong disputed the assessments, contending that the correct tax position was \$951 in 2013 and nil in 2014, on the basis that interest deductions were available in respect of all three rental properties. IRD argued that interest was only deductible in respect of the two properties owned personally. However, the interest incurred for the trust property could not be deducted against his personal income as it had been incurred by the Trust, as owner of the property. To successfully challenge IRD's assessments in the courts, the onus of proof rests with the taxpayer to show how, and by how much, the IRD's assessments are wrong. With respect to the interest incurred in relation to the trust property, the TRA found in favour of IRD, emphasising that Mr Wong had failed to prove the outstanding debt and interest was paid in relation to properties owned by him personally.

The taxpayer appealed to the High Court, who found the TRA's decision correct in all respects.

A shortfall penalty, for taking a 'grossly careless tax position' was also upheld. Mr Wong contended that no shortfall penalty should apply once tax losses are taken into account i.e., no cash tax liability existed due to his personal tax losses. However, shortfall penalties are calculated based on the net shortfall, as though tax is payable and the shortfall penalty was upheld.

From a commercial perspective, it can make sense to stand back and look at a group of entities as though they are a single person, especially when they are economically owned by a single person, however, IRD and the Courts do not take the same approach.

We strongly recommend that where clients have a number of entities that they each be treated separately and have their own bank accounts to deal with their financial affairs. Where expenses are intertwined, there is a real chance that the deduction will be disallowed and penalties will be imposed by the IRD, whether or not it actually results in a tax liability for the entity.



SUGAR TAXES

With obesity becoming an ever increasing problem in New Zealand, there is regular debate regarding the effectiveness of a sugar tax to curb the problem. There's a lack of consensus on whether such a tax may be beneficial, yet sugar taxes are nothing new.

100 years ago in 1919, with the First World War nearing conclusion, politicians in the United States decided that taxing ice-cream sodas, sundaes, juices, lemonades and other sugary drinks would offset the tax revenue lost from alcohol sales once the nationwide prohibition came into effect.

However one year after introduction of the sugar tax, following the conclusion of the war, the tax was scrapped. The USA still faced record levels of war debt, yet the soda tax was so unpopular with the American people that it wasn't a viable option.

Although the 1919 soda tax did not have health objectives in mind, it is reasonable to conclude that soda was not something the American people wanted their politicians messing with.

After 100 years, the situation is only getting worse with 32% of adults in New Zealand considered obese, what are our options? During the First World War, rationing was a way to ensure people got what they "needed"...



HOUSEKEEPING & IT

Our new billing system has been received very positively with 90% of our fee notes being emailed. Please assist us by ensuring that we are always notified of your latest or best contact details. The next step of our IT evolution is to have all our Newsletters delivered directly into your email Inbox. Over the last year we have implemented a new Document Management system where all our documents are now stored digitally rather than the burdensome and costly off-site storage. We will be scanning the last 7 years of records and you would have noticed costs for this has been trickling through. This will also be the MRC family of clients' contribution to reducing their carbon footprint.

IMPORTANT TAX DATES

20 February - PAYE, RWT, NRWT Returns are due

28 February - GST due for period-end January

5 March - PAYE due for large employers

20 March - PAYE, RWT, NRWT Returns are due

28 March - GST due for period-end February

31 March - Last Day to write off Bad Debts

5 April - PAYE due for large employers

20 April - PAYE, RWT, NRWT Returns are due

7 May - GST due for period-end March