NEWS

USEFUL SNIPPETS

HOW TO CALCULATE AN EMPLOYEE'S ESCT RATE

The tax free status of employer contributions to Kiwisaver schemes and complying superannuation funds ended with effect from 1 April 2012. From this date employers need to calculate Employer Superannuation Contribution Tax (ESCT) on all employer cash contributions to superannuation funds, including Kiwisaver schemes.

ESCT is deducted from the employer contribution and so reduces the value of the amount that ends up in the employee's Kiwisaver scheme.

From 1 April 2012, the tax rate is determined by the employee's gross salary or wages plus the employer's superannuation contribution - before deduction of any ESCT - the total being called ESCT rate threshold amount - paid during the last tax year (1 April – 31 March) as follows:

ESCT rate threshold amount	Tax rate
$0 – 16,800	10.5%
$16,801 - $57,600	17.5%
$57,601 - $84,000	30%
$84,001 upwards	33%

An example calculation of employee's ESCT rate threshold amount if the employee has worked the previous 12 months is:

Employee A's gross salary for the 2012 tax year (1 April 2011 – 31 March 2012) based on actual remuneration:	$60,000
Employee A belongs to Kiwisaver, therefore A's employer compulsorily contributed 2% minimum this tax year:	1,200
Employee A's Income to calculate the rate is:	$61,200

The ESCT rate as per schedule above for this employee is therefore 30% commencing from the first pay period after 1 April 2012.

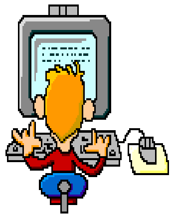
In this example case, the employer allocates 30% of the employer Kiwisaver contribution as ESCT, the balance of 70% is paid as Kiwisaver Employer contributions (KSR). The ESCT & KSR is shown separately on the Employer deduction form (IR345).

If on 1 April 2012 the employee has not worked for the employer for the full previous 12 months, the ESCT rate threshold amount is calculated by making a 'reasonable estimate' of what the employee's annual remuneration will be for the coming year.

CASUAL AGRICULTURAL WORKERS

If you employ casual agricultural employees and they are taxed at the "CAE" rate, this rate changes on 1 April 2012 to 19.20%.

NEW MINIMUM WAGE RATES



New minimum wage rates also take effect from 1 April 2012. The new adult minimum wage rate (before tax) which applies to employees aged 16 years and over will be:

$13.50 per hour, $108.00 for an eight hour day, or $540.00 for a forty hour week. If you are paying employees inclusive of 8% holiday pay, this minimum adult wage becomes $14.58 per hour.

SCHOOL CHILDREN & DEDUCTIONS OF PAYE

We have been asked to clarify whether school children who earn under the $2,340p.a. ($45 per week) threshold and have PAYE deducted from their pay get all their tax back or end up paying ACC earners' levy on their wages.

If you hire a school child and they earn less than $2,340, they will get back all the tax they have paid. If you expect them to earn over the $2,340 threshold they will need to complete an IR330 and have PAYE deducted.

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THE HIDDEN CASH ECONOMY – HOW BIG IS IT?

A recent report stated that the New Zealand Government is losing around $7 billion a year in lost revenue as a result of the hidden cash economy. Basically, the hidden cash economy is not returning sales as taxable income either by pocketing cash received for goods and services (colloquially called 'cashies') or by swapping goods and services with other businesses without returning their value as income. It also includes cash wages (under the table wages), proceeds from criminal activity, undeclared income from on-line trading and undeclared offshore investment income. All amount to tax evasion in the eyes of the IRD.

This unrealised tax revenue could have been used to fund education, health and other social services, perhaps reducing the burden placed on taxpayers. Although it is naturally difficult to determine the size of the cash economy in New Zealand, research carried out estimates that it could be as large as $20 billion per year, which is 12.4% of GDP. Consequently, over the past two years, the hidden economy has been a focus of the IRD's compliance programme with specific funding received from the Government to target this.

As revenue authorities share methods and resources and the information age makes it easier to target participants in the hidden economy, the risk of being caught is increasing for those operating outside the law. Various methods are being used by IRD to identify individuals who evade their tax obligations, including:

- Working with Trade-Me to identify people who are regularly selling goods and services on the website
- Developing industry benchmarks to help identify businesses that fall outside their industry performance standards
- Improving information streams from industries, supplier networks and overseas treaty partners to identify tax cheats through third party information
- Improving the anonymous information service to make it easier for people to report suspected tax system cheating.

HOLIDAY PAY & PARENTAL LEAVE

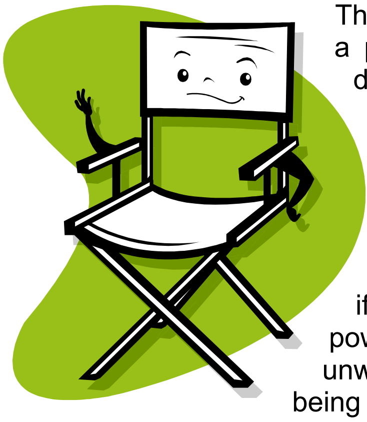
An employee's annual leave entitlement accrues while they are away on parental leave as the leave is considered to be part of the employees' continuous service. However, a little recognised fact amongst employers and employees is that the method of calculating holiday pay when annual leave is taken by employees who have returned from parental leave is different to the normal holiday pay calculation.

Holiday pay is normally calculated as the higher of either the average weekly earnings for the 12 months immediately before the end of the last pay period before leave is taken, or alternatively, the employee's ordinary weekly pay at the beginning of the holiday.

However, the calculation changes when the employee takes holidays in the twelve months following parental leave.

The calculation for holidays taken within 12 months of return from parental leave is based on the average weekly earnings for the 12 months immediately before the end of the last pay period prior to this holiday and is of course not comparable to the ordinary weekly pay. This means that it is likely that the amount of holiday pay for annual leave taken may be less than the employee is expecting. Therefore, it is important that both employers and employees are aware of the difference in calculation methods before annual leave is taken.

DIRECTOR RESPONSIBILITIES



There are personal risks when a person acts as a company director. It is possible for a director to be held personally liable to the company, the shareholders or to a third party. A person may become a deemed director if he or she exercises powers as a director or is unwittingly treated as one by being involved with that company or by sitting at the board table (e.g. a shareholder who is not a director). Sometimes a person is only a nominee director but is still acting as a director and therefore has responsibilities and may be liable for their actions.

It is important for directors (and deemed or nominee directors) to be aware of their obligations. One such obligation is the request to maintain a Directors' Interests Register. Directors must disclose any interest they have in a transaction of the company on the Interest Register. An interest includes situations where the director is a:

- Party to a transaction in which he or she will derive financial benefit from a transaction with the company;
- Director, officer or trustee of an entity deriving financial benefit from a company transaction; or
- Parent, child or spouse of the party deriving such financial benefit from a transaction of the company.

Regardless of whether or not the interest is disclosed, the company can void the transaction at any time up to three months after the disclosure is made to all the shareholders in the event where the company does not receive fair value for a transaction in which the director had an interest. If a disclosure of the interest is not made, the director could be liable for a fine of up to $10,000. However, the transaction cannot be voided where the company receives fair value.

Where a person is asked to accept a role as a director, it is advisable to require both an indemnity and insurance from the company before that person accepts the directorship.

An indemnity typically provides that a director will be reimbursed by the company in respect of liability to any person, other than the company or a related company (as defined by the Companies Act 1993), for any act or omission in his or her capacity as company director. However, an indemnity can only be provided by a company if it is permitted by the company's constitution and will not cover all the acts of the director – for example, criminal acts or a breach of his fiduciary duties as the law does not allow it.

In the case of insurance, the company may provide this only if its constitution allows it and the required board resolutions and certificates are signed.

THE REVIEW OF TRUST LAW

The Law Commission has released a number of papers that aim to review and modernise the law of trusts.
The Commission firstly points out that the current legislation (the Trustee Act 1956) has been neglected and that there are concerns about its usefulness and outdated language. Moreover, the Commission believes that the present law does not have enough mandatory provisions. For example, it is not unusual for a trust deed to include clauses exempting trustees for breaches of trust. The Commission sees a rewrite of the legislation as helping to clarify certain basic obligations that must be adhered to. The new legislation will spell out the duties and powers of trustees, as well as beneficiaries' rights.

It will be some months before the likely changes become clear. Having said that, we have concerns about the standard of trust administration in a number of our clients' trusts and we will be stepping up our trust administration to make sure those trusts are robust and cannot be challenged by any third party.

CEASING TO OPERATE A BUSINESS

If you are selling or closing all or part of your business, you will need to consider business tax obligations such as GST, employer-related taxes, income tax and depreciation recovery. When a business ceases or is sold, or the business assets disposed of, an adjustment must be made in your end of year tax return to account for the gain or loss on the sale.

If all taxable activities cease, or if your annual taxable supplies drop below $60,000, you may cancel your GST registration. However, this does not apply if GST was built into your sale prices. In these cases you cannot cease your GST registration even if your annual taxable supplies drop below $60,000 (e.g. taxi operators).

If the business is a company that is ceasing its taxable activities but not winding up altogether, you will need to apply to the Inland Revenue Department for non-active status. If this application is accepted, you will need to file a tax return for the business unless it is reactivated.

Where the business cannot operate because it has been irreparably damaged, any insurance payments the business receives are treated as if the property was sold. If the insurance payment is more than the adjusted tax value (book value) included as income in the income tax return is the lesser of:

- The difference between the insurance payment and the adjusted tax value, or
- The total amount of depreciation claimed for that asset.

DISEASE-RESISTANT KIWIFRUIT GIVES THE INDUSTRY HOPE

A new gold kiwifruit variety showing good tolerance to the devastating disease Psa-V is shaping up as the first relief in the recovery process for the former blue chip $1.3 billion export industry. Marketer Zespri announced recently that should the Gold3 variety continue to show promising levels of tolerance to Psa-V through till May, the Company will release enough hectare-licences to cover grafting demand from growers of the original Zespri gold variety Hort16A which is very susceptible to the bacterial disease.
More than 40 per cent of New Zealand's kiwifruit growing area now has some level of Psa-V which can kill vines. Zespri says a further 200ha of a sweet green variety is also showing positive market response and a good level of tolerance. These are the first steps in a recovery process that will take at least three years according to Zespri.

NEWSLETTERS VIA THE WEBSITE

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In the highlands…………..

A man in Scotland calls his son in London the day before Christmas Eve and says "I hate to ruin your day but I have to tell you that your mother and I are divorcing; forty five years of misery is enough".

"Dad, what are you talking about?" the son yells.

"We can na stand the sight of each any longer", the father says. "We're sick of each t'othr and I'm tired of talking about this, so you call your sister in Leeds and tell her".

Frantically, the son calls his sister, who explodes on the phone, "Like hell they're getting divorced", she shouts, "I'll take care of this"

She calls Scotland immediately and tells her father, "You are NOT getting divorced. Don't do a single thing until I get there. I'm calling my brother back and we'll both be there tomorrow. Until then, don't do a thing, DO YOU HEAR ME?' and hangs up.

The old man hangs up and turns to his wife.
"Done! They're coming up for Christmas – and they're paying their own way".

A bloke sitting in his armchair shouts to his wife,
"When I die I'm going to leave everything to you love!!"

She shouts back, "You already do you lazy b .. .. d"!