



# Newsletter April 2011

## Employment Law Changes

A large number of changes come into effect on 1 April 2011. These include:

1. **Cash up** - employees will be able to cash up to one week of their four weeks leave.
2. **Transfer public holiday** - Employers and employees can agree to transfer the employee's observance of a public holiday to a different working day if certain criteria are met.
3. **Alternative holidays** - Employees, who work on a public holiday, are currently entitled to time and a half and an alternative holiday. The change enables employers to specify the day the alternative holiday is to be taken.
4. **Proof of sickness** - Employers will no longer have to have reasonable grounds to suspect that sick leave is not genuine before requesting proof of sickness or injury.
5. **Average daily pay** - Employers may now choose to use the new Average Daily Pay calculation to calculate holiday pay.
6. **90 Day trial** - The trial period provisions will be available to all employers, regardless of the number of employees.
7. **Labour Inspectors** - Can enforce the requirement to have an employment agreement for all employees.
7. **Union access** - Union representatives will require an employer's consent before entering a workplace.
8. **Employment Relations Authority** - Changes to the grievance process enable the ERA to dismiss frivolous or vexatious proceedings.
9. **Minimum wage** - From 1 April 2011, the adult minimum wage will increase to \$13.00 an hour. The new entrants' minimum wage and the training minimum wage will increase to \$10.40 an hour.

If you need help understanding the changes please contact our Payroll division.

## Year End Check List

- a) To claim a deduction for holiday pay and bonus owing to staff at 31 March 2011 the amount must be paid by 2 June 2011.
- b) If you own trading stock you need to do a stock take at 31 March 2011 unless the stock has a cost price of less than \$10,000 and your sales are less than \$1.3m.
- c) To be deductible for tax you must be able to show that any bad debts were written off before 31 March 2011.

## Employee Fraud

Unfortunately in these tough times employee fraud/theft is on the increase.

If you have any concerns that your results are worse than expected, please contact us.

## LAQC's / LTC's

We are in the process of reviewing all LAQC's where you have asked us to do so.

Where any shareholding changes were required by 31 March 2011 these should have been done. We will get back to you with our recommendation over the next 2 months. You then have until 30 September 2011 to make a decision and notify the IRD if required.

## Effect of Earthquake on IRD, Christchurch Office

IRD have not been able to get back into their Christchurch office. If you sent mail to them in the weeks prior to 22 February 2011 and have not had a reply you should forward a copy of your correspondence by electronic mail.

## Company Tax Rate

The income tax rate for the 2011/12 year is 28%, down from 30%.

## **Working for Families (WFF) - Changes to the Definition of Income**

Effective from 1 April 2011 the definition of what is income for the purposes of determining entitlement to WFF has been considerably widened. For many business taxpayers this will mean a substantial decrease in the amount of WFF they receive.

The new categories of WFF income include:

- a) Income retained in a trust if you are a settlor of the trust. This includes Retained Income of any company controlled by the trust (controlled means any company in which the trust or any associated person holds 50% or more of the shares).  
**N.B.** a settlor includes any person who has lent money to a trust on non commercial terms.
- b) Fringe benefits received by shareholder employees e.g. vehicles and low interest loans. The amount to be added back is the value of the benefit, plus the tax payable on that benefit.
- c) PIE income excluding super funds or retirement savings schemes (e.g. Kiwi Saver).
- d) Income of children from interest, dividends and rent if more than \$500 pa per child. Beneficiary income received by a child will also be added back.
- e) Income equalisation deposits.
- f) 50% of non taxable private pensions and annuities.
- g) Other payments used to meet the family's living expenses if the total exceeds \$5,000 pa. This would include such things as:
  - i) Distributions from a trust - if not already caught under (a) above.
  - ii) Regular gifts received
  - ii) Loans on non commercial terms

One off payments and gifts are excluded.

The amended definition of income will also apply for the purposes of determining entitlement to Student Allowances and Community Services Card.

If you are receiving WFF on a fortnightly basis and have any "income" in the categories above you need to advise IRD of your amended income to avoid facing a large pay back at the end of the year.

If you get WFF at the end of the year or have children studying you need to budget for the impact of lower entitlements.

If you are not sure if your entitlement will be affected, please contact your Account Manager.

## **Abolition of Gift Duty - Beware**

As from 1 October 2011 gift duty will be abolished. This means the current \$27,000 pa restriction on the amount that can be gifted will go.

At first glance this seems like a very generous move by the Government. While the Government does not collect much in the way of gift duty the current rules do restrict the amount of rest home subsidies people can claim.

The fact the Government is not worried about everyone gifting all their property to a trust and thus, becoming entitled to rest home subsidies, suggests there must be a fish hook in the Government's generosity. Unfortunately there is!

This fish hook is, that if a person gifts more than \$27,000 pa then WINZ is not restricted to considering only gifts made in the last 5 years when determining if a person is eligible for a subsidy. They can consider gifts made at any time if the \$27,000 threshold is breached.

If you are in a gifting programme and are nearing the end of it or are gifting a relatively low value asset and the main reason you are gifting is to ensure you qualify for a rest home subsidy, then you could well be better off just continuing to gift \$27,000 a year.

If that's not bad enough the IRD have also made ominous noises that they consider they have enough powers to counter any overly aggressive gifting. Thus, you can look forward to greater scrutiny of trust records and procedures by the IRD.

Further, there is provision in law already to reverse the transfer of assets to trusts where there is "an intention to prejudice" creditors. Once again you can expect a higher level of scrutiny if assets are held by a trust and creditors miss out.

Hopefully by 1 October 2011 there will be some clarification of how various laws will be interpreted. Until that happens we would not rush to gift everything on 1 October 2011 if your sole/primary reason is to obtain rest home subsidies.

## **Keeping Business Records**

While records have to be kept for 7 years for income tax purposes, there are a number of other Acts which can require records to be kept for a longer period. These Acts include:

- The Fair Trading Act 1986
- The Building Act 2004
- The Weathertight Homes Resolution Services Act 2006

You should also retain records relating to dealings with customers, suppliers and competitors for up to 15 years.

If in doubt consult your solicitor.

## ***Zero-Rating of Transactions Involving Land***

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The Taxation (GST & Remedial Matters) Act 2010 included some significant changes to the way the GST rules apply to transactions where the supply wholly or partly consists of land.

Where any transaction involves land, the GST registered supplier may be required to zero-rate the supply if it is made to another registered person and the purchaser acquires the goods with the intention of using them for making taxable supplies, unless the land is intended to be used as a place of residence for the purchaser.

The changes will apply for goods supplied on or after 1 April 2011. An interest in land is defined widely, however, it does not extend to cover a commercial lease. Commercial leases will continue to be subject to GST.

Before a supplier can zero-rate a transaction involving land, a written statement is required to be provided by the purchaser setting out that they are or they expect to be a registered person, that they are acquiring the goods with the intention of using them for making taxable supplies, and they do not intend to use the land as a principle place of residence. In most cases, this written statement will be included in the Sale and Purchase Agreement entered into by the parties, but it is not necessary for it to be so included.

If the transaction is to be zero-rated, the supplier must maintain records of the name, address, and the GST number of the purchaser, a description of the land, and the amount paid for the supply.

There are a number of situations where the GST treatment may change between the time of supply and settlement of the transaction. If the transaction was agreed to be subject to GST and an invoice was issued with a GST component, but the purchaser, prior to settlement, changes their intention for the land, the vendor can issue a credit note and receive a refund of the GST already paid and treat the transaction as zero-rated.

In situations where the transaction was intended to be zero-rated but subsequently the purchaser did not satisfy the requirements, the GST obligation will fall on the purchaser to account for the GST on the transaction, whereby the purchaser is deemed to make a supply of the land.

### **How it affects you**

Whilst these rules are designed to simplify GST for land transactions, it is important that the requirements for zero-rating are met, particularly for the purchaser as the GST liability falls on them rather than the vendor should zero-rating not apply. If you are selling land and you are unsure of your GST obligations, we suggest you contact your tax advisor prior to the transaction being completed.

If you are the vendor ensure the contract is "Plus GST, if any"

## ***"Cloud" Computing Services & Business Records***

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Cloud computing is an Internet-based computing service where users are provided with access to servers, software, applications, storage and networking, or any other aspects of computing, all of which are delivered over the Internet.

Cloud computing services are provided by software providers operating data centres that can be located anywhere in the world. The data centres are where the services are usually delivered from and businesses that use cloud computing services will have their data stored in these centres.

### **IRD View**

The Tax Administration Act 1994 and the Goods and Services Tax Act 1985 require a person who carries on any business or any other activity for the purpose of deriving assessable income in New Zealand to **keep sufficient records in New Zealand, in the English language.**

It is the IRD's view that only business records stored in data centres physically located in New Zealand will comply with the record-keeping obligations in the Inland Revenue Acts. Taxpayers using a cloud computing service will therefore need to be satisfied that all their business records will be stored in data centres located in New Zealand. Using cloud computing to back up business records will not breach record-keeping obligations, provided the primary business records are stored in New Zealand.

Failure to keep the books and documents in New Zealand as required by the Inland Revenue Acts is an absolute offence under s 143 of the Tax Administration Act. A person convicted of this offence is liable to a fine.

For those of you using Xero they advise they are discussing the issue with IRD and don't expect any issues for Xero users.

## ***International Tax***

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If you have recently arrived in NZ or you derive overseas income or own assets situated overseas (including super funds and life policies) the IRD have recently published a list of the 10 most common mistakes people make with regard to their liability for tax on overseas income/assets.

This list is available on our website ([www.winkerr.co.nz](http://www.winkerr.co.nz)).

## ***Use of Money Interest Rates***

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From 16 January 2011 the rate of interest payable on under / over paid income tax is:

Underpayments	8.89%
Overpayments (refunds)	2.18%

## Are Your Overseas Workers Entitled to Work?

If you employ overseas workers, changes to the Immigration Act that came into effect on 29 November 2010 will have an impact on your obligations in the future.

The main change for employers is that the receipt of a completed tax code declaration form will no longer be a reasonable excuse for employing a person not entitled to work in New Zealand. Employers will need to show they have taken reasonable precautions and exercised due diligence to check the job applicants are entitled to work for them.

To assist employers in determining whether a person is entitled to work in New Zealand, Immigration New Zealand has developed a new online product, VisaView, which allows a New Zealand employer to check whether a person who is not a New Zealand citizen can work in New Zealand.

An employer will be able to check whether a person is able to work for them, view any conditions attached to the particular visa, and see the expiry date of the visa for the prospective employee.

Overseas workers are commonly employed by vineyards and orchards to complete seasonal work under contract. As such, once an employee's work status has been confirmed, employers are required to deduct withholding tax at 15%, unless the recipient holds a certificate of exemption.

Persons who are entitled to work in New Zealand are:

- New Zealand citizens, including nationals of the Cook Islands, Niue, and Tokelau.
- New Zealand residents and permanent residents.
- Holders of Australian current permanent residents visas who are granted a New Zealand residents visa on arrival.
- Australian citizens who enter New Zealand on a current Australian passport.
- Non New Zealanders holding a valid visa with work entitlements.

### How it affects you

As an employer, you must take reasonable steps to determine whether a person is entitled to work in New Zealand. Failure to take reasonable steps can give rise to significant penalties of up to \$50,000. Further, once you have employed someone, please make sure you deduct the correct amount of tax.

## GST Changes Effective 1 April 2011

### a) **Goods used for both private and business purposes.**

Up until 31 March 2011 the initial GST claim was determined by whether the item purchased was used predominantly for business or private purposes. e.g. if you purchased a vehicle costing \$23,000 which was used 70% of the time for business you claimed all the GST (\$3,000) up front. You then had to do a period by period adjustment to adjust for the 30% private use.

For goods and services acquired after 31 March 2011 you apportion the initial GST claim. e.g. in the case of the vehicle above you would claim 70% of \$3,000.

When you first acquire the asset you will have to estimate business use, which should then be confirmed by keeping a log book.

If your initial estimate is wrong or business use changes at some later date you then have to do a further adjustment. Sounds simple but the formula is somewhat complicated.

Also an adjustment is only required if business use changes by at least 10 percentage points or the adjustment is more than \$1,000.

We recommend the adjustment be done each year when your annual accounts are done.

**N.B.** No apportionment or adjustment is required for vehicles owned by a company unless the company is a Look Through Company (LTC).

### b) As explained earlier, all sales, which include land, will be zero rated provided both the vendor and purchaser are GST registered and the purchaser intends to use the property for business purposes.

### c) There are now rules which determine the GST consequences when the purchaser involves a Nominee.

### d) The definition of "dwelling" has been clarified - somewhat.

To be a dwelling and therefore GST exempt a building must be occupied by someone as their principal place of residence.

Buildings used for homestays, farmstays, B & B etc are not dwellings for GST purposes and thus, you can claim GST on the construction on such buildings.

The new ruling doesn't cover holiday homes but it appears a holiday home will be treated as a dwelling unless it is rented out **and** the rental income exceeds \$60,000 pa.

As far as we know, existing holiday homes are unaffected by the change.

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