ACC and Making a Claim

What to do if you need to claim ACC

The first step is to complete a claim form. This needs to be completed when you see your treatment provider. This could therefore be at the doctor's surgery, the hospital or maybe the ambulance. On this form you will give ACC your contact details and a description of how your accident occurred. Your doctor will describe your injury. You will also indicate your type of employment (e.g. self-employed, shareholder employee) and whether you are able to return to work.

ACC will then process your claim. If accepted, ACC will help towards the cost of your treatment. Once your claim has been processed you will be able to apply for weekly compensation.

To apply for compensation you will need to contact ACC. This can be done by ringing their **Claims Service Centre on 0800-101-996.** ACC will assign you a case worker. This person will be based in the ACC office nearest to where you live. Your case worker will be your first point of contact with ACC.

ACC CoverPlus Extra (Standard Option)

If you are on ACC CoverPlus Extra (i.e. you have a contract with ACC where you have agreed the amount of compensation that you will be entitled to) there should be no other financial information that needs to be provided to ACC. You will still be required to complete a number of forms and provide ACC with information on the number of hours you had been working, and the type of work you were doing prior to the accident.

The nominated amount in your contract will be the basis for calculating your weekly compensation. It will however have PAYE deducted. There is also a one week stand-down period after an accident where no compensation will be paid.

This compensation will continue until you are able to return to work full time. Full time is defined by ACC as being able to work for 30 or more hours per week.

There is no abatement for anything you may earn while you are on ACC – the contracted amount is guaranteed.

ACC CoverPlus Extra (Lower Levels of Compensation Option)

If you are on ACC CoverPlus Extra (i.e. you have a contract with ACC where you have agreed the amount of compensation that you will be entitled to) there should be no other financial information that needs to be provided to ACC. You will still be required to complete a number of forms and provide ACC with information on the number of hours you had been working, and the type of work you were doing prior to the accident.

The nominated amount in your contract will be the basis for calculating your weekly compensation. It will however have PAYE deducted. There is also a one week stand-down period after an accident where no compensation will be paid.

This compensation will continue at that level until you are able to return to work. Once you are able to start work – even if in a diminished capacity - the amount you will receive from ACC will reduce. Once you are able to work full time ACC payments will cease. Full time is defined by ACC as being able to work for 30 or more hours per week.

ACC CoverPlus

If you are on the normal ACC CoverPlus scheme, you will have to provide ACC with a copy of your last year's financial statements. ACC will want to know if your tax return for the previous year has been lodged with Inland Revenue. If it hasn't yet been completed, we will need to attend to that before any compensation can be granted.

You may also have to prove that your accident has caused you to suffer a reduction in the amount of income you are earning from your business. Contact us if ACC require further information other than just your financial statements.

The compensation is calculated based on 80% of your previous year's liable earnings. This cannot be altered – it is what the legislation says. If in the previous year you were not self-employed, you will only be entitled to the minimum compensation. You will however have to prove to ACC that you are now in business. This may mean providing them with copies of GST Returns and anything else that can prove you are in business.

Even if your earnings have risen significantly during the current financial year (the year of your accident), your compensation will still be based on the previous financial year.

Your weekly compensation will have PAYE deducted from it and there is also a stand-down period of one week where no compensation will be paid.

Once you are in a position where you can start to return to work, your compensation will be subject to abatement i.e. it will be reduced by ACC in proportion to the input into your business. This will begin as soon as you are able to start any sort of work.

You will also have to prove that your accident has cost your business financially. If Loss of Earnings cannot be proven, ACC may require that any compensation they have paid be refunded. Care needs to be taken here if you are in an industry that relies on external commodity prices e.g. kiwifruit sales, milk sales. If the dollar value you receive per unit has increased over the previous year, it may be difficult to establish to ACC's satisfaction that your business is worse off in this financial year because of your accident.

Our experience tells us that this process may not always run smoothly, so please contact us if you experience any difficulties when making your claim.

ACC Levies and How They Work

ACC provides personal injury cover for all New Zealand citizens, residents and temporary visitors to New Zealand. ACC uses a risk-based classification system whereby business activities are grouped so that the costs of work injuries are fairly distributed among similar businesses. ACC sets levies for each group by comparing costs of previous claims with total earnings within that activity group.

Whether you are a self-employed person or shareholder employee or an employer, you are required to pay ACC levies. There is no ability to 'contract out' of the scheme. Levies for businesses fall into the following broad categories:

Cover for	Levy	To provide
Employer	WorkPlace Cover	... cover for your PAYE employees
Shareholder Employee		…you with workplace cover
Self-Employed	ACC CoverPlus	… you with compensation based on 80% of your previous year's earnings, in the event of accident or injury

Levies are calculated and invoiced annually, based on:

Cover for	Based on the…
Employer	… gross amount paid to your employees
Shareholder Employee	… amount paid to you as a Shareholder Employee
Self-Employed	… amount received from self-employment in the previous financial year

Initially, employers and shareholder employees generally receive an assessment based on the previous year's figures. ACC subsequently updates this based on actual earnings for the current year and invoices all businesses for the year:

Cover for	Invoices sent out	Invoice consists of
Employer	From July	▪ ACC WorkPlace Cover Levy adjustment for current income year ▪ ACC Residual Claims Levy, including the Health and Safety in Employment Levy ▪ Estimated ACC WorkPlace Cover Levy for coming income year
Shareholder Employee	from August	
Self-Employed	From November	▪ Work levy (covers weekly compensation, rehabilitation and medical costs) ▪ Earner Levy (this covers non-work injuries) ▪ Residual Claims Levy and Health and Safety in Employment (HSE) Levy

		▪ Earner Residual Levy

It's important that you check your invoice when you receive it (or that you ask us to check it for you). Check that the liable earnings you have been assessed on are correct. You also need to check the Classification Unit – this will determine at what rate your ACC Levies are calculated.

ACC CoverPlus Extra: option for self-employed and non PAYE shareholders

As you can see, there are various components to the ACC levy scheme and most cannot be altered.

However there is an alternative cover for self-employed and shareholder employees. It provides an opportunity for these people to obtain better cover and perhaps make some savings on the levies they pay. This scheme is called **ACC CoverPlus Extra**.

ACC CoverPlus Extra

Under ACC CoverPlus Extra, you and ACC enter a contract where you both agree the amount of compensation that you will receive should you have an accident. This amount is then paid on a weekly basis until you are able to return to work fulltime. The scheme is flexible:

- You can nominate a future start date (as opposed to the date ACC receives the application), that lets you organise lost earnings cover in anticipation of circumstances
- When an employer company pays a shareholder-employee's ACC CoverPlus Extra levy (or reimburses them for payment), the amount paid/reimbursed (excluding earners' levy) is now tax deductible as an expense to the employer company
- It may be possible for shareholder employees to be classified under their individual occupation rather than the business activity of their employer company. This tailors this cover product more appropriately to shareholder employees.

In many instances you can save significant premiums by applying for ACC CoverPlus Extra. There is no change to the way in which ACC pays for your other accident related costs – it only affects the income compensation. However it can provide savings and peace of mind make the claim process to obtain income compensation smoother and simpler. Though of course each case needs to be assessed on an individual basis

Can levies and charges be minimised?

A number of other options are available to businesses which may help them reduce their levies, if they can show they run safer workplaces which therefore pose a lower risk. These include:

- Experience rating, as well as
- Three new initiatives the government has announced:
  - Updates to the Workplace Safety Discounts scheme
  - Updates to the Vehicle Classification System

- Fleet Safety Incentive Programme

It is also possible to reduce administration charges. For example, clients now have the option to pay levies over a 6 month period with no administration charges.

Our Recommendation

Navigating ACC can be complex. We can assist you with managing the whole process. If you would like to go through the options in detail please contact us.

Balance Dates - Changing

Taxpayers may make an application to the Inland Revenue Department to have their balance date changed. The application must be in writing and must fully state the reasons for the change requested.

Transitional tax returns after change in balance date

Once approval is received from the Inland Revenue Department, transitional tax returns are required to be filed, to take into account income derived during the period between the new and original balance dates.

- **Change from standard to early balance date**

  If the new balance date is changed from a standard balance date (31 March) to an early balance date (date falling between 1 October and 30 March), a return is required for the period from the original return date to the new date in the next income year.

  Example: A 31 March balance date is changed to a 31 January balance date. The return for the 2018/2019 income year will cover the period from 1 April 2018 to 31 January 2019 (10 month return).

  The return for the income year 2019/2020 will cover the period from 1 February 2019 to 31 January 2020.

- **Change from standard to late balance date**

  If the new balance date is changed from a standard balance date (31 March) to a late balance date (date falling between 1 April and 30 September) a return is required to include the period covering from the original return date to the new date in the same income year. Alternatively, two returns can be filed in one year.

  Example: A 31 March balance date is changed to a 31 July balance date. The return for the 2018/2019 income year will cover the period from 1 April 2018 to 31 March 2019 as usual.

  The return for the 2019/2020 income year will cover the period from 1 April 2019 to 31 July 2020 (16 months).

  Or, if we file two returns in one year, returns will cover the following periods:
  1 April 2019 to 31 July 2019 (4 month period within the 2009/10 year)
  1 August 2019 to 31 July 2020 (will also be part of 2019/20 year).

Provisional tax when balance date changed

The payment dates will change in line with the new balance date for provisional tax. In the transitional year the pattern and number of provisional tax instalments will be based on the old balance date, with payments required every four months.

Instalments of provisional tax due in a transitional year are as follows:

Length of transitional year	Number of instalments in transitional year	Month in which instalments are due
0 to 4 months	1	Only final instalment payable
5 to 8 months	2	Instalment due in 5th month
9 to 12 months	3	Instalment due in 5th and 9th month
13 to 16 months	4	Instalment due in 5th, 9th, 13th months
17 to 20 months	5	Instalments due in 5th, 9th, 13th and 17th months
21 to 24 months	6	Instalments due in 5th, 9th, 13th, 17th and 21st months

To calculate provisional tax the year following a change of balance date, we are required to gross up or scale down the transitional year's residual income tax (RIT), to represent the RIT that would have been applied had the transitional year been of a standard length.

Use the following formula to calculate the RIT:

$$\frac{\text{The RIT for the transitional year} \quad \times \quad \text{The number of days in the current year}}{\text{The number of days in the transitional year}}$$

The normal provisional rules now apply.

Our Advice

We suggest that you make a time to see us in the near future to discuss the best time to change your balance date, as there are tax issues to consider which may affect your cash flow.

Balance Dates - Options

Standard Balance Date

The standard balance date is the income year ending 31 March.

Non-standard Balance Dates

Taxpayers may make an application to the Inland Revenue Department to have a balance date that coincides with their year-end.

The application must be in writing and must fully state the reasons for the application. As a general rule, an application for a change of balance date will not be approved if the change is for reasons of tax deferral or tax avoidance or to take advantage of any tax concession.

The following is a list of non-standard balance dates that are normally allowed:

Industry specific non-standard balance dates	
Apiarists	30 November or 31 December
Education/childcare related services	31 December
Farmers	
cattle	31 May
dairy	31 May, or 30 June, or 31 July*
sheep	30 June
Fishing industries	30 September
Horse breeders	31 July
Meat processing and export	31 August or 30 September
Orchardists, pip fruit	31 March or 30 June or 31 December
Kiwifruit	31 January, 28 February or 31 March
Seed dressers	30 November
Tobacco growers	31 July

* expanded to 30 June or 31 July to recognise regional variances within the dairy industry.

Note
When there is more than one recognised industry balance date for an activity, the Commissioner's consent will be required for any subsequent election to adopt an alternative industry balance date.

Your balance date and your GST Registration period have an effect on the due date for Income Tax payments. In most cases provisional tax payments are due on the 28th of each month. For those payments that are due on the 28th April, the payment due date is deferred to 7th May and for payments due on the 28th December, the payment date is deferred to 15th January.

If you are registered for GST on a six monthly basis and that particular entity also pays provisional tax, you will only be paying provisional tax in two instalments.

The following table shows when provisional tax payments are due for all provisional taxpayers except those that are registered for GST on a six monthly basis:

Month of Balance Date	1st Instalment of Provisional Tax (5th Month after Balance Date)	2nd Instalment of Provisional tax (9th Month after Balance Date)	3rd Instalment of Provisional Tax (being the month following the Balance Date)	Terminal Tax if the Tax Payer does not have a Tax Agent	Terminal Tax if the Tax Payer has a Tax Agent
October	28th March	28th July	28th Nov	7th Sept	7th Nov
November	7th May	28th Aug	15th Jan	7th Oct	7th Dec
December	28th May	28th Sept	28th Jan	7th Nov	15th Jan
January	28th June	28th Oct	28th Feb	7th Dec	7th Feb
February	28th July	28th Nov	28th March	15th Jan	7th March
March	28th Aug	15th Jan	7th May	7th Feb	7th April
April	28th Sept	28th Jan	28th May	7th Feb	7th April
May	28th Oct	28th Feb	28th June	7th Feb	7th April
June	28th Nov	28th March	28th July	7th Feb	7th April
July	15th Jan	7th May	28th Aug	7th Feb	7th April
August	28th Jan	28th May	28th Sept	7th Feb	7th April
September	28th Feb	28th June	28th Oct	7th Feb	7th April

If you are registered for GST on a six monthly basis and you also pay provisional tax, your provisional tax instalments will be paid at the same time as your GST payments. This means, for example, if you have a March balance date you would be paying your provisional tax on the 28th October and the 7th May. Your terminal tax dates would still be the same as the table above.

If trading as a partnership, it is usual to apply for similar balance dates for both the partnership and the individuals.

The Inland Revenue Department requires that a taxpayer's salary, wages or withholding payments be reconciled to the year ended 31 March irrespective of the balance date.

For Example:

A client has an approved balance date for their business of 30 September. In addition, they earn income from wages. Regardless of their 30 September balance date, wages to be recorded in their tax return must be for the year ended 31 March.

Our Advice

Your balance date should normally coincide with your year-end. Contact us if you wish to adopt a non-standard balance date so that we may apply to Inland Revenue.

Business Interest and RWT

Interest paid on money lent is known as resident withholding income and in certain cirumstances must have deducted from it resident withholding tax (RWT).

Registering as an RWT payer

Taxpayers who pay more than $5,000 in business related interest per year, other than to a bank or normal lending institution, are required to register with the Inland Revenue Department as a RWT payer.

Deducting RWT

Taxpayers who earn interest and have provided a valid IRD number can elect their own resident withholding tax rate by completing a resident withholding tax election (IR456) form.

RWT must be deducted at the time interest is paid to the recipient.

Current RWT Rates

If your taxable income is...	*Note*	
$0 - $14,000	10.5%	You must have a ‘reasonable expectation’ of earning $14,000 or less.
$14,001 - $48,000	17.5%	This is the RWT default rate for existing accounts if you haven't elected a rate.
$48,001 - $70,000	30%	
$70,001 and over	33%	This is the RWT default rate for new accounts if you haven't elected a rate.

If you have...	*RWT will be deducted at the ...*
not provided a valid IRD number	no-notification rate of 33%
provided a valid IRD number but not chosen a rate and opened a new account after 31 March 2010	default rate of 33%
provided a valid IRD number but not chosen a rate and not opened a new account after 31 March 2010	default rate of 17.5%

Companies

Criteria	*Deduct RWT at*
No IRD number	33%
Default rate	28%

Partnerships

If the partnership's IRD number is given to the interest payer, you may choose any of the rates that would apply as if the account were held in a partner's name. For example, if the partnership has a company as a partner, the partnership can choose the rate that applies to companies.

Dividends

Dividends are paid to the owners of shares in a company. Dividends are taxed at a flat RWT rate of 33%. Dividends from a listed PIE are not liable for RWT.

Paying RWT to the Inland Revenue Department

If the RWT deducted is $500 or more each month, the deductions must be paid by the 20th of the following month to the Inland Revenue Department.

If the RWT deducted is less than $500 per month, each time the deductions accumulate to $500, the deductions must be paid in by the 20th of the month after the month the deductions have reached $500. Once the RWT deductions have been paid to the Inland Revenue Department, the $500 accumulation threshold recommences.

Our Advice

We have experienced many examples of clients paying business-related interest to family members and friends, and being totally unaware of their RWT obligations.

IRD can charge significant penalties and interest on RWT deductions not properly made.

If you need to register as an Interest Payer, please contact us.

Business Structures – Options and Features

There are four main structures used to operate a small business. These are:-

- Sole Trader
- Partnership
- Company
- Trust

The type of business structure you choose will affect your taxation position, your personal legal liability, the life of your business, and the availability of capital to establish and operate your business. It is therefore important to make the right choice.

Features of operating as a Sole Trader

- The taxable income of the sole trader includes the entire taxable income of the business

- A sole trader is able to pay a spouse a salary or wage, but must obtain advance approval from Inland Revenue as to the value of that salary or wage

- The sole trader is personally responsible for any business debt or loss and any business creditor will therefore have the right to claim against the sole trader's personal assets (such as the family home) to enforce a right of payment

- The operational life of the business is limited. When the sole trader dies, the business organisation will come to an end automatically, unless otherwise provided for in a will

Features of operating as a Partnership

- The taxable income of the business is split between the partners. The partners pay tax at their individual rates on their partnership income. Husband and wife partnerships are reasonably common

- The terms of the partnership are usually set out in the partnership agreement. If there is no such agreement, which is common for husband and wife partnerships, the partnership is then governed by the Partnership Act 1908

- A partnership is not a legal entity separate from the individual partners. The members of the partnership are therefore personally liable for all partnership debts. Since partners are legal agents for each other, it is important to choose your partner or partners carefully

- There is a presumption that partners will be jointly liable for contracts made by any one partner and that they will be jointly and severally liable for costs or any wrongful act committed by one partner

- A partnership can be terminated or dissolved in a number of ways. Subject to any contrary clause in a written partnership agreement, the death or bankruptcy of a partner will automatically result in the partnership being dissolved. In certain circumstances, a partner can apply to the court for a winding up order. For example, if one of the partners is of unsound mind, has been guilty of continuous misconduct, or if the business is continuing to run at a loss

- In certain circumstances (for example where there is a partnership involving a venture capital partner) a 'Limited Partnership' may be available. A Limited Partnership is a separate legal entity but retains the flow-through tax treatment for the partners. A requirement of a Limited Partnership is that there is at least one limited partner (a passive investor) and a general partner (who manages the business and are liable for the debts and obligations of the partnership)

Features of operating as a Company

- A company is a legal entity that is separate from the people who own it (the shareholders)

- A company is taxed separately from its owners at the corporate rate of 28%

- Company directors have many statutory obligations and various common law duties and responsibilities. All companies are governed by the Companies Act 1993. It is from this Act that directors derive these powers, obligations and duties. They must act honestly and in good faith for the benefit of all the shareholders and must exercise care, diligence and skill in performing their duties. If a company director breaches these statutory duties, he or she can be fined and/or sued by a shareholder

- In general, company directors are only liable for the company's debts to the amount outstanding on their shares, or to the amount of any personal guarantee given by them. They can however, be personally liable for the debts of the company, if the company continues to trade when it is insolvent

Features of operating as a Family Trust

- A typical trust has a settlor, a beneficiary, at least one trustee, (who is given wide discretionary powers to distribute income and assets amongst the beneficiaries of the trust and to carry on the business) and a trust deed, (the set of rules that governs the operation of the Trust)

- Most trust deeds give the business owner the power to remove a trustee and appoint a fresh one. This power of appointment gives the owner of the business a high degree of indirect control

- Trusts are becoming an increasingly popular form of business structure because they are a flexible means of distributing income and assets amongst various beneficiaries

- Trustees are governed by the Trustees Act 1956 and have significant obligations to the beneficiaries of the Trust. A trustee should be fully aware of his or her obligations before accepting any appointment as a trustee

Trustees can be held liable for the debts of the Trust, including directors of corporate trustees where they have failed to act in accordance with the Companies Act

Our Recommendation

The choice of the correct business structure can be of critical importance to the success or failure of the business.

It is always wise to seek legal and accounting advice as to the relative initial and ongoing costs of each type of structure.

Certain types of businesses do not have the flexibility to operate under each of the entity types. It is therefore sensible to check in advance for any industry regulations that prevent a certain type of ownership structure for your particular business.

The following table summarises the advantages and potential disadvantages of each structure type.

Structure Type	Advantages	Potential Disadvantages
Sole Trader	▪ Low cost of entry ▪ Easy to set up ▪ No significant legal costs ▪ Only one tax return required ▪ No registration of name required (if trading under your own name)	▪ Personally liable for all business debts ▪ When you die, the business entity dies
Partnership	▪ Relatively low cost of entry ▪ No significant legal costs, unless Partnership Agreement required ▪ No registration of name required (if trading under your own names) ▪ Limited Partnership may be available for specific situations involving venture capital investors	▪ Partners are personally liable for all business debts ▪ Partners are personally liable for debts incurred by other partners ▪ There is always the potential for relationship problems ▪ Limited succession assistance
Company	▪ Limited liability for shareholder, although becoming greatly reduced ▪ Easy to transfer shares and therefore ownership, on a progressive basis	▪ Additional legal and accounting costs to set up ▪ Slightly higher ongoing compliance costs ▪ Knowledge of directors' responsibilities required
Trust	▪ Protection of assets ▪ Trust is ongoing (life of 80 years)	▪ Additional legal and accounting costs to set up ▪ Higher ongoing compliance work to administer properly ▪ Knowledge of trustees' responsibilities required ▪ Disgruntled beneficiaries have the power to sue later ▪ Trustee personally liable for tax debt

Client Gift Expenses and their Tax Deductibility

If you provide a gift to a client, depending on the type of gift it may be completely deductible, or only 50% deductible.

If the gift is in the nature of “entertainment”, such as food and wine, it will be 50% deductible.

You may find the following table useful to determine the deductibility of your various client gifts.

Client Gift	50% deductible	100% deductible
Bottle of wine or six pack of beer	✓	
Meal voucher	✓	
Basket of gourmet food	✓	
Box of chocolates/biscuits	✓	
Christmas ham	✓	
Calendar		✓
Book or gift voucher		✓
Tickets to a rugby game		✓
Movie tickets		✓
Presents (not food or drink)		✓

Client disputes fact sheet - IRD issued assessment

There are various reasons why you as a taxpayer might enter into a dispute with Inland Revenue. This fact sheet outlines one scenario and provides detail about the disputes process.

Why have I received an assessment from the IRD?

You have received an assessment from the IRD because there was no tax return filed for the applicable tax period.

Where you have not filed a tax return the IRD are able to issue an assessment based on estimate of your tax liability, often based on your previous tax returns and other information held by IRD. The only way you can change the assessment is to:

- file the outstanding tax return; and
- initiate the disputes procedure by issuing a Notice of Proposed Adjustment (‘NOPA’) within the required four month timeframe

What is the disputes procedure?

The NOPA is the first step. The disputes procedure follows a formal process governed in the most part by legislation imposing strict legal requirements and timeframes. The aim is to encourage you and the IRD to openly discuss the matters and attempt to resolve the dispute. The process is broken down into identifiable phases:

- issue of a NOPA
- issue of a Notice of Response (‘NOR’)
- conference phase
- disclosure including exchange of a statement of position (‘SOP’) by you and the IRD
- adjudication and review of dispute by an independent unit of the IRD
- assessment or amended assessment if applicable, and
- litigation (if the adjudication unit does not find in your favour and you choose this option)

What do I do next?

If you do not agree with tax assessments issued by the IRD, you need to file the outstanding return and also issue the IRD with a NOPA within four months from the date the IRD issued the assessments (note this is not the date you received them). If this timeframe is not met you are deemed to have accepted the IRD’s assessments. If that occurs you will have lost your right to dispute the correctness of the position proposed in the NOPA.

Our recommendation

We recommend that you make an appointment to see us. We can help you to determine whether you need to file a NOPA, explain what is involved, estimate costs and timeframes, and then prepare the required legal documents for you.

Client disputes fact sheet - IRD issued assessment

And it's outside the time limit to respond...

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The NOPA is the first step. The disputes procedures follow a formal process governed in the most part by legislation imposing strict legal requirements and timeframes. The aim is to encourage you and the IRD to openly discuss the matters and attempt to resolve the dispute. The process is broken down into identifiable phases:

- issue of a NOPA
- issue of a Notice of Response ('NOR')
- conference phase
- disclosure including exchange of a statement of position ('SOP') by you and the IRD
- adjudication and review of dispute by an independent unit of the IRD
- assessment or amended assessment if applicable, and
- litigation (if the adjudication unit does not find in your favour and you choose this option)

Timeframes

The disputes procedures have strict legislative timeframes and requirements. If you do not meet these timeframes or requirements you are likely to be deemed to have accepted the IRD's position.

You have four months to respond to the IRD assessment from the date the IRD issued the Notice of Assessment (not the date we received it) by issuing a Notice of Proposed Adjustment (NOPA).

What do I do next?

Unfortunately the statutory period of time has lapsed for you to reject the IRD's default assessment.

Only in exceptional circumstances will the IRD accept a late NOPA. An exceptional circumstance is defined as:

- 'an event or circumstance beyond the control of a disputant provides the disputant with a reasonable justification for not rejecting a proposed adjustment by issuing a NOR within the response period for the notice', or
- a minimal delay (of no more than a few days) beyond the response period; or
- if you have consistently shown a 'demonstrable intention to enter into or continue the disputes process'. This requires you to have previously expressed a clear and consistent opposition to IRD's assessment

An example of an exceptional circumstance is:

A taxpayer is issued with a NOPA. Two days before the response period ends, the taxpayer suffers a severe heart attack and is not able to provide a Notice of Response. Three months later, the taxpayer is well enough to go through his tax affairs and wishes to issue a late Notice of Response. The Commissioner accepts the Notice on the basis that the failure to respond in time was due to an exceptional circumstance. The Notice is treated as having been received in time and progresses through the new procedures in the usual manner.

The IRD have stated that if you did not receive the NOPA in time due to being on holiday or the NOR is late as a result of a miscalculation in timeframe, these will not generally be considered an exceptional circumstance.

Our recommendation

We note that the IRD do not generally grant extensions of time, however if you consider there may be grounds to apply for an extension on the basis of exceptional circumstances please let us know.

If you would like further information or to meet with us please make an appointment as soon as possible to discuss the above.

Client disputes fact sheet - I need to amend a mistake

There are various reasons why you as a taxpayer might enter into a dispute with Inland Revenue. This fact sheet outlines one scenario and provides detail about the disputes process.

I have made a mistake in my tax return and I want to fix it

How you deal with a mistake in your tax return will depend upon the nature and consequences of that mistake. In particular:

- What type of mistake was made? Was it an arithmetic miscalculation in the calculation of what tax is payable? Or a 'genuine error' as to the correct treatment of certain items of income, deductions or timing issues?
- Will correcting that mistake result in an increase or reduction in your tax liability?
- Is the tax arising from that mistake 'material'? Is it a big mistake or a little one?

Mistake that increases tax liability

If you have made a mistake in a tax return you have filed that increases your tax liability, in most circumstances you should make a voluntary disclosure to the IRD requesting it to amend your return. This disclosure must identify the amount of the error and how it came about. Generally making a voluntary disclosure ensures you will face no additional shortfall penalties for the underpayment of tax resulting from the mistake.

In limited circumstances, where the amount of tax owing as a result of the mistake is small (generally less than $500), you need not make a voluntary disclosure but may correct the mistake itself in the subsequent GST or income tax return to ensure the correct amount of tax has been paid.

Mistake that reduces tax liability

If you have made a mistake in a tax return you have filed that reduces your tax liability, you have a number of options, depending upon the amount of the overpayment and when it occurred.

Where the amount of the tax reduction as a result of the mistake is small (generally less than $500), the taxpayer may correct the mistake itself in the subsequent GST or income tax return to ensure the correct amount of tax has been paid.

As the mistaken return was filed less than 4 months ago, you can issue a NOPA proposing to reduce the tax owing in that return to correct the mistake.

If IRD agree there has been a mistaken overpayment of tax, it will accept the NOPA and issue a re-assessment.

If IRD do not agree there has been a mistaken overpayment and therefore conclude the current return is correct, it will reject the NOPA and issue a NOR. You may then dispute the correctness of the tax return through the statutory disputes procedure.

Because you are inside the 4 month timeframe for response for issuing a NOPA, you have the right to dispute the Commissioner's decision to refuse to accept there has been a mistaken overpayment of tax.

Voluntary disclosure

We recommend a voluntary disclosure is made if the amount of the adjustment is above the threshold for making the adjustment in the next return period and the adjustment will result in more tax payable.

If you make a full and complete disclosure before an audit actually begins, the advantages of making a voluntary disclosure are:

- you will not be prosecuted in court (if you make a pre-notification disclosure)
- any shortfall penalty will be reduced or eliminated entirely

What is the disputes procedure?

The NOPA is the first step. The disputes procedure follows a formal process governed in the most part by legislation imposing strict legal requirements and timeframes. The aim is to encourage you and the IRD to openly discuss the matters and attempt to resolve the dispute. The process is broken down into identifiable phases:

- issue of a NOPA
- issue of a Notice of Response ('NOR')
- conference phase
- disclosure including exchange of a statement of position ('SOP') by you and the IRD
- adjudication and review of dispute by an independent unit of the IRD
- assessment or amended assessment if applicable, and
- litigation (if the adjudication unit does not find in your favour and you choose this option)

You have four months to file a NOPA from the date the IRD issued an assessment in respect of your tax return. If this timeframe is not met the IRD are not required to amend your assessment. If that occurs you will have lost your right to dispute the correctness of the position taken in your return.

Our recommendation

We recommend that you make an appointment to see us. We can help you to determine whether you need to file a NOPA, explain what is involved, estimate costs and timeframes and prepare the required legal documents for you.

Employee Accommodation and Tax Treatment

An accommodation allowance paid as part of an employee remuneration package is not liable for FBT. However, it is subject to PAYE.

The following is a list of accommodation that is deemed to be "monetary remuneration" if provided in respect of a position of employment:

- Value of board or lodging
- Use of any house or quarters
- Allowance paid in lieu of board

The value of the accommodation is a taxable benefit and is to be included in the employee's gross salary or wages, from which PAYE is deducted.

If the employee pays a portion of the rent or accommodation himself/herself, the taxable benefit is the difference between the value of the benefit provided and the amount paid by the employee.

Example:

Market value of accommodation	$150 per week
Less portion paid by employee	$90 per week
Value to be added to wages and taxed	$60 per week

Employee versus Independent Contractor

If you do not wish to register as an employer and account for PAYE, or you wish to engage an individual under the status of independent contractor, rather than employee, the only option is for your worker to invoice you.

However, you should be mindful of the independent contractor vs. employee rules and ensure that these rules are met.

The issue of whether a worker is an independent contractor or an employee normally arises either when there is an employment dispute or when deciding tax status.

Only an employee is entitled to bring a personal grievance under the Employment Relations Act 2000. The courts have ruled that tax status follows employment status.

The Inland Revenue and the courts have developed a series of tests for distinguishing between the two.

Tests

Control

- Has the employer the right to control the way the work is performed? For example:
  - When holidays are taken
  - When, where and what hours are worked
  - The standard or quality of work
  - How much is paid and how

Integration

- Is the type of work or the way it is done the same as work performed by other staff who are employees?
- Is the work an integral part of the employer's business?

Independence

- Does the worker supply all the necessary tools?
- Does he or she work from home?
- Is he or she free to work for other people as well?
- Does he or she pay for training?
- Does he or she advertise on his/her own account?

Intention

- Does a written contract exist, and what is the nature of that contract?
- What is the conduct of the parties?
- How are the payments for the work made?
- Is the worker carrying out the same activities as other self employed persons (or employees)?
- Why is the worker being treated as self employed?

Economic Reality

- Is the worker genuinely in business on his or her own account?
  - Could he or she sell the business?
  - Has the worker contributed any working capital to the business?
  - Is the worker responsible for any losses or bad management?
  - Is the worker responsible for investment decisions for the business?

Other matters the courts will take in to account

- Contractors are not paid holiday or sick leave, and they are usually responsible for their own ACC premiums

- Contractors are not usually provided with fringe benefits such as company cars and health insurance

- Contractors are usually registered for GST and provide their own tax invoices

- A contractor may employ staff or sub-contract work
- A contractor is able to work for more than one person
- A written contract for services should exist
- The Courts and the Inland Revenue will consider the intention of the parties and their actions, rather than just the written contract

Important Advice

If the Department investigates the person claiming to be an independent contractor, the onus of proof and the possibility of penalties is as much on the hirer as it is on the contractor.

The IRD is ever vigilant against attempts to avoid the PAYE system. This is because of the favorable tax treatment that self-employed taxpayers receive due to tax deductions for business expenses, not to mention the cash flow advantages.

Contracting through a Company will not necessarily prevent IRD from overturning a decision to treat a worker as an independent contractor. If the IRD considers the arrangement is a sham, the contractor will be treated as being in the PAYE system. Payers will then be faced with a PAYE bill on the grossed up salary, penalties and even possible prosecution.

Entertainment Expenses and their Income tax and GST Treatment

General Rule

If you provide entertainment for your team, clients or any other business contact, some of your business entertainment expenses are tax deductible.

Fully Deductible Expenses

The following is a list of the entertainment expenses that are fully deductible:

1. **Meals while travelling on business**
   The cost of a meal while travelling on business is fully deductible as long as there are no business contacts present.

2. **Conferences**
   The cost of food and drink at a conference or business course, which continues for four hours or more, is fully deductible.

3. **Meal allowances**
   A tax-free meal allowance paid by an employer to an employee working overtime is fully deductible.

4. **Executive dining facilities**
   The cost of a light meal provided to employees in an area reserved for senior management is fully deductible when the meal is provided during the course of the employees’ normal duties.

5. **Morning and afternoon teas**
   Morning and afternoon teas in an executive dining facility or at a conference are fully deductible.

6. **Promotions open to the public and trade display**
   Entertainment provided by a business as part of a function open to the public, or at trade displays to advertise the business, are fully deductible.

   For example: The costs of crockery/glassware hire, food, room hire, equipment

7. **Off-shore entertainment**
   Entertainment enjoyed outside New Zealand is fully deductible.

8. **Monetary sponsorship**
   The cost of sponsoring entertainment is fully deductible where the sponsorship is principally for promotion or advertising to the public.

9. **Entertainment provided for market value**
   Providing entertainment for market value is fully deductible.

   For example: the cost incurred by a restaurant in providing meals to patrons.

10. **Samples**
    The cost of providing samples for advertising or promotional purposes is fully deductible.

11. **Charitable entertainment**
    Entertainment provided to members of the public for charitable purposes is fully deductible.

    For example: A business donates food to a Christmas party in a children’s hospital.

12. **Reviewers**
    The cost of providing entertainment to a person to review your business for a paper, magazine, book or other medium, is fully deductible.

13. **Licensed premises operators**
    Costs incurred by a licensed premises operator in providing a special offer are fully deductible.

    For example: Happy hour of cheap drinks or two-for-one price meals.

50% deductible Entertainment Expenses

The following is a list of the four types of entertainment where deductibility is limited to 50%:

- The cost of corporate boxes, corporate marques or tents
- The cost of accommodation in a holiday home or time-share apartment
- The cost of hiring a pleasure craft
- The cost of food and beverages enjoyed in any of the three locations listed above, or food and beverages enjoyed on/off the business premises for a social event

Goods and services tax (GST)

You can claim the full GST portion on all entertainment expenses you have incurred throughout the year. If the entertainment expenses are only 50% deductible, you need to make an adjustment once a year for the 50% non-deductible portion.

The GST adjustment is calculated by multiplying by 3 and dividing by 23 the non-deductible entertainment expenses, exclusive of GST. This needs to be returned in the GST return in the period your income tax return is filed or due to be filed.

Many clients find it easier to claim the correct portion as they go, throughout the year.

Fringe benefit tax (FBT)

If employees (including shareholder-employees) can enjoy an entertainment benefit at their discretion and outside their employment duties, this benefit will be subject to FBT.

Any entertainment expenses that come under the 50% deductibility rules are not liable for FBT.

Our Advice

The rules are complex. For big ticket items, get our advice.

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Our Advice

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Fines and their deductibility

Fines are generally regarded as non-deductible on public policy grounds.

Even so, there has been some case law which seems to indicate that fines may be deductible if there is a sufficient relationship between the fines and the income earning process.

However, the Inland Revenue Department has issued a draft interpretation statement, reiterating that fines and penalties are not deductible in any circumstances.

This could be said to be the definitive word on the issue. Consequently, it is unlikely you would be granted a deduction for your fine.

Foreign Investment Fund (FIF) Tax Rules - Individuals & Trusts

Investors who have certain types of overseas investments may have foreign investment fund (FIF) income and this is subject to specific tax rules.

What is an FIF?

A Foreign Investment Fund or FIF is a foreign company, foreign superannuation scheme or a non-resident insurer under a life insurance policy.

An investment in a foreign investment fund is an offshore investment held by a New Zealand resident taxpayer who holds:

- Less than 10% of the shares in a foreign company
- Less than 10% of the units in a foreign unit trust
- 10% or more of the shares in a foreign company which is not a ‘Controlled Foreign Company’
- An interest in a life insurance policy where an FIF is the insurer and the policy is not offered or entered into in New Zealand
- An interest in a foreign superannuation scheme

Do the rules apply to me?

If you…	And	Then
Have shareholding of less than 10% in a foreign company or foreign unit trust	It is an attributing interest	YES, the FIF rules apply
	It is not an attributing interest	NO, the FIF rules do not apply
Hold interests in FIFs with a total amount of NZ$50,000 or less	You are an individual investor or an eligible trust	NO, the FIF rules do not apply
	You are any other type of investor	Yes, the FIF rules apply
Have a shareholding of 40% or more in an offshore company	You are any type of investor	No, the rules do not apply. The controlled foreign company (CFC) rules apply.[1]

FIF income - it needs to be 'attributing'

FIF income will only arise for a NZ tax resident where they have an interest in an FIF that is an 'attributing interest' and not subject to any exemption.

The attribution of FIF income effectively means that income and any increases in value from the FIF are taxable even though income may not have been received by the investor.

The attributable FIF income calculation looks at passive income (generally dividends, interest, royalties, rent and income from insurance). If the non-portfolio FIF has a ratio of passive income to gross ratio of less than 5% then no income will be attributed under the FIF rules. If the passive income ratio is higher than 5%, then the passive income will be attributed and become taxable.

Minimum threshold on cost of the investment

The FIF rules will not apply to individual investors if the original cost of their investment is NZ$50,000 or less. These investors continue to pay tax only on dividends if they hold the shares on capital account and are not required to calculate income under the FIF rules.

This minimum threshold does not apply to family trusts. However it is extended to eligible trusts that:

- Arise out of a Court order, or
- Are estates but only for the first five income tax years after death, or
- Have ACC as the Settlor

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[1] The CFC rules will apply where a single NZ resident controls more than 40% of an offshore company and there is no other foreign shareholder with a greater interest. Otherwise the CFC rules will apply where 5 or fewer NZ residents control more than 50% of an offshore company.

It is important to note that this NZ$50,000 rule is a threshold rather than an exemption. This means that if the cost of a person's offshore shares exceeds $50,000 all their shares are then subject to the new rules and not just the excess costing more than $50,000.

Exemptions

The FIF rules will not apply to:

- FIF interests of less than $50,000 held by individuals or eligible trusts (as mentioned above)
- Certain Australian resident companies listed on the ASX
- 10% or more interests in an Australian company
- Most regulated Australian superannuation schemes
- Certain employment-related superannuation schemes or pension schemes
- Shares in a company that is resident in a grey list country held by a natural person under an employee share plan where there are restrictions on the sale of shares

Investors who fall under the threshold of $50,000 can still elect to return FIF income or losses. However, if they do this, they must then continue to apply the FIF rules.

Summary of how FIF rules are applied

There are five methods available for calculating FIF income. Taxpayers can choose which method to use, to an extent, but the nature of the investment will also affect which rules can and can't be used:

Less than 10% interest in FIF (portfolio FIF)	**10% or more interest in FIF (non-portfolio FIF)**
Calculate FIF income using either: ▪ Fixed Dividend Rate Method (FDR) ▪ Comparative Value Method (CV) ▪ Cost Method ▪ Deemed Rate of Return Method (DRR)	Calculate FIF income using: ▪ Fixed Dividend Rate Method (FDR) ▪ Comparative Value Method (CV) ▪ Cost Method ▪ Deemed Rate of Return Method (DRR ▪ Attributable FIF income method

There are also rules designed for taxing shares that are bought and sold within the same income year.

Our recommendation

This is a complex technical area. Depending on your circumstances, the number and type of shares you have, different rules and calculation methods apply.

We'd be happy to talk you through how it affects your business if you'd like further information.

Gift Duty

Abolition of Gift Duty

The government abolished gift duty for dispositions of property made on or after 1 October 2011:

- Gift duty will not be payable for dispositions of property made on or after 1 October 2011
- Gift statements will not need to be filed for dispositions of property made on or after 1 October 2011
- However, gift statements still need to be filed for gifts made before 1 October 2011 and gift duty will still apply to dutiable gifts made prior to 1 October 2011

Gifts made before 1 October 2011

Gift Duty is payable at progressive rates according to the value of dutiable gifts made by the donor (person making the gift) within a twelve-month period.

It is important to note that this twelve-month period is not the same as your annual balance date period.

The rates of gift duty are:-

Value of Gift	Rate	Cumulative Value of Gift Duty
Up to $27,000	Nil	Nil
$27,001 - $36,000	5% on excess over $27,000	$450
$36,001 - $54,000	$450 plus 10% of excess over $36,000	$2,250
$54,001 - $72,000	$2,250 plus 20% of excess over $54,000	$5,850
$72,001 or more	$5,850 plus 25% of excess over $72,000	Calculate individually

Up to $27,000 may be gifted without gift duty being chargeable.

When that exemption level is exceeded, gift duty is chargeable according to the total value of dutiable gifts made within a twelve-month period.

A gift duty statement (IR196) must be filed with IRD when the value of a gift is more than $12,000, or when the value of all gifts within the previous twelve months is more than $12,000.

The gift statement must be filed within three months of the making of the gift that gave rise to the liability to file that gift statement.

Any gift duty itself is payable upon the making of the dutiable gift.

Penalties are chargeable on unpaid gift duty.

A late payment penalty of 5% is charged, followed by a monthly penalty if gift duty is not paid within six months of the making of the dutiable gift.

Our Recommendation

Gifting needs to be completed carefully. Clients should never attempt to file gift duty statements themselves. We recommend that you refer all gifting queries to us.

Home Used as Office Expenses

Where a self-employed taxpayer uses his or her home partly in furtherance of the conduct of a business, he or she is entitled to a partial deduction for the outgoings which relate to the use of the home for the work related activities. These include:-

- Heating
- Lighting
- Rates
- Insurance
- Mortgage interest
- House and contents insurance
- Repairs and maintenance
- Telephone rental

The portion of outgoings deductible is based on the area used for the business, expressed as a percentage of the total area of the home:-

$$\frac{\text{Area used for business purposes}}{\text{Total area of home}}$$

It is not absolutely necessary to set aside a specific room for business purposes, nor is it necessary for your home to be physically changed to suit the business.

However in cases where a separate room is not set aside, it may be appropriate to apportion the outgoings based on criteria such as the amount of time spent on income-earning activities as home as well as the area used.

Examples of areas likely to be used for business purposes include:-

- An office or office area
- A storeroom or storage area
- A workshop
- A garage or part of a garage which is used to house a business vehicle

Our Recommendation

Do the maths, and think laterally. Most people who are self employed find that it is impossible to completely separate business life from home life. Keep written workings of your calculations, and be sure to keep records of your outgoings in a safe place.

KiwiSaver Report

KiwiSaver is a voluntary work based savings scheme to help New Zealanders with their long term saving for retirement. The scheme began operating from 1st July 2007.

Employers are required to provide a KiwiSaver information pack (KS3) within 7 days to any current employee who asks for the information and to all new eligible staff aged up to 65 who are NZ residents and people entitled to live here permanently.

Enrolment and Employee Contributions

All new eligible employees must be automatically enrolled by the employer into the KiwiSaver scheme. Exemptions from automatic enrolment are set out on the IRD website.

Contribution rate

New employee contribution deductions start from their first payday at the rate of 3%, 4% or 8% as they elect. If the employee has not selected a contribution rate on their deduction form, the employer is required to deduct the default rate of 3% from their pay.

Opt Out

Within the first 2 to 8 weeks of starting their employment, a new employee has the option to opt out of the scheme. They must do so before the completion of their 8th week of employment otherwise they will continue to be enrolled and the employer will continue to make deductions. If a new employee opts out of the scheme within the 2 – 8 week timeframe all contribution deductions taken up until the date of effective opt out are refunded to the employee.

Existing employees

All other current employees may choose to join the scheme at any time they wish, provided they are eligible. They may join the scheme either through their employer, or directly through IRD or their chosen scheme provider. They do not have the same option as new employees to cease being in the scheme once they have joined.

Contributions holidays

An employee may decide to stop making contributions after 12 months in the scheme (for periods up to 5 years at a time). Employers will need to stop their deductions and restart them when the savings break finishes.

Reducing or increasing employee contributions

Employees can change between the three contribution rates of 3%, 4% or 8%. To do this employees complete a KiwiSaver deduction form (KS2) selecting the new rate or notify the employer in writing of the change to their contribution.

However employees cannot change their contribution rate more frequently than every three months unless this is agreed with the employer.

Member Tax Credit

From 1 July 2012, the government will contribute 50c for each $1 contributed by individual KiwiSaver members, up to a maximum of $521.43 per year.

Compulsory Employer Contributions

Employers are required to contribute to their employees' KiwiSaver Scheme or complying fund. The minimum compulsory employer contribution is currently 3%.

For new employees the employer contributions start from their first payday. For all other current employees the employer contributions start from the first payday after the employer receives notification from either the employee or IRD that the employee has enrolled.

Employer Superannuation Contribution Tax (ESCT)

From 1 April 2012, all employer contributions to employees' KiwiSaver accounts (and complying superannuation funds) are subject to employer superannuation contribution tax. ESCT is applied at a rate equivalent to an employee's marginal tax rate.

The exception to this is if the employee and employer have agreed to treat some or all of the employer contributions as salary or wages under the PAYE rules. It is important to document this agreement.

KiwiSaver scheme providers and other superannuation schemes

Employers who have their own schemes can apply for an exemption from the KiwiSaver scheme. The IRD website has more detail about this.

Employers can select a preferred KiwiSaver scheme for their staff. If the employer has a chosen KiwiSaver scheme, they must advise new employees in writing that the new employee will be allocated to the employer-chosen scheme unless they choose their own KiwiSaver scheme. The employer must also give them the chosen scheme's investment statement.

Employees can choose their own scheme provider, use the employer's preferred scheme or use a default scheme provider. KiwiSaver members can switch schemes but can only belong to one KiwiSaver scheme at any time.

A full list of scheme providers is available on the Retirement Commission Sorted website at http://www.sorted.org.nz/home

Administering KiwiSaver

Employers need to provide to IRD the names, addresses and IRD numbers for new and existing employees joining KiwiSaver using the KiwiSaver employee details form (KS1) or ir-File. They also need to keep records of which employees have KiwiSaver accounts, their contribution rate, compulsory and voluntary employer contributions, and notification of contribution holidays or opt outs

Deductions and employer contributions are detailed in each employer deductions form (IR345) that is filed with IRD and sent to the IRD through the PAYE system. The IRD will then send the deductions to the appropriate scheme provider.

Employee opt-out requests and refunds are also administered by Inland Revenue.

Other points to be aware of

- If employers don't make KiwiSaver deductions and pass them on to IRD they may be liable for penalties
- Self employed people, beneficiaries and people under 18 can join by contacting their chosen scheme provider directly
- The government will make an initial contribution to KiwiSaver of $1,000 per employee tax free
- After 3 years in the scheme first home buyers may be entitled to a deposit subsidy of up to $5,000 on their home. They may also be able to withdraw their KiwiSaver account balance to pay a deposit on their first home
- Part of a KiwiSaver contribution can be used to help pay off a mortgage on the employee's home. The rest of the contribution will be deposited in their KiwiSaver account
- Generally, KiwiSaver members can't access their savings until they are 65 or have been with KiwiSaver for 5 years – whichever is the later. Under special circumstances like hardship they may be able to withdraw their contributions (excluding the government contribution of $1,000)
- Employees can also withdraw funds after 12 months if they move overseas permanently (including the $1,000 government contribution)

Other useful information is set out on the IRD website at http://www.ird.govt.nz/kiwisaver/employers/

Does this change our Employment Agreements?

Firms may write the KiwiSaver arrangements into the employment agreement, though there is no obligation to do so.

Where KiwiSaver provisions are written into the employment agreement, record any changes as a document of variation to the employment agreement, signed by both parties and held on the employee's file:

- Changes to voluntary employer contributions
- Changes to employee contributions, such as in the event of a pay rise
- Where an employee wishes a pay rise to be commuted to a salary sacrifice paid into KiwiSaver
- Where legislative changes impact on the KiwiSaver arrangements

Contractors and the self-employed

The amount of the contributions and the frequency of payment periods are agreed directly with the scheme provider. The self-employed person then needs to pay the contributions as and when required to either IRD or directly to their scheme provider. Additional voluntary contributions over and above the agreed amount can also be made at any time.

Keep in mind

All KiwiSaver documentation should be completed within 8 weeks of the new employee's commencement, whether they elect to continue in the scheme or to opt out. For existing employees who elect to opt into KiwiSaver, we would suggest written documentation of this, to be signed by both parties.

For further information, IRD's employer guide to KiwiSaver (KS4) is available online.

If you would like further advice on KiwiSaver please do not hesitate to contact us to discuss these matters further.

Livestock - Explaining the Herd and NSC Livestock Valuation Methods

Herd Scheme

The theory underlying the herd scheme is that the livestock (Herd) are a capital asset. It therefore follows that the movement in livestock values should not be assessable income. Changes in numbers and classes of livestock only are assessable.

Around the middle of May each year the IRD announces the Herd Values (National Average Market Values) for each class of livestock. These values are calculated from a survey of livestock values throughout the country as at the 30th of April each year.

This year we have seen a decline in nearly all categories of livestock. While we were seeing strong dairy cattle prices earlier in the season the widespread summer drought has lead to a decline in livestock values across the board. This drop in values may be an opportunity for new animals to be added in to the Herd Scheme with minimal impact on taxable income. The other factor impacting on the reduction on stock values is of course the high exchange rate.

The Herd Scheme allows you to value both your opening and closing livestock at the same value per head. This is done by making a 'tax free' adjustment (increase or decrease) to the opening livestock. The adjustment is made to the livestock on hand at the opening day of the financial year and therefore removes any taxable income due to changes in values of livestock.

The theory behind the Herd scheme means that there should not be a huge tax liability created upon the sale of the herd. However because the Herd livestock adjustment affects next year's opening livestock values it is important that your accountant knows what your thoughts or plans are regarding your livestock ownership.

Once you elect to enter the Herd Scheme there are very limited circumstances where you can exit. This was a move introduced by IRD to stop people moving back and forth between the various schemes. We do still have the option of using an alternative valuation method for any increases in numbers. This is another factor we need to take into account when considering which livestock scheme is the most appropriate for you.

NSC (National Standard Cost) Scheme

The NSC Scheme is a cost of production based system. NSC values are determined by IRD after looking at and analysing the cost of production for all types of livestock. Values are released for the Breeding, Rearing and Growing (BRG) cost to get an animal to where it is a Rising One year. A further value is then applied for Rearing and Growing (RG) the animal for a further year to a Rising Two year. At that point it is classed as a mature animal. No further increases in value apply from that point onwards.

NSC values are released by IRD in February of each year.

A farmer applies the NSC values to homebred stock while all purchased stock is valued at purchase price. The average of these costs is applied to year-end stock on hand to obtain a closing value.

Because the NSC scheme is a ‘cost based’ scheme a farmer will typically have a lower cost per animal recorded in the financial statements. This means that when the stock are sold there may be assessable income created - i.e. the difference between market value and book value. If you are using the NSC valuation option and you sell all or part of your herd there may be a considerable tax liability created. It is therefore important you tell your accountant when this is happening so the tax liability can be quantified and you are aware of it and when it is likely to have to be paid.

NSC can be used in conjunction with the Herd Scheme. For this reason, it is quite common for farmers to place additional livestock in the NSC Scheme, particularly when Herd Scheme Values are perceived to be quite high.

Our Advice

The decision as to which valuation option to take is an important one. Livestock valuation is a complex area and it requires an individual approach - each farmer’s circumstances will be different from those of another.

It is also important that the appropriate notices regarding elections to value livestock using particular schemes are filed with IRD within the required time frames.

We will discuss your livestock valuation choices with you and make some recommendations. It is important you understand your options and the pros and cons of each scheme.

Minimum Wage Rates

The minimum adult wage rate for a worker 16 years or older became $15.75 per hour from 1 April 2017.

There is no minimum wage rate for youths under the age of 16 years.

Minimum training wage

The minimum training wage rate is $12.60 per hour. This rate applies to workers doing recognised industry training involving at least 60 credits a year.

Starting-out wage

This provides for eligible 16- to 19-year-olds to be paid no less than 80% of the adult minimum wage which equates to $12.60. Three groups may be paid at this lower rate unless they are training or supervising others:

- 16- and 17-year-olds in their first six months of work with a new employer
- 18- and 19-year-olds entering the workforce after more than six months on a benefit
- 16- to 19-year-old workers in a recognised industry training course involving at least 40 credits a year

Those workers who are 20 or over and are in jobs for which they are required to carry out training can still be subject to a minimum rate set for trainees.

Parental Leave

The parental leave legislation provides that an employee can take unpaid parental leave from the workplace when they are either having a baby or adopting a child under six years old, providing the employee meets the eligibility criteria.

The legislation also provides that if the employee is eligible for parental leave and takes this leave they are then also entitled to government funded parental leave payments of up to 18 weeks.

Employees' eligibility for parental leave

To be eligible for parental leave from the workplace an employee must:

- Have worked for the same employer for an average of 10 hours a week and no less than one hour every week OR for 40 hours in every month
- Have worked for the same employer for either:
  - 12 months up to the expected due date or adoption, OR
  - 6 months up to the expected due date or adoption

There are different unpaid leave entitlements available to employees depending on whether they meet the 12 or 6 month criteria:

Type of unpaid leave	**If 12 months and minimum hours criteria met**	**If 6 months and minimum hours criteria met**
<u>Maternity Leave</u> Available to birth mother and adoptive mother	18 weeks' leave	18 weeks' leave
<u>Partners/Paternity Leave</u> Available to spouse or partner	Up to 2 weeks (additional to the extend leave entitlement)	Up to 1 week
<u>Extended Leave</u> Available to only one of the two parents or it can be shared between them.	Up to 52 weeks (includes the 18 weeks for any maternity leave and paid parental leave). If shared the total leave taken between both partners cannot exceed 52 weeks	No entitlement for this

Each type of leave must be taken in one continuous period.

It is possible to have more than one period of parental leave but 6 months must have elapsed between the date of return to work from the last period of parental leave and the expected due date of the subsequent child.

There is also an additional Special Leave available to pregnant employees of up to 10 days that can be taken before the maternity leave for reasons connected to the pregnancy. It is additional to the 52 weeks' maximum of combined maternity and extended leave.

Employees must apply to their employer for parental leave.

Eligibility for Paid Parental Leave

Paid parental leave is a government funded entitlement for eligible parents when they take parental leave from their job to care for their newborn or adopted child up to the age of 6 years.

The initial entitlement to the payment for up to 18 weeks lies with the mother or primary carer of the child. An employee will be eligible for this entitlement provided they have qualified for parental leave from their job.

The employee can however then transfer some or all of their entitlement to their spouse or partner provided that they are also eligible as an employee or self-employed person.

The paid parental leave payments are administered through Inland Revenue. This paid leave must be taken at the same time as the unpaid parental leave is taken.

To receive the payments the employee must first apply to their employer for parental leave and then apply to Inland Revenue for the parental leave payment.

Employers' Obligations under the Parental Leave Legislation

As an employer your obligations by law are to:

1. Inform your employee of their paid parental leave entitlements

   A fact sheet with this information can be obtained from the Department of Labour website

2. Consider, then approve or decline your employee's request to take parental leave
   - Your employee is responsible for approaching you to apply for the leave and notice of this is required at least three months before the expected date of delivery (except where you have agreed to allow the employee to give less notice or where the employee is in the process of adopting, in which case it will be within 14 days of receipt of documentation placing the child lawfully in the employee's home)
   - They must apply to you in writing, stating:
     - What type of leave they want to take
     - When they plan to start their leave
     - The period of leave they intend to take
   - With their application, they also need to include a medical certificate (or copy of) verifying the pregnancy and stating the expected date of delivery

   Sharing Leave

   - If the employee is sharing any leave with their spouse/partner, they apply as above and their application must also state:
     - The dates on which they and their spouse/partner plan to start and finish each period of leave
     - Their spouse/partner's name, and the name and address of their employer
     - That they are both eligible for the leave they are applying for
     - That the total amount of leave they are taking will not be more than their maximum entitlement
   - With their application, they also need to include a written declaration stating they and their partner are going to share the care of the child

   Upon receiving your employee's application, you have 7 days in which to request any further required information that was not provided. They must then provide this information to you within 14 days.

   Once you have received all information you must reply to the employee within 21 days.

   Your reply must state:

   - Whether the employee is entitled to take parental leave, and if not, the reasons why
   - The main legal rights and obligations they have regarding parental leave, especially those relating to when they can start their leave, and

- Whether or not their job can be kept open. If it cannot, your letter needs to explain that they are entitled to dispute this and that they will have preference for similar jobs for six months after the end of their parental leave

  Sample forms for employer responses are available from the Department of Labour website

3. Confirm accurately the length of employment and income details on the employee's application to IRD for paid parental leave:
   - Once the employee has received your response confirming their entitlement to take parental leave they should complete an application to IRD for the paid parental leave
   - Once the employee has completed their part of the IRD application form, you as the employer are required to verify on the application form the length of their employment and their income details. It is up to the employee to send the completed application form to IRD
   - The latest date an employee can apply for parental leave payments is the earlier of the date the period of leave ends and the date the employee returns to work or resigns from the job

4. Confirm the parental leave arrangements with your employee
   - Within 21 days from the date your employee started their parental leave you must write to them to confirm the arrangements you have made
   - Your letter must include the date your employee is to return to work and a reminder to them that they are required to write to you 21 days before their leave ends
   - Your employee must then write to you 21 days before their leave ends to let you know whether they are planning to return to work

Keep in mind

Your employee's employment agreement may allow for extra provisions regarding parental leave. It is important to check these provisions and discuss them with your employee.

You should also review your health and safety procedures to ensure any issues that may arise due to the pregnancy are taken into account and managed.

Should any problems or queries arise regarding your employees' parental leave entitlements we recommend that you contact the Department of Labour on 0800 20 90 20 who can then help you resolve these and who can then provide you with further advice on the matter.

The Department of Labour website also contains other useful information regarding parental leave.

Parental Leave – Advice for the Self-Employed

The parental leave legislation provides that a self-employed person is entitled to 18 weeks' government funded parental leave payments when they are having a baby or adopting a child under the age of six years, provided they meet the eligibility criteria.

This paid parental leave is administered through Inland Revenue.

The initial entitlement to paid parental leave lies with the birth mother or primary carer of the child to be adopted. However all or part of the entitlement can then be transferred to their spouse or partner provided they are also eligible for paid parental leave either as a self-employed person or as an employee.

Eligibility Requirements

To be eligible for paid parental leave as a self-employed person you must:

1. Meet the definition of self-employed, which means you must have been:
   - Providing goods or services for hire or reward under a contract for services
   - Carrying on a business (including a profession, trade, manufacturing operation or an undertaking carried on for profit), including being in partnership with another person, or
   - Working for a trust in a business carried on by the trust

2. Have been self-employed for an average of 10 hours a week for either:
   - The 6 months before the due date or adoption, or
   - The 12 months before the due date or adoption

   You are equally entitled to 18 weeks' paid parental leave whether you have been self-employed for 6 months or 12 months. However the level of the payment can differ depending on whether your average income is to be determined over 12 or 6 months' self-employment.

   If you are engaged in several types of self-employed work this is treated as a single period of self-employment. In this case IRD will need to know if the type of work is either:
   - Concurrent: Different types of self-employed work undertaken over the same period e.g., bee keeping and gardening, or
   - Consecutive: Different types of self-employed work undertaken one after the other. (This however can only be treated as one period if any breaks between the different types of work are no longer than 30 days)

   By treating these as one period of self-employment it may help you to meet the eligibility criteria around:
   - The number of hours worked
   - The length of time worked as self-employed

3. Be taking parental leave from self-employment to care for the baby or child.

   You are required to take leave from your business while receiving payments; however you will still be able to:

   - Maintain a level of oversight over your business, or do occasional administrative tasks to ensure the continuity of your business
   - Receive income that was earned prior to the start of your leave, and
   - Receive income from work undertaken by other people in your business

   The ability to maintain this contact with your business will not affect your paid parental leave payment. However if you return to working regular hours for your business or cease self-employment before the 18 weeks' payment period is over, your entitlement to parental leave payments will end.

Calculating your Payment Level

The payment will equal your average weekly income over the last 6 or 12 months, up to the maximum of $516.85 per week before tax (threshold applying from 1 July 2015). This is the maximum amount paid by Inland Revenue.

Your average weekly income can be calculated as follows:

If self-employed for less than 12 months:

$$\frac{\text{Net Income Over 6 Months (26 weeks)}}{26} = \text{Your Average Weekly Income}$$

If self-employed for 12 months or more:

$$\frac{\text{Net Income Over 12 Months (52 weeks)}}{52} = \text{Your Average Weekly Income}$$

In this instance you have the choice as to whether to use the 26 weeks or 52 weeks calculation. Your individual circumstances will help determine the best option.

Note: The number of weeks used to divide your net income will then also need to be reduced, if during the last 6 or 12 months you have been:

- In receipt of ACC payments
- On parental leave
- Unable to work due to other relevant circumstances

If you have made a loss or earned less than the minimum wage for at least 10 hours' work a week you will be entitled to the equivalent of 10 hours a week at the highest rate of the current minimum wage. This payment will be $147.50 per week before tax (amount applicable from 1 July 2015).

Spouse/Partner Entitlement

The initial entitlement to paid parental leave lies with the mother or primary carer of the child to be adopted.

However if responsibility for looking after the child is to be shared, this entitlement can be transferred in whole or part to the spouse or partner provided that they are also eligible for paid parental leave as either a self-employed person or as an employee.

Where the spouse is an eligible employee they will then also have an entitlement to unpaid parental leave from their workplace. A spouse or partner who is eligible for unpaid parental leave as an employee must apply to their employer for this.

A full summary of all paid and unpaid leave entitlements is available from the Department of Labour website. This summary clarifies the entitlements available for both parents.

Applying for Paid Parental Leave

As a self-employed person, you decide the date your parental leave will commence and the date of your return to work. You do not have to take the full 18 weeks' leave, but you can only receive parental leave payments for the period you are away from your business. No special paperwork is required to record the period of your leave but you do have to take an actual break away from your business.

It is important to carefully consider:

- When you are going to take your leave and
- If and when any leave will be transferred to your spouse/partner

It is not easy to change your dates once you have applied to Inland Revenue.

You can apply for paid parental leave before the date your parental leave commences or at any time while you're on leave. You must however apply for the payments before you return to work or cease your self-employment.

There are several steps involved in the application process:

1. The mother or primary carer needs to complete the IRD 'Paid parental leave application for a self-employed person' application form (IR888).

2. The declaration section in the application form requires that either of the following be completed:

   - A declaration completed by a chartered accountant, or
   - A self-declaration, witnessed by a JP or other authorised person

   Whichever declaration is completed should confirm:

   - Your self-employment status

- Your total net income for the 6 or 12 months prior to the due date or adoption
- Your average weekly earnings for the 6 or 12 months prior to the due date or adoption

3. If some or all of the entitlement is to be transferred to your spouse or partner you should both complete the appropriate IRD 'Paid parental leave transfer application form' as below:
   - If your spouse/partner is an employee:
     - You should both complete the IR881 application form
     - Your spouse's or partner's employer should also complete the employer section of this application
   - If your spouse or partner is self-employed:
     - You should both complete the IR889 application form
     - This application will also require either the declaration by a chartered accountant or the self-declaration, witnessed by a JP or other authorised person, to be completed

   The appropriate IRD application forms can be obtained from either the IRD website www.ird.govt.nz or the Department of Labour website

4. The following documents should be sent to Inland Revenue for processing:
   - The completed paid parental leave for self-employed application form (IR888)
   - The appropriate paid parental leave transfer application form (IR881 or IR889), if applicable, and
   - A medical certificate (or copy of) verifying the pregnancy and stating the expected date of delivery, or
   - Evidence of adoption such as a letter from a social worker, certified copy of an interim court order or copy of a statutory declaration confirming intention to adopt

   Once your application has been processed, Inland Revenue will send you notification of your entitlement to paid parental leave, how much you will receive and when you will receive the payments.

Payments from Inland Revenue

Inland Revenue will pay the parental leave payments directly into your bank account or alternatively your spouse's or partner's account (from the date of transfer when any part of the entitlement has been transferred to your spouse or partner). Payments are made fortnightly.

The payments are treated as income and, where relevant, tax and student loan deductions will be taken out at the rate applicable to you or your spouse or partner (where entitlement has been transferred).

Keep in Mind

You may be eligible for both paid parental leave and parental tax credit. You cannot however receive both payments and can therefore apply for only one of these. For most people, paid parental leave payments will be higher than parental tax credit. You may also be eligible for some other form of family assistance.

It may also be that you can apply for paid parental leave as both a self-employed person and an employee.

Given how many options are available, we suggest that you contact our office to discuss your circumstances in order to achieve the best possible outcome for you. We can also assist you to complete all the necessary application forms and declarations required by Inland Revenue.

The Department of Labour website also contains other useful information regarding paid parental leave for the self-employed.

Partnerships – Allocation of Profits

In the absence of a formal partnership agreement, the IRD can reallocate income or losses between partners in a family partnership if the profit allocations are not reasonable.

In determining whether the remuneration or share in profits is, reasonable, the nature and extent of the services rendered, the value of the Partners' contributions to capital or providing of services and any other relevant matters are taken into consideration.

In so doing, Inland Revenue Department has regard to hourly rates paid by employers in the particular industry or trade. It must be stressed that these are applied only as a guide. Each case is viewed on its own facts.

Where Inland Revenue considers that the remuneration, salary, share of profits or other income payable for the benefit of the relative is unreasonable, or the share of losses as he considers reasonable, he may reallocate the income or losses as he considers reasonable.

However, the Commissioner of Inland Revenue cannot rely on the above powers when the partners are employed under a proper employment agreement, or where there is a properly executed partnership deed.

A proper contract of employment or partnership deed is one in which:

- The contract is in writing and is signed by all of the parties
- All of the parties are aged 20 or more at the time of signing
- Each party to the contract has real and effective control of the income to which he or she is entitled under the contract.
- Each party to the contract has real and effective liability for the share of losses to be borne by him or her under the contract; and

- The remuneration or share of profits of the relative is not of such an amount that the transaction constitutes in whole or part a gift.

If the contract is not considered to be proper, the Inland Revenue Department can reallocate the remuneration or share of profits.

Our Advice

In deciding whether a reallocation of income is justified, the Commissioner applies a formula to partnership income.

As this formula is relatively complex, we suggest you seek detailed advice from us on the likely consequences of the reallocation of income in your particular circumstances.

PAYE Intermediary Subsidy

The PAYE intermediary subsidy was introduced to encourage small employers to outsource their payroll services to a PAYE intermediary in order to focus their efforts on growing their business.

A PAYE intermediary may be an existing service provider, accountant or any other tax professional who can deal with all aspects of an employer's payroll obligations.

There are several conditions that need to be met in order to obtain the government subsidy. These are:

- Payroll services must be contracted out to a PAYE intermediary
- The PAYE intermediary must be registered with IRD as an accredited listed PAYE intermediary
- Total PAYE deductions must be less than $500,000 per year
- The Employer must link themselves to the PAYE intermediary by completing the 'Employer Linking to PAYE Intermediary' form (IR920) and sending this to IRD

The Employer Linking form (IR920) can be obtained from either the PAYE intermediary or the IRD website www.ird.govt.nz

The subsidy is $2 per payday, per employee for up to a maximum of five employees. It is GST-inclusive and subject to income tax.

The subsidy is claimed by and paid directly to the PAYE intermediary on a monthly basis. The amount received will then be applied by the PAYE intermediary towards the costs involved in providing the services for the employer.

Should the services provided by the PAYE intermediary then cease, for any reason, a PAYE Intermediary Cessation form (IR913) should be completed and sent to IRD. This can be done by either the Employer or the PAYE intermediary.

It is important to ensure that the PAYE intermediary is registered with IRD to obtain this subsidy. It may be that your current PAYE intermediary may need to complete this registration with IRD, or alternatively a new one be contracted to in order to take advantage of the subsidy.

Payments to Spouse

If you are a sole trader, no deduction is permitted for wages paid to a spouse, unless the Inland Revenue Department consents in writing to that deduction.

There are no special rules for payments to spouses if you are trading as a partnership, trust or company.

Inland Revenue must be satisfied:

- That the payment is for services rendered and not for services performed in connection with the home (see details below for exceptions)
- That the payment is a reasonable and bona fide payment
- That the payment is incurred in the production of your gross income
- That full and proper employee wage records are kept in respect of that spouse

Exceptions applying to payments for services performed in connection with the home:

- If your spouse is paid wages for cooking for permanent farm employees you may claim the following deduction:

- Cooking for one permanent employee	$18 per week
- Cooking for two permanent employees	$27 per week
- Cooking for three permanent employees	$33 per week
- Thereafter, per employee	$4.50 per week

- If your spouse is obliged to entertain people such as your firm's clients or guests in your home, as a condition of his/her employment, you may be able to claim a deduction for payments made in connection with services performed entertaining such guests

Approval is obtained by writing to the Inland Revenue Department. Such a

request must include the following details:

- The nature of your business
- Precise and full details of the duties to be performed by your spouse
- The average hours your spouse is expected to work weekly and the number of weeks he/she is expected to work per annum

- Particulars of other staff employed, including wages paid
- How payments to your spouse are to be made and how often
- Calculation of the exact remuneration to be paid to your spouse

Further Approval from Inland Revenue Department

You will need to obtain further approval from Inland Revenue if, after obtaining the initial approval from Inland Revenue, you subsequently increase the wages paid to your spouse as a result of either:

- Increased duties performed by your spouse, or
- An increase in pay that is not a general wage increase

Personal Property Securities Act 1999 (PPSA)

What is the PPSA?

The Personal Property Security Act 1999 (PPSA) covers security interests taken in personal property. More specifically, it provides rules relating to the creation, registration, determination of priority and enforceability of security interests taken in personal property. It also provides for the rights of innocent persons buying or leasing personal property.

This legislation affects a wide range of financial transactions, including lending and leasing as well as other types of credit providing activities. It also applies to suppliers of goods on credit, leases for terms of greater than one year and consignment of goods.

This legislation does not apply to just one type of client. It is not just about banks and financial institutions. The PPSA can affect anyone who buys, sells, owns, lends or leases. It also applies to suppliers of goods on credit and consignment of goods.

What ‘Personal Property’ means under the Act

The term ‘personal property’ has a wide definition under the legislation, but generally (with a few exceptions) it covers any property someone can own other than land. Personal property can include both business and domestic assets, shares, leases, debts, boats, cars, appliances, stock and equipment.

A ‘Security Interest’ under the Act

A security interest is an interest in personal property that secures the payment of money or the performance of an obligation. For example if you lend money to someone for a car and take an interest in the car as security for the loan, you have a security interest. Security interests can include:

- Hire purchase agreements

- Long-term leases
- Retention of title (Romalpa) clauses in a supply agreement
- Loans that have personal property as security (for example a car)

A security interest in personal property is created or provided for by a transaction in which one party (the 'debtor') gives to a second party (the 'secured party') an interest in the debtor's property to secure the repayment of a debt or the performance of an obligation owed to the secured party.

All security interests taken in personal property are subject to rules of the PPSA.

What is the PPSR

Generally under the Act, in order for the secured party to protect their security interest and ensure priority over any competing security interest in the same property, they must register the security interest on the Personal Property Securities Register (PPSR).

The Personal Property Securities Register (PPSR) is a national computerised register created under the PPSA. It is an internet-based electronic 'notice board' wherein details of all security interests held in respect of personal property are recorded.

This register can be searched online by anyone wanting to know if an individual or company has debts. It is, however, illegal to search this register without good reason. In order to use it you will need to obtain a User ID and Password.

The register is operated by the Ministry of Economics and is available to be accessed 24 hours a day, 7 days a week.

Registering Security Interests

To register a security interest on the PPSR the secured party needs to register a 'financing statement'. This is not an actual document but refers to the data required for entry on the register. This must be done online at the Personal Property Securities website: http://www.ppsr.govt.nz/cms

In general the financing statement must contain the following information:

- Debtor's name, address and date of birth (if an individual)
- Company name; the name or job title and address of the contact person; and the company number
- Secured party's name and address
- Description of the collateral

There is a small fee payable for registering a security interest.

Registering a financing statement on the PPSR enables a security interest to be 'perfected' which is critical to protecting the priority of security interests.

Further information on how to register a security interest and what is also required is available on the Personal Property Securities website above.

What is the importance of the PPSA for Creditors?

If you are a lender, lessor, seller or supplier, this legislation affects you and you need to be aware of the requirements and how these apply.

The PPSA and the PPSR provide you with a means of securing the debtor's obligation to pay.

If you do not attend to the requirements of the PPSA, this can cost you dearly in the event the debtor defaults or, more importantly, becomes insolvent.

To get the best security protection you must:

- Make sure that your terms of trade, conditions of sale or any other security agreements are documented correctly and give you a security interest in accordance with the requirements of the PPSA
- Ensure that your security interest is registered on the PPSR correctly by registering a financing statement

The general rule under the PPSA is that the first interest registered gets priority. However, there is an exception to this which applies in certain circumstances.

Failure to register a security interest on the PPSR can result in other creditors (who do have a registered security interest in that same property) obtaining priority and rights to the property ahead of you in the event the debtor experiences financial difficulty - irrespective of the fact that your unregistered interest may have been created first.

In simple terms you run the risk of losing all rights to that property and may then be the last in queue to be repaid any outstanding debt.

What's the exception?

The major exception to the general rule is for a 'Purchase Money Security Interest' (PMSI)

A PMSI is a security interest in goods which secures the purchaser's obligation to pay the purchase price for the goods (e.g. suppliers who supply goods on credit where the goods have been supplied but not yet paid for)

A PMSI (provided all procedural requirements of the Act have been complied with) will take priority over all other types of security interests, regardless of when those other interests were registered or possession was taken.

Do I have to renew my registration?

Registration of a security interest lasts for only five years. It is therefore important to ensure that when required the renewal of the registration is completed before the expiry date.

Once again failure to renew a registration will mean that you run the risk of losing priority and rights to that property.

How does registration on the PPSR affect a debtor?

As a debtor you have certain rights and obligations.

When entering into an agreement relating to personal property it is important that you as the debtor read and understand the terms and conditions and implications of any security agreement before signing it.

Once the security interest has been registered by the creditor on the PPSR you are entitled to receive from them a copy of the information that they have registered. This is called a verification statement. However they do not have to provide this to you if you have waived this right in writing.

If you discover that any of the security interest's details recorded on the PPSR are incorrect, you have the right to ask them to be corrected.

In certain circumstances you can take the step of lodging a change demand to formally request correction of the registered details.

If you owe money on personal property, you should not sell or dispose of the property without getting permission from the person or company you owe the money to. If the secured party has registered their security interest on the PPSR, they may repossess the property from the person to whom you have sold it. In this situation, that person is likely to seek repayment of the purchase price from you.

Once you have repaid your hire purchase or loan etc., the secured party must discharge the registered financing statement. This means that the financing statement will no longer appear on the live register or be available for general searching. In the case of consumer goods, this is within 15 working days.

Effect of the PPSA on Consumers

The PPSA provides some protection for consumers that buy personal property.

As a consumer you will assume full ownership of the goods despite any registered security interest when:

- Buying from dealers – as opposed to private sale
- Buying consumer goods for less than NZ$2,000 or
- Buying from registered car dealers

However, you will not be protected from a registered security interest when you buy:

- Personal property that could have been worth more than NZ$2,000 at some time, particularly second hand items
- A motor vehicle privately i.e., not from a registered Motor Vehicle Trader
- Chattels that may be included in a house sale (e.g., dishwasher, air conditioner)

Therefore, as a consumer, it is most important that you search the PPSR for any security interest that may be held in that property before buying the item.

If you find that the seller does owe money on the item of property – don't buy it.

If you buy personal property that is subject to a security interest registered on the PPSR, it may be repossessed from you to pay off the debt. This debt may have been incurred by the previous owner but you may still lose the item if the previous owner has not repaid the debt in full.

Our Advice

We have given an overview of how the PPSA can affect not only creditors but everyday consumers. The legislation can be quite complex and it is important that you know and understand the implications.

If you are presently or in the future going to be involved in an agreement relating to personal property as the secured party with the secured interest we strongly suggest that you seek our advice or that of your solicitor to ensure that you protect your interest.

If you think the requirements of the PPSA or the PPSR affect you then we should meet together to discuss your individual situation to make sure that your rights and priority over the property are protected.

It is important to get the process right as it can be costly for you if you do not.

PPSR Financing Statement Discharges

Common Questions & Easy Answers

When is it time to discharge the financing statement?

When the obligation to a contract is met, i.e. you finish paying off a product.

Who is responsible for discharging the financing statement?

The ‘secured party’ being the company or person with whom you have signed a contract is the only one able to discharge the security.

How do I let the secured party know that they need to discharge the security?

You can make a formal request in writing under section 162a of the Personal Property Securities Act 1999 giving the secured party 15 working days to discharge the security.

If I am the secured party, how do I release the security?

Simply log on to the PPSR website and under the option to Maintain Registered Financing Statement, select ‘Discharge’. You will then be asked for the financing statement number and PIN. After that you will need to entered your secured party login ID and password and this will take you through to the financing statement where you will only need to push the ‘Discharge’ button and confirm you wish to discharge the financing statement.

How long does the security stay on the register?

When the financing statement is registered it is given a life of five years, after which time it disappears if not renewed.

Once a financing statement is discharged, it will no longer show in any search and is effectively wiped from record.

Our Advice

If you would like to discuss this further please contact us. If you wish to let a secured party know that they need to discharge a security, we can provide you with a template for formal request for PPSR discharge.

See over the page for relevant parts of the Personal Property Securities Act 1999.

161 Discharge of registration relating only to consumer goods

- If a registration relates exclusively to a security interest in consumer goods, the secured party must discharge the registration within 15 working days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiration of that period.

162 When debtor, etc, may demand registration of financing change statement

- The debtor or any person with an interest in property that falls within the collateral description included in a registered financing statement may give a written demand to the secured party if:
  a) all of the obligations under the security agreement to which the financing statement relates have been performed
  b) the secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement
  c) the collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor
  d) no security agreement exists between the parties
  e) the security interest is extinguished in accordance with this Act.

163 Matters that may be required by demand

- A demand under section 162 may require the secured party to register, within 15 working days after the demand is given, a financing change statement:
  a) discharging the registration in a case within paragraph (a) or paragraph (d) or paragraph (e) of section 162; or
  b) amending or discharging the registration so as to reflect the terms of the agreement in a case within paragraph (b) of section 162; or
  c) amending the collateral description to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor in a case within paragraph (c) of section 162.

Provisional tax is a way of managing your income tax by paying instalments during the year.

The concept of provisional tax is based on payments of tax being made while income is still being derived. Effectively, this amounts to progress payments of tax being made to the IRD before the final assessment of tax for a particular year is made.

You may be liable for provisional tax

If your tax to pay on your last income tax return is more than $2,500, you may have to pay provisional tax for the following year.

You will not be required to pay provisional tax so long as your previous year's residual income tax is $2,500 or less. However, if your residual income tax (RIT) in the current year exceeds $2,500 and no provisional tax is paid you may be subject to use of money interest from the first instalment date.

The number of instalment payments you are required to make depends on how you work out your provisional tax. If you're GST registered, how often you file GST returns will determine how many provisional tax instalments you're required to make.

Even if you are not required to pay provisional tax, you may still elect to do so; see below.

What is residual income tax?

Residual income tax (RIT) is the amount of tax you have to pay, less any tax credits you may be entitled to and any PAYE deducted. RIT is used to calculate the amount of provisional tax you are required to pay.

Calculating your provisional tax

You can use one of these options to work out your provisional tax:

1. Standard
2. Estimation
3. GST Ratio – only if you're registered for GST

Standard option:

Under the standard method, the amount of provisional tax payable for an instalment is either based on:

- 105% of the previous tax year's residual income tax, or
- 110% of the RIT of the tax year before the preceding tax year, (e.g. for taxpayers who have not yet filed their preceding tax year's tax return due to a tax agent's extension of time)

Estimation option:

On or before the due date for an instalment of provisional tax, you can make a fair and reasonable estimate of your RIT for the income tax year. The estimate may be filed using form IR 309 or online at www.ird.govt.nz.

You must revise the estimate for the tax year if, at any time in the tax year, the amount estimated is no longer fair and reasonable.

The benefit of estimating provisional tax is that you can avoid paying too much tax, for example when you expect your income to be less than the previous year.

You may be liable to shortfall penalties if reasonable care is not taken when formulating your estimation. However, you will be deemed to have taken reasonable care in making your estimate if the estimate is more than the provisional tax payable.

Interest is payable or receivable on any provisional tax paid that is under- or over-estimated. From 8 May 2016 the interest rate charged by the IRD on unpaid tax is 8.27%.

GST Ratio option:

The GST ratio method allows you to base your provisional tax payments on a percentage of your GST taxable supplies. If your business income is declining or tends to fluctuate during the year you may benefit from using this method.

You may be eligible to use this method if:

- Your RIT liability for the preceding tax year and corresponding income year was more than $2,500 but no more than $150,000
- You were registered for GST for the whole of the preceding income year and you did not begin the taxable activity in that preceding year
- Your ratio for the current year is between 0–100%, and
- For the current tax year you are liable to file GST returns on a monthly or two-monthly basis.

If you meet the criteria you can send an election to the IRD before the beginning of the income year and the IRD will calculate the ratio and advise you of the ratio before your first provisional tax payment is due.

You will then be required to make six provisional tax payments (every two months) along with your GST. If you pay GST on a monthly basis you will make provisional tax payments on every second GST return.

If you decide to stop using the GST ratio method before your first provisional tax instalment date, you can elect to use the standard or estimation methods of calculating provisional tax. However, if you stop using this method after your first provisional tax instalment you will be required to estimate your provisional tax payments for the remainder of the income year.

When do you have to pay provisional tax?

The number of times you need to pay provisional tax each year depends on the option you use to calculate your provisional tax, and how many times you pay GST (if registered).

If your balance date is 31 March and you use the standard or estimation options to calculate your provisional tax payments, your provisional tax due dates are:

	Not registered for GST	**GST registered and pay monthly or bi-monthly**	**GST registered and pay 6 monthly**
1st instalment	28 August	28 August	28 October
2nd instalment	15 January	15 January	7 May
3rd instalment	7 May	7 May	

If your balance date is 31 March and you use the GST ratio option to calculate your provisional tax payments, your provisional tax due dates are:

1st instalment	28 June
2nd instalment	28 August
3rd instalment	28 October
4th instalment	15 January
5th instalment	28 February
6th instalment	7 May

If you're registered for GST you pay your provisional tax and GST at the same time on a combined GST and provisional tax return.

Election to be a provisional taxpayer

Even if you are not required to pay provisional tax you may elect to become a provisional taxpayer.

You will be eligible to make such an election if you pay provisional tax of more than $2,500 and had the expectation on the date on which you made the first payment that you would be a provisional taxpayer for that year. The election is made in the relevant annual tax return.

If you pay provisional tax and subsequently find that you were not required to do so this provision allows you to receive use of money interest on your overpaid tax. In this case, use of money interest will run from the day after the date of payment. If you are a safe-harbour taxpayer (see below), you will not receive use of money interest.

Voluntary payments of provisional tax

You may find it advantageous to make voluntary payments of provisional tax. This will help reduce use of money interest charges on any known tax shortfalls. If you are a safe-harbour taxpayer, you can avoid making an estimation and liability for use of money interest.

While voluntary payments will earn interest it is typically at a lower rate than interest rates offered by commercial banks. The IRD's current overpayment rate is 1.62%.

Safe-harbour for all taxpayers using the standard provisional tax method

Amendments have been made which modify the application of UOMI to taxpayers who make all but their last instalment of provisional tax using the standard method (commonly known as the standard "uplift" method). For these taxpayers, UOMI will no longer apply from the first instalment. Instead, it will commence from the date of the final instalment of provisional tax.

Background

Under the previous rules, taxpayers who used the standard method for paying provisional tax but exceeded the safe harbour threshold of $60,000 residual income tax were liable to UOMI from the first instalment when their residual income tax for that instalment differed from the amount paid.

For taxpayers who cannot reasonably estimate their income (such as taxpayers with volatile or seasonal income) and who use the standard method, the previous rule could be unfair as provisional tax assumes a straight-line earning of income throughout a year.

The new Act introduces a new rule so that where a taxpayer makes all their provisional tax instalments (except for the final instalment) using the standard method on the respective payment dates UOMI will only apply from the date of the final instalment on the difference between the residual income tax and the payments made.

This change was announced by the Government in a pre-Budget release in April 2016 and the proposals consulted on in an officials' issues paper, *Making Tax Simpler – Better Business Tax*, released in April 2016.

Feedback following consultation at the select committee stage of the bill resulted in some changes to the technical detail of the proposal. These do not alter the policy intent of the original proposal.

Key features

For taxpayers who pay their provisional tax using the standard method and do not qualify for the safe harbour, UOMI will only apply from the date of the final instalment when:

- the taxpayer has made all of their instalments (other than the final instalment) using the standard method;
- has paid those instalments on or before the due date;
- any provisional tax associates have also used the standard method for all of their instalments (other than the final instalment); and
- there is no provisional tax interest avoidance arrangement.

For taxpayers using the standard method who do not meet the above criteria, UOMI will apply from the applicable instalment date on the *lesser* of the difference between:

- the amount of residual income tax apportioned to the particular instalment date and the amount paid by the taxpayer; or
- the amount of the standard method instalment for the particular instalment date and the amount paid by the taxpayer.

A “provisional tax associate” of a person (person A) is defined as follows:

- If person A is a company, another company in the same wholly owned group as person A is a “provisional tax associate”.
- If person A is a company, another person who has a direct or indirect shareholding interest in the company greater than 50 percent is a “provisional tax associate”.
- If person A is not a company or is a company acting as a trustee, another person in which person A has a direct or indirect shareholding interest greater than 50 percent is a “provisional tax associate”.

A provisional tax avoidance arrangement is an arrangement involving the manipulation of one or more amounts of residual income tax, including a zero amount of residual income tax, with the purpose or effect of defeating the intent and application of the UOMI provisions. It is intended to capture situations where taxpayers who are outside the “provisional tax associate” definition manipulate income between parties to avoid application of the UOMI rules. It is intended to apply only in cases of clear manipulation to remove parties from the UOMI rules.

Application date

The new UOMI rules for standard method taxpayers in section 120KBB of the Tax Administration Act 1994 apply for the 2017–18 and later income years.

Penalties for unpaid provisional tax

Late payment penalties and use of money interest apply to underpaid provisional tax.

An initial late payment penalty of 1% is applied to the amount of the unpaid tax from the day after your due date for payment. A further penalty of 4% is charged if your tax remains unpaid seven days after your due date (i.e. the additional 4% penalty is imposed on the 8th day after your due date). This is followed by a monthly incremental penalty of 1% until the date of payment.

Late payment penalties are only calculated once your actual RIT liability for the year is known. This is because a late payment penalty will only arise on unpaid provisional tax to the extent that your provisional tax payable exceeds your provisional tax paid.

Provisional tax payable will be the lesser of:

- the amount of provisional tax calculated as payable; and
- The appropriate proportion of your RIT for the year.

Early-payment discount for new small businesses

If you are self-employed or a partner in a partnership you may be entitled to a discount of 6.7% of the amount of income tax payable on income received before the income year in which you are due to pay provisional tax for the first time. The objective of this discount is to encourage you to make voluntary payments of tax before you are actually required to pay provisional tax.

If you are a new business you are not required to pay provisional tax until the income year in which your RIT first exceeds $2,500. In practice this means that you effectively have 2 years' worth of tax to pay in the year in which you are first required to pay provisional tax. The discount encourages new business owners to pay tax early and helps to relieve the financial strain in the year in which provisional tax is first paid.

Tax pooling

Tax pooling lets customers pool their provisional tax payments.

You make payments to an authorised intermediary who manages underpayments and overpayments on behalf of many unrelated taxpayers.

Actual payment of your provisional tax liabilities is made by the intermediary. Underpayments of tax will be offset against overpayments within the same pool. The pooling regime allows you to pool your tax payments with those of other taxpayers, even when there is no association.

Compared with the use of money interest rates paid or charged by the IRD the intermediary should be able to pay you a higher rate of interest on any overpayments of tax you have made into the pool and charge a lower rate of interest on any underpayments of tax made into the pool.

Standard Companies and LTCs – Explaining the features

Companies have two tax status options on incorporation:

- Standard
- Look Through Company (LTC)

Standard

Under the standard tax status all losses generated by a company must be held in the company until future profits offset them. A company may also make its tax loss available to offset the net income of another group company. Capital gains can only be distributed to shareholders tax free from a Standard tax status company on liquidation.

LTCs

An LTC (Look Through Company) exists for tax purposes only. An LTC retains its identity as a registered company and is therefore still governed by the Companies Act.

To become an LTC, a company must meet all the eligibility criteria for the whole of the income year. If there is a breach, the company cannot use the LTC for that tax year or for the two tax years following.

- Generally, an LTC's income, expenses, tax credits, gains and losses are passed on to its owners. These are allocated to owners in proportion to the number of shares they have in the LTC. Owners can also deduct expenditure incurred by the LTC before they became a member, if they pass certain tests
- Any profit is taxed at the owner's marginal tax rate. The owner can use any losses against their other income, subject to the loss limitation rule
- The loss limitation rule ensures that losses claimed reflect the owner's economic loss in the LTC
- The owners of an LTC are treated as holding the LTC's property directly in proportion to their shareholding. When owners sell their shares they are treated as disposing of their share in this property and may have to pay any tax associated with this, if certain thresholds are exceeded
- If the LTC ceases to exist or becomes an ordinary company, the owners are considered to have disposed of their shares at market value
- Look-through applies for income tax purposes only. Under company law an LTC retains its corporate obligations and benefits, such as limited liability

- An LTC is still recognised separately from its shareholders for:
  - GST (goods and services tax)
  - PAYE and employer tax responsibilities
  - FBT (fringe benefit tax)
  - RWT and NRWT (resident and non-resident withholding tax)
  - ESCT (employer superannuation contribution tax) and
  - RSCT (retirement scheme contribution tax)
  - The income tax rules for company amalgamations

The Main Advantage of being an LTC

An LTC may be a popular entity for certain small enterprises because losses can flow through to a shareholder.

The Main Disadvantages of being an LTC

Profits are taxed at the marginal rate not the corporate rate. And of course there are the usual costs related to statutory compliance for companies.

Our Recommendation

There is no longer one recommendation which will generally suit all situations. Please contact us to discuss your situation and the best option for you. We can then arrange for the appropriate documentation to be completed.

Reimbursing Allowances Paid to Employees

Any reimbursing allowance paid by an employer to an employee is tax free if it is incurred by the employee for the benefit and convenience of the employer.

Private vehicles used for work-related purposes

Inland Revenue allows the employer to reimburse the employee for using their private vehicle for work-related purposes.

The employer can choose one of the following:

- To reimburse actual costs incurred by the employee, or
- To use the Inland Revenue mileage rate, as per their website *http://www.ird.govt.nz/business-income-tax/expenses/mileage-rates/emp-deductions-allowances-mileage.htmlor*

- To use other published mileage rates, as long as they represent a reasonable estimate. For example, the AA makes mileage rates available free to members and at a cost to non-members. To obtain AA rates call 0800 500 333
- To reimburse costs based on a reasonable estimate of the amount of expenditure likely to be incurred by the employee

The use of the published IRD rate per kilometre can be used for any number of kilometres in a year. In other parts of the legislation there is a 5,000km limit – however not in relation to employee reimbursement. If, however, the employee is being reimbursed for a large number of kilometres, care does need to be taken that the amount of the reimbursement is not 'unreasonable' when considered in relation to actual costs. Any excessive reimbursement can be deemed to be taxable income to the employee.

Travel for work-related purposes

Any reimbursing allowance for travel must meet the following criteria:

- The reimbursing allowance being paid for transport costs must be additional to costs incurred in travelling between the employee's home and place of work
- The costs must be attributable to one or more of the following work-related factors:

Time of work: The time of day or days of the week the employee is required to work, cause the employee to incur additional transport costs

For example: A commercial cleaner travels by bus to start work at 8pm and finishes at midnight, by which time there is no bus available to travel home. The employee travels home by taxi.

Carrying work equipment: The employee is required to bring work equipment to work, which requires him or her to use a particular means of transport

For example: The Company van/truck is double-booked and the employee uses their own van/truck to complete business deliveries.

Temporary change in worksite: There is a temporary change from the normal place of work of an employee in relation to the same employer

For example: An employee is assigned to work at another branch across town for eight months. He or she incurs the cost of additional bus trips for that period.

The absence of a public passenger transport system

If you pay your employee more than the amount they incurred as a cost on your behalf, then that excess is treated as monetary remuneration and is subject to PAYE.

Shareholder Employees

If you are a shareholder-employee and you use your own private vehicle for work-related purposes, you have the same options as above available to you.

If you meet the conditions, you are able to be treated as an ‘ordinary employee’ (i.e. no 5,000km limit).

In order to qualify as an ‘ordinary employee’, one of the following conditions must be met:

- You must receive a regular amount of salary or wages at least monthly throughout the year, or
- You must receive a regular salary or wage that makes up at least 2/3 of your annual gross income as an employee of the company

If neither of these conditions is met, you will only be able to claim reimbursement for up to 5,000km per annum.

Other allowances

Instead of reimbursing actual expenditure incurred by an employee for any other work-related purposes, an allowance may be paid to the employee based on a fair and reasonable estimate of work-related expenditure likely to be incurred.

Some methods which can be used to show that the payment is fair and reasonable include:

- Carrying out a survey of expenditure incurred by employees
- Adopting an industry average agreed upon by Inland Revenue and representatives of that industry; or
- Following a public statement issued by Inland Revenue on that class of allowance

Our Recommendation

If you reimburse costs incurred by employees based on their actual expenditure, there is little likelihood that those reimbursements will be treated as monetary remuneration.

All reimbursement allowances should be checked thoroughly to ensure that they are not at some point deemed to be benefiting the employee, and therefore treated as monetary remuneration and subject to PAYE.

Rental Properties Ownership Structures and Deductibility of Expenses

There are four main structures used to operate a small rental business. These are:

- Sole Trader
- Partnership

- Company
- Trust

The type of business structure you choose will affect your taxation position, your personal legal liability and the life of your business. It is therefore important to make the right choice.

Sole Trader

- The sole trader manages and owns the rental property
- The taxable income of the sole trader includes the entire taxable income of the business and therefore cannot be attributed to family members (e.g. spouses) unless by way of salary reflecting work performed.
- The sole trader will be subject to the marginal individual tax rates, the highest being currently 33%
- The sole trader is personally responsible for any business debt or loss and any business creditor will therefore have the right to claim against the sole trader's personal assets (such as the family home) to enforce a right of payment
- The operational life of the business is limited. When the sole trader dies, the business organisation will come to an end automatically, unless otherwise provided in a will

Partnership

- Two or more people run the rental property as a business
- The taxable income of the rental business is split between the partners. The partners pay tax at their individual rates on their partnership income
- A partnership is not a legal entity separate from the individual partner. The members of the partnership are therefore personally liable for all partnership debts. Since partners are legal agents for each other, it is important to choose your partner or partners carefully

Company

- A company is a legal entity that is separate from the people who own it (the shareholders)
- The rental property is owned as an asset by the company
- A company is taxed separately from its owners at the corporate rate of 28%. It is important to note that the corporate rate is currently 5% lower than the highest individual marginal rate of 33%
- Company directors have some statutory obligations and various common law duties and responsibilities. All new companies are governed by the Companies Act 1993. It is from this Act that directors derive these powers, obligations and duties. They must act honestly and in good faith for the benefit of all the

shareholders and must exercise care, diligence and skill in performing their duties. If a company director breaches these statutory duties, he or she can be fined and/or sued by a shareholder

- In general, company directors are only liable for the company's debts to the amount outstanding of their shares, or to the amount of any personal guarantee given by them. They can however, be personally liable for the debts of the company, if the company continues to trade when it is insolvent
- Look-Through Company (LTC) points to note:
    - LTC profits are allocated to shareholders in the same way as losses
    - LTC shareholding changes can trigger a recovery of depreciation (as the assets are deemed to be beneficially owned by the shareholders)
    - The deductibility of losses can be limited by the economic interest of the LTC shareholders

Family Trust

- A typical trust has a settlor, at least one trustee, (who is given wide discretionary powers to distribute income and assets amongst the beneficiaries of the trust and to carry on the business) and a trust deed, the set of rules that governs the operation of the trust
- Trusts are becoming an increasingly popular form of business structure because they are a flexible means of distributing income and assets amongst various family members with possibly favourable tax consequences
- The trust is taxed separately at the rate of 33%
- Trustees are governed by the trust deed and the Trustees Act 1956. They have significant obligations to the beneficiaries of the Trust. A trustee should be fully aware of his or her obligations before accepting any appointment as a trustee

  The Law Commission is currently undertaking a comprehensive review of the Trustees Act and a significant overhaul is expected when it delivers its findings
- It is sometimes desirable for the rental property to be owned by a family Trust. However, if annual tax losses are likely, we tend to prefer an LTC structure, as the shareholders are then able to access the losses immediately. A Trust is not able to allocate its losses to beneficiaries, and must carry forward losses and offset them against future profits

Some of the expenses you can deduct from your rental income:

- Accounting fees
- Agent's fees and commission
- Interest on the rental property mortgage
- Legal fees in connection with arranging a mortgage and for the conveyancing to acquire the rental property
- Mortgage repayment insurance

- Motor vehicle expenses or travelling costs relating to the inspection, improvement or repair of the property
- Rates and insurance
- Repairs and maintenance (costs over $500 which improve the building may have to be capitalised)

From the 2011-2012 income year onward, depreciation deductions are no longer allowed for buildings with an estimated useful life of 50 years or more, such as rental houses and offices. Leasehold improvements of commercial buildings can be depreciated in certain circumstances

Goods and Services Tax (GST)

Residential properties are exempt from GST and accordingly GST is not charged on residential rents. You cannot make a claim for the GST on any of your residential rental property expenses

Our Recommendation

The choice of the correct business structure can be of critical importance to the tax effectiveness of the rental business.

We suggest that you make an appointment in the near future to review your ownership options.

Shareholder Remuneration and the Penny & Hooper decision

The Penny & Hooper decision is widely regarded as a landmark case and has generated a great deal of discussion as to its implications for other businesses.

Synopsis of the Penny & Hooper decision

The Supreme Court decision in Penny and Hooper v CIR was decided in favour of the Commissioner of Inland Revenue (CIR) and concluded that the setting of artificially low salaries amounted to tax avoidance.

Briefly, Penny and Hooper were two orthopaedic surgeons who practiced under their own names, each earning taxable income of between $600k and $850k a year.

They restructured their businesses into companies with a family trust owning most of the shares. They provided their services to the companies for which they were paid salaries of between $100k and $120k each year. The balance of the company’s income was then declared as dividends to the family trust.

The surgeons were then able to draw on the funds from their trust and did so regularly. Tax of between $20k and $30k a year was saved by having the profits after salaries taxed at the trustee rate rather than at the surgeon’s individual top personal tax rates.

The IRD used its reconstruction powers under the tax avoidance legislation to assess them with what they considered to be an appropriate level of income for the services they performed, rather than the artificially low salaries paid to them.

The court found that tax savings were a ‘more than merely incidental’ reason for the salaries being fixed at a low level and upheld the Commissioner’s reallocation of the income from the trusts back to the individuals who performed the services.

IRD’s response

The IRD has issued a Revenue Alert RA 11/02 setting out their current view on how the law should be applied following on from the Penny & Hooper decision.

Where income is generated from the supply of services provided by individuals, a combination of some or all of the following factors may result in IRD looking more closely at the business structure:

5. The controllers of the business arrange for an entity, such as a trading trust or a company, to operate and own the business. The operating entity engages or employs them (or contracts for their services);
6. Where the business has been transferred, the business operates substantially as it did before its transfer to the operating entity;
7. The business may not in substance be operated according to the terms of the arrangements entered into. This includes examining the agreements themselves, the manner in which they are actually implemented and also whether the overall arrangement is commercial having regard to a comparison with relevant standard business practices;
8. The degree to which the individual service providers or their family ultimately control the entity, its economic product and cash flows from the business;
9. Whether there is a redistribution of the underlying income from the entity to the person or to family members, usually via a trust but there are other mechanisms, for example, by way of employment of the family members perhaps at inflated salaries, or related party loans or the payment of management and other service fees to associates; and
10. The extent to which, as a consequence of the arrangement, significant tax benefits are obtained e.g. where the entity and/or any beneficiaries or shareholders pay lower marginal tax rates than would have been payable by the taxpayer, but for the arrangement.

The IRD recognises that there may be valid commercial reason why the service providers are not adequately remunerated, such as:

- Adverse business conditions mean that the business' profits are down but most of those profits are still paid out to the individual service providers;
- It is financially prudent to retain some profits in the business because it is anticipated that the business may experience financial difficulties in the near future;
- The profits are set aside to acquire business assets in the next financial year; or

- The business relates to a charity and the individual receives less to ensure the charity's return is maximised.

For these reasons, the IRD would not then expect to see much in the way of distributions being made to shareholders as dividends.

How does this affect you?

The IRD is now actively reviewing businesses providing professional services to determine whether they fall foul of the Penny & Hooper decision, and it is fair to say they are doing so with a fair amount of rigour and enthusiasm! The IRD's starting point is that 80% of profits should be paid out as salaries to the individual service providers.

The IRD is entitled to go back at least four years without having to consider the time bar, but they have publicly confirmed that where a 'full voluntary disclosure' is made, they will only reassess the last two income years for which income tax returns have been filed. The main benefit of a full voluntary disclosure is that shortfall penalties can generally be significantly reduced or avoided entirely.

Where assessments are amended, the increased tax, use of money interest, and possibly a shortfall penalty, will be payable.

If the IRD undertakes an audit without the benefit of a voluntary disclosure, they could go back further than the last two years, and impose shortfall penalties which could be as high as 100% (or 50% if there have been no previous shortfall penalties imposed) of the extra core tax that is payable, in addition to the income tax payable and the IRD interest that would be charged.

The IRD have confirmed the above concession will only to voluntary disclosures made prior to 31 March 2013.

Our Recommendation

If you would like to discuss your arrangements further please contact us as soon as possible. If you consider that your entities could **potentially** be the target of such an IRD review, we would like to meet with you to consider the impact of the Penny & Hooper decision on your circumstances. We will need to discuss the level of salaries paid historically, determine whether these are in fact 'market' based, and consider what action, if any, should be taken.

We can undertake a shareholder remuneration review for you and advise you on your position.

Sponsorship of Community Events/Teams

General Rule

If you provide sponsorship for your team or community event, depending on the type of sponsorship and as long as your business is being promoted, it may be completely deductible.

Fully deductible sponsorship

For sponsorship to be fully deductible, it needs to satisfy the general deductibility test. The IRD must be satisfied that the expense is in connection with advertising, and not a private expense on a recreational pastime. Therefore, for the expense to be deductible, the business must be promoted in some way, and the recepient of the sponsorship must also benefit from the expenditure.

Two examples of fully deductible sponsorship:

- Sponsoring $2,000 towards the local rugby league team's new uniforms. In return, the team agrees to display your business logo on the uniforms
- Sponsoring $10,000 towards the Life Education Trust – "Colour for Life" event. In return, the trust agrees to advertise your business in all media publications

Expenditure on sponsorship of a capital nature

If the expenditure is of a capital nature, such as a permanent neon sign or billboard, it is not fully deductible, and needs to be capitalised and depreciated as follows: -

- Neon sign – Depreciation rate of 20% on a diminishing value base
- Non electrical sign – Depreciation rate of 10% on a diminishing value base

Stocktakes

Who should do stocktakes?

- Taxpayers who either manufacture or buy and sell products have to value their stock on hand as at Balance Date. Typically this may be by way of a rolling (or perpetual) inventory system or by a physical stock count (or even a combination of both methods)
- Smaller businesses (those with a turnover of up to $1,300,000 and where stock on hand is likely to be less than $10,000) do not have to value their stock at year end – they can just use the opening value if they wish

What kind of systems?

- Businesses that use a perpetual inventory system – usually a computerised system – are able to produce a stock on hand value at any point with a reasonable amount of accuracy. Despite this, periodic checks should be made on the calculated totals to ensure that they are accurate – particularly the more high value items. It may be that an error has been made in the system or that some stock has gone missing. A regular system of physical checks should be established to check on the accuracy of the reports produced

What valuation methods should be used?

- Individual stock items should be counted and valued at their cost price. This often requires a bit of research and hunting through invoices to determine what the current purchase price of an item is. Some retailers have a code on their price stickers that represents what the purchase price of the item is – this can be particularly useful when doing a stocktake

- In some cases a business may have a very standard mark-up on all of their items – when doing a physical stocktake the retail price is recorded and then an adjustment made to take out the GST amount and the standard mark-up. This is really only suitable to a small number of high turnover types of businesses

- Care should be taken with stock that has devalued since it was purchased – perhaps it has been damaged or maybe the market for this type of product has crashed. In these circumstances the stock should be valued at the lower of cost price or net realisable value – i.e. what you can net after selling it. Of course, if the stock is worthless, it should be disposed of

- All stock values should be exclusive of GST

What should be included in the stocktake?

- Any items that have been purchased to resell should be included in your stocktake. As an example, if you are buying two products – say, products A and B – and making them into product C, you need to include all stocks of products A and B, together with all stocks of product C that you have on hand. These should all be valued at cost price and should not include any profit margins

- If you are holding stock on behalf of someone, for example on consignment, you should not count this stock in your stocktake as you do not own it

- You should not include any consumable items such as stationery, computer supplies and so on, in your stocktake

The Importance of Cut-Off Procedures

- It is important to have good cut-off procedures so stock is recorded accurately, as this has the potential to affect the calculation of gross profit. The more stock you carry, the more important this is

- You need to be careful with items of stock that arrive around balance date. Goods arriving during the last week of the year should be monitored with extra care.

- If you receive a shipment of stock items on balance date you will generally be invoiced for them on that date and the invoice will be included in your Accounts Payable – if that is the case the stock also needs to be included in your stocktake

- For example, assuming a March balance date, make sure all stock arriving on or just before balance date is:
  - Counted in the stocktake
  - Invoiced to you on or before 31 March
  - Either paid for on 31 March or included in Accounts Payable

- If you have good ‘inwards goods’ procedures in place it will be easier to have good cut-off procedures. Incoming goods need to be:
    - Shelved, or
    - Put in a holding area for inclusion in the stocktake

When should you do a physical stocktake?

- The stocktake should be done after close of business on the last day of the financial year – your balance date. You are wanting to establish how much stock you have paid for (or owe your suppliers for) that has not yet been sold

- In cases where it is not practical to close up shop to count your stock, care needs to be taken – you do not want to include items in your stocktake that are subsequently sold as this will overstate your profit for the year. If this is a problem for you, please do give us a call and we can talk through what options you have in this area

Our Advice

If you are at all unsure about how to go about doing your stocktake we suggest that you make a time to see us in the near future to discuss the best way to approach this. Attached to this report is a checklist to use for doing your stocktake – this should help you to conduct your stocktake in a more efficient way

Student Allowances and Loans

A student allowance is a weekly payment to help with living costs while studying full-time. A student loan is a loan to help with course fees, course-related costs and living costs.

If you receive a student allowance or student loan for tertiary study, you must pass more than half your course load over a set period to receive it again. Follow the link below to find out more.

https://www.studylink.govt.nz/products/

Terms of Trade

Terms of trade differ from business to business and from industry to industry. Small businesses providing goods and services often want, and can fit terms of trade on an A4 sheet of paper. In contrast the terms of trade for more complex businesses can run to several pages in length.

When drafting terms of trade for a standard seller of goods or services we consider the following areas:

The Parties

A particular advantage of having clear terms of trade is the prevention, or at the very least, minimisation of bad debts. It is essential that the legal entity you are contracting with should be clearly identified, whether it be corporate, individual or Trust.

Goods and/or Services

- An exact description of the nature of the goods and/or services is essential.
- If dimensions and specifications are included, are these exact or just estimates?
- Will there be customary or reasonable tolerances allowed?

Price

- Is the price fixed or can it be varied?
- Does the price include or exclude GST?
- Is the price a firm quote or only an estimate?
- If a quote is given, how long does it remain open for acceptance?

Payment

- Is the price payable 'cash on delivery', or is credit given?
- If on invoice, how many days after receipt of the invoice must the invoice be paid?
- What is the interest rate on credit provided?
- Will penalty interest accrue on an unpaid debt if payment is not made by due date?
- Is the debtor to incur the supplier's costs of pursuing the debt?
- Should a personal guarantee be obtained from the Directors of a Company, or the trustees of a Trust?

Delivery

- How, when and where will goods be delivered?
- Who pays delivery costs?
- What are the consequences of late delivery?

Risk and Insurance

- When does the risk in goods pass to the buyer?
- What are the risks of installation of the goods?
- Is insurance required?
- Who pays the insurance?

Reservation of Title

- The Consumer Guarantees Act 1993 requires that for a reservation of title clause to be enforceable, it must be fully explained to the buyer and it is preferable for the buyer to acknowledge this in writing and to be given a copy?
- Does ownership in the goods pass to the buyer when the goods are delivered or does the seller retain ownership until full payment is received Does the supplier have right of entry to the buyer's premises to repossess goods?

- Where goods have been intermingled or sold, does the supplier still have the right to reclaim the goods or to claim against the proceeds of the sale?

Installation

- What are the obligations on the buyer to provide suitable premises, accessibility, services and amenities?

Limits on Liabilities

- Careful consideration must be given to liabilities for defective products and a policy on refunds
- Supplying goods and services to consumers prevents contracting out of the guarantees and remedies implied by the Consumer Guarantees Act. (Supply of goods or services to businesses is open to parties agreeing in writing that the Act does not apply, allowing the parties to agree on liability)

Warranty

- If a warranty is to be given, what does the warranty cover and for what period?

Miscellaneous Clauses

- Right to cancellation
- Indemnity (against the failure by a buyer to use the goods in strict accordance with instructions)
- Terms of trade can be varied by notice in writing to the buyer from time to time
- Governing laws
- Force majeure
- Change of buyer details
- Notices
- Privacy
- Credit checks

Naturally the format of terms of trade shall be such that the buyer signs the terms of trade before the goods or services are provided.

Our Advice

Nowadays it is not sufficient for a company to simply post out terms of trade to its customers and expect them to be bound by them. The proper method of ensuring that customers are bound by terms of trade is to have them sign their acceptance. This is particularly important where directors or shareholders personally guarantee the performance of their company and where the provider of goods or services wants to be able to charge interest on unpaid monies.

Terms of trade are not generic documents and they are the subject of considerable litigation.

You should give careful thought as to what terms of trade best suit your business. We can provide some sample templates for various Terms of Trade Agreements just to get you started. However, you must understand that every business has different areas of exposure to risk, and very different needs as regards such an agreement. Your solicitor is the best person to draft a Terms of Trade Agreement suitable for your business, especially if there is any possibility of exposure to litigation through issues such as liability or warranty.

We are happy to go through the sample templates with you to identify the issues most relevant to you so that you can instruct your legal advisor most effectively as to your needs.

Travel Expenses, Domestic and International

A claim for travel expenses needs to satisfy the general deductibility test.

Generally, a deduction for travel expenses is calculated on a factual basis.

That is to say, a deduction is allowed for work-related travel including:-

- Travel between business places
- Travel overseas
- Travel to acquire plant

A deduction is not allowed for travel between your home and place of business, unless your residence is used as a work base.

Practically speaking, the best way to ensure that you have sufficient proof of the connection between the travel expense and your business is to record a memo of the nature of the trip and its relationship to your business with the expense invoice/receipt.

Travel and Capital Expenses

Generally, travel expenses relating to the purchase of business assets is regarded as capital and looked upon as part of the cost of the machinery.

However, a deduction is allowed for travel expenses undertaken to study new machines or processes.

Overseas Travel Expenses

Overseas travel expenses are deductible too the extent that they are incurred in the course of the taxpayer’s business. Any element of holiday expenditure is not deductible.

Given the Inland Revenue Department’s attitude to overseas travel expenses, the best advice we can give you is to complete a detailed travel itinerary and diary. You should record:-

- Letters of introduction
- Business contacts/cards
- Firms visited
- Business conducted
- Diversions from the business itinerary for personal purposes

- All items of expenditure, as well as the total cost

Where the trip contains a private or capital element, an apportionment of the costs may be necessary.

Each case will depend on its own facts

In general terms however, any apportionment will work as follows:-

- 100% deduction – where the holiday aspect is incidental to the work element
- Apportionment – where there are two purposes for the trip, both truly separate
- No deduction – where the work aspect is really just incidental to the holiday

Where the travel is by group tour, it is common for the tour organiser to supply the IRD with the necessary details. In such cases, the Department usually gives overall approval in principle and the individual's travel expenses are generally accepted without further question.

Taxpayer's Spouse/family members accompanying

Where a member of a professional is accompanied by his/her spouse and attends an overseas conference as the delegation leader, or a speaker, he/she may claim a deduction for the spouse's expenses.

Any expenditure which is of a holiday or private nature should not be claimed.

Some of the professions which qualify under this rule include:-

- Doctors
- Accountants
- Teachers
- Dentists
- Solicitors, Barristers
- Engineers
- Psychiatrists etc

Investor's Travel Expenses

In some cases, an investor may be able to claim a deduction of the travel expenses incurred in connection with the management or administration of investments. The investor would needs to show that there is a sufficient connection between the travel expenses and the business.

Our Advice

It really is best to consider the taxation implications of such travel before the trip is planned rather than on your return to New Zealand!

We suggest that you make an appointment to see us so that we can work together to legitimately maximize your travel expenses claim.

Trust Administration and Legal Costs and their Tax Deductibility

Legal, accounting and administration expenses are fully deductible if incurred in connection with:

- The preparation, stamping and registration of any lease of trust property used in the derivation of gross income
- The renewal or assignment of any such lease
- The preparation of any Deed of Acknowledgement of Debt
- Remuneration paid to trustees that is attributable to the derivation of gross income
- Remuneration in relation to tax advice
- Remuneration to trustees in relation to reviewing financial statements
- Attendances in relation to finance documentation (where finance costs are deductible)

Legal and administration expenses are not deductible if incurred in connection with:

- The cost of drawing up a Trust Deed
- The capital administration
- The distribution of income to beneficiaries
- The appointment of new beneficiaries
- The cost of settling any dispute related to beneficiaries
- Costs associated with a gifting programme

Trustees' Remuneration

When the capital of the trust is made up of mainly business and farming assets, and the trustees conduct business with those assets, the trustees' activities are accepted as relating to the derivation of gross income and not protection of the capital. Therefore, in these circumstances, the whole of the trustees' remuneration is permitted as a deduction for tax purposes.

Gifting

Deeds of Reduction in Debt and Gift Statements are prepared at the request of individuals who have previously advanced funds to the family trust, (the donors). It is the donors who provide instructions to their solicitor to complete such deeds and for these reasons, any related legal and administration expenses are not tax deductible to the family trust. The donor would have to show that the gifting, and legal fees incurred as a result, are part of their own business or income earning process, before being able to claim a deduction.

Understanding the IRD Use of Money Interest System

When do you have to pay Use of Money Interest to IRD?

There are four categories of taxpayers that pay Use of Money Interest. These are:

- Companies or Trusts (non-individuals) that pay tax in their own name
- Individuals who have estimated their provisional tax
- Individuals who have earned income which has either not been taxed, or has not had enough tax deducted from it, and the end of year residual tax works out at $60,000 or more
- Taxpayers who pay their taxes late

How is the actual amount of Use of Money Interest calculated?

Use of Money Interest rates are set by the Inland Revenue Department. They are set at a level which is intended to discourage taxpayers from using the IRD like a bank. At the moment the rate at which you pay Use of Money Interest is 8.27%. The rate at which you receive it (if you overpay your tax and you are in one of the above categories) is 1.67%.

If you are late paying your taxes you will incur a Use of Money Interest charge until the account is clear. Even if you enter into an arrangement to pay off your taxes over time you still have to pay the interest (in these cases you will often be able to avoid any further penalties).

Minimising Use of Money Interest

Where you are likely to fall into the Interest regime, it may be advisable to make voluntary payments of provisional tax as you go, as it is likely that you will find it cheaper to finance your tax payments through your trading bank.

We strongly recommend that you gain access to a good computer package that is capable of producing reliable and regular management reports, so that you are able to see your income unfolding as the year progresses. We have access to some excellent computer packages. You may wish to take responsibility for the completion of those reports yourself, or you may wish us to complete them for you, as so many of our clients do.

In any event, the importance of regular tax planning, in consultation with us, is self-evident.

Our Recommendation

1. Be informed. Make sure you have a broad idea of the likely tax commitments in advance. We can prepare a tax plan for you.

2. If your income circumstances change, let us know. There will be provisional tax consequences.

Vehicles – Lease or Buy?

If you are looking at buying a new vehicle and require finance, the salesperson will offer you two options. These options are to **'Lease'** or **'Purchase'**.

The most important point to note is that over the normal period for Leases or Hire Purchase (usually 3 years):

> **The overall cost of owning or leasing a vehicle works out to be approximately the same over the three years when all cost factors are taken into account**

Leases and Loans are simply two different methods of vehicle financing.

- Leases finance the use of a vehicle
- Hire Purchase (HP) or Loans finance the purchase of a vehicle

Each has its own benefits and drawbacks depending on the vehicle user's personal circumstances.

What should you consider when comparing lease options versus buy options?

When making a decision to lease or buy a vehicle you must look at your personal priorities and your financial situation.

Some things to think about include:

- Is having some ownership in your vehicle more important than low upfront costs and no deposit?
- Do you need the use of a new vehicle but do not have the funds for a deposit upfront?
- Is it important to you to pay off your vehicle and be debt free for a while, even if it means higher monthly payments for the first few years?
- What will be your likely funds position at the end of the lease or loan period?
- These days there are no risks of major repairs because all new cars have extended warranties of 3 – 5 years and a minimum of 100,000 kilometres on the speedometer

Implications of Leasing

There are two types of lease:

1. An Operating Lease

- An Operating Lease is a contract for the use of a new vehicle for a fixed period. It is usually 36 months (with a maximum term allowed for tax purposes of 45 months for a motor car) and the first payment is in advance. At the end of the lease period you hand the car back. Assuming the mileage is within the range set in the contract there will be no further payments required from the user

- Operating Leases can either be inclusive of full maintenance or not. Obviously the full maintenance options would mean significantly higher monthly lease payments

2. A Finance Lease

- A Finance Lease is also a contract for the use of a new vehicle for a fixed period. However a Finance Lease takes into account the likely value of the car at end of the lease period. This value at the end is called the 'residual value'
- A Finance Lease with a residual value tends to have a lower monthly payment than either type of Operating Lease. Further the lessee can usually buy the vehicle for the residual value at the end of the lease period. If the user's use of the vehicle is greater than normal then there is a chance that the vehicle will be worth less than its residual value. If that is the case then there is an extra cost to the lessee

When you lease, you pay an amount based on only a portion of a vehicle's cost, which is the part that you use for the duration of the lease. You have the option of not making any deposit and your monthly payments are fully claimable as an expense. You make your first payment at the time you sign the lease. If you are short of cash upfront, but do have good cash flow, a lease is a great way to acquire a new vehicle.

With an Operating Lease, instalments being effectively rental payments, GST is charged on the full amount of the instalment and claimed as an input in the relevant GST return.

As Finance Leases usually have an option to purchase the vehicle at the end of the lease term, GST is charged on the principal portion only of each lease instalment and claimed as an input in the relevant GST return.

In both cases, if the vehicle is not used entirely for business purposes the GST input tax claimed will be subject to the new apportionment rules published in the February 2011 edition of Inland Revenue's Tax Information Bulletin.

Implications of Buying

When you buy, you pay for the total cost of a vehicle regardless of how many kilometres you drive it. You make a deposit, and pay an interest rate determined by the Finance Company or Bank. You make the first payment a month after signing the contract and can select the period of time you wish the HP/Loan to be spread over.

Once the HP or loan balance has been repaid you will own an asset – given the nature of most vehicles the asset will be worth less than what you paid for it – however it will still have a value. If at this point you want to upgrade to a newer vehicle you will have some equity that you can use as a deposit on a new vehicle. Alternatively you could continue to use the vehicle debt free – you have to remember however that the age of the vehicle may mean that your repair costs may be higher – this will depend in part on how well you have maintained it in the first few years you owned it.

The vehicle may be used to secure any HP you take out to buy it. If you sell before the end of the HP term you have to repay the balance of the HP.

For tax purposes we treat the vehicle as a fixed asset and depreciate it at the appropriate rate. We also claim the interest on the HP or loan. The depreciation and interest claimed is often similar to what you would be paying if you were leasing the vehicle. Generally we find that the tax implications of leasing versus buying are minimal.

Our Advice

If after reading this report you are still unsure about how to proceed, please do contact me and we can talk through the implications – often having another person to discuss these options will make the decision easier. Our Vehicle - Buy vs Lease vs HP Asset Analysis allows us to compare the various options of leasing versus buying.

As stated at the beginning, the overall cost of 'using' a vehicle compared to the cost of 'owning' a vehicle is much the same over a period of, say, 36 months. It is the personal circumstances of the user that determine which option he or she will take.

Wage Subsidies

Work and Income can provide financial assistance to an employer who employs someone who has been recommended by them and who has been unemployed for a certain period of time. The financial assistance is provided to help the employer with wages, training and other costs to help get the person up to speed in the job.

Certain eligibility criteria must be met in order to qualify for this assistance:

- The employee must meet Work and Income's own eligibility criteria
- The position offered must be:
  - Permanent
  - Continuing once the subsidy has finished
  - For at least 30 hours a week (although some assistance is available for part time positions)
- The pay rate must be the going rate for that type of position
- No other person must have been dismissed in order to employ this person

You, the employer, negotiate with Work and Income to agree upon the amount of the weekly subsidy and duration over which Work and Income will pay. You work together to decide on what investment is required to train and update the skills of the employee.

If you as an employer qualify for this then a formal agreement is entered into with Work and Income outlining:

- The terms and conditions
- The agreed weekly level of the subsidy
- The length of time that this is to be paid for that employee

The weekly subsidies are usually paid four weekly in arrears. You would complete a claim form and file this together with an attendance sheet or wage record signed by you as the employer and the employee each month. As the first subsidy would not be received until after the employee has completed the first four weeks' employment, you should take into account the initial wage cost upfront for the first four weeks.

Any wage subsidy paid to an employer by the government or public authority will normally be GST inclusive. Therefore if you are registered for GST you will need to include the amounts of subsidies received as part of total income in your GST returns.

Our Advice

Work and Income have several other employment type subsidies available that may also be of benefit to you.

We suggest that you contact the Employer Service section of Work and Income on 0800 778 008 to discuss this matter further with them in order to find the best options available to you as the employer.