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## Withholding Payment Regulations – Confused?

In November 2007 Mohammad Wasim received a prison sentence of 5 years nine months for his role in what the Inland Revenue called the biggest horticultural industry tax fraud they had ever prosecuted. The scheme, carried out between 1 April 2004 and 31 October 2006, involved contractors evading their tax liabilities by claiming they subcontracted work to another company or having another company issue an invoice for work completed by their employees.

The horticultural industry has been the subject of considerable IRD scrutiny due to it historically being an easy target for tax evasion. The Withholding Payment Regulations (WPR) currently require tax to be deducted from payments made to fruit pickers (individuals and companies). However, prior to 1 April 2006 if these services were carried out by a company for an orchard owner, withholding tax did not have to be deducted. Due to this exemption, companies were setup to carry out the work, with no withholding tax being deducted from the income earned. The individuals who set up the companies simply walked away without the tax being paid. From 1 April 2006 the rules were changed specifically to counter this scenario. Withholding tax is now required to be deducted from payments to companies that carry out work of this nature.



The problem with the WPR is that they can be confusing, as they appear to overlap the PAYE rules. This makes it hard to distinguish whether a WPR tax code or a generic PAYE tax code should be used. The mechanism used by an employee to select the correct tax code is the Inland Revenue form, IR330. The form itself requires a WPR rate (withholding tax rate) to be used if a person is operating under a “contract for service” and “not for salary or wages”, but the form does not explain the distinction. The basis for the distinction lies in the difference between how employees are taxed versus the self employed. A person employed under a “contract of service” is an employee and their income is taxed through the withholding of PAYE by their employer. The self employed on the other hand are employed under a “contract for service” and are responsible for meeting their own tax obligations as they are required to calculate their income and expenses and file an income tax return.

Whether a WPR rate or a generic PAYE rate applies will depend on the circumstances under which the person is to work. The WPR are not relevant if a person is an employee, i.e. the person is employed under a “contract of service”.

Indications that a person is an employee include an entitlement to annual and sick leave, having set

working hours, no financial risk, and having a high level of control by their “employer”. If a person is an employee and therefore is receiving a salary or a wage, the WPR do not apply and the generic PAYE rates are followed. If a person is self-employed the WPR apply and withholding tax must be deducted at the rate of 20%.

## Provisional Tax Changes

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There is an important tax change approaching in respect of the dates on which provisional tax must be paid.

From the beginning of the 2008-2009 tax year (i.e. commencing from the month following the 2008 balance date), taxpayers will be required to pay GST and provisional tax together, in the months when provisional tax is due. Taxpayers will continue to file a GST return as normal, but will make a combined payment for GST and provisional tax in the months that provisional tax is due. In all other periods other than when provisional tax is due they will continue to make GST payments only.

The number of times that taxpayers pay GST will not change, but the number of times that they pay provisional tax each year might change depending on how often they file and pay GST. If they file and pay GST every two months or every month, they will pay three provisional tax instalments each year, just as in the past, but remembering that they will also be paying GST on those same three dates of the provisional tax instalments. If they file and pay GST every six months, they will pay only two provisional tax instalments each year, on the same dates that they file and pay GST.

At this stage there is nothing more that taxpayers have to do. Inland Revenue will make the change for them, and will advise them of the change before the commencement of the 2008-2009 tax year. After the commencement of the 2008-2009 tax year Inland Revenue will send taxpayers the new GST and provisional tax return (GST 103), which will replace the GST return that is currently sent to them.

We will continue to send out provisional tax reminders, allowing sufficient time for provisional taxpayers to be able to enter the amount of provisional tax that we advise onto the GST 103 return form and pay the provisional tax along with the GST. If a GST refund is due, at a time that provisional tax is payable, there will be an automatic right to deduct the GST refund from provisional tax that is payable.

If the GST return is prepared by us, we will of course automatically incorporate the above changes in the work that we carry out, and will advise accordingly of the amount that is payable at any given date.

## Unclaimed Tax Refunds

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Information provided by Inland Revenue indicates that in respect of every Income Tax year, there is in the region of \$80 million owed to taxpayers, by way of unclaimed Income Tax refunds.



Sometimes taxpayers are unsure about whether they should file an Income Tax return. Official information

available suggests that certain taxpayers may not be required to file a return and this is commonly found to be the prevailing public opinion or belief.

While this official information may well be correct, each and every taxpayer will not receive back any tax refund owing unless steps are taken to communicate the refund claim to Inland Revenue.

Taxpayers who are unsure about their position in respect of their Income Tax situation are well advised to contact us so that we can assist them to ascertain exactly whether or not an Income Tax refund is owing to them. Often the cost involved in clarifying the overall situation will be significantly exceeded by the amount of refund claimed, making the exercise well worthwhile.

## Renewing your Community Services Card

### Income Limits (gross/before tax)

To be eligible for a card, your total annual income must be less than:

Singles – Sharing accommodation	\$21,676.00
Singles – living alone	\$22,981.00
Couples – no dependents	\$34,328.00
Family of 2 (one parent, one child)	\$41,196.00
Family of 3	\$49,364.00
Family of 4	\$56,096.00
Family of 5	\$62,684.00
Family of 6	\$70,073.00
Family of 7	\$76,555.00
Family of 8	\$83,037.00
Family of 9	\$89,519.00
Family of 10	\$96,001.00
Family of 11	\$102,483.00
Family of 12	\$108,965.00

For a family of 13 or more add \$6,482 for each additional child.

Any taxable income must be taken into account. Include all wages, interest, dividends, income from rent, business income, New Zealand Superannuation, other private pensions, and any other income. Business losses are ignored for Community Services Card purposes.

### Notes about applying

Singles: You “live alone” if you do not share with other adults. You “live alone” in a granny flat if you

own it or pay full rent and live independently without sharing expenses. If you live with others, including a home, hospital or hostel you are “sharing accommodation”.



Couples: You are a “couple” if you are married or in a Civil Union or living together in the nature of marriage.

If you have a partner, you must both apply because eligibility is based on joint incomes.

It is important you only include your share of the joint income on your part of the form.

To prevent delays, please complete all sections and check the form is signed (by both partners) and return promptly.

If you are no longer eligible, you can re-apply later if your circumstances change.

### Annual New Zealand Superannuation Rates (gross/before tax)

Singles – sharing accommodation	\$16,102.32
Singles – living alone	\$17,505.80
Couples (each)*	\$13,296.40

\*If your spouse or partner has not reached the qualifying age for New Zealand Superannuation your payments are income tested and may be less than above.

## Deducting PAYE from children’s earnings

If the earnings of a child of school-going age do not exceed \$45 per week, the employer is not required to deduct tax from the weekly earnings, and the child is not required to complete a tax code declaration form (IR 330) or to furnish an annual return of income.

This is also the case if the weekly earnings exceed \$45 but the annual earnings are not expected to exceed \$2,340. In the event that the earnings exceed \$45 per week and the yearly income exceeds \$2,340, the weekly tax may be reduced by \$6.75 per week to take into account the child rebate if the child has used the M tax code.

Additionally, if the child rebate applies, the IRD may rule that an employer does not need to make deductions from the child’s salary or wages. The employer is then not required to deduct the earner’s levy for accident compensation purposes.

This does not apply to income from withholding payments that exceed \$45 per week. Where PAYE does not need to be deducted, the children should not be included on the employer monthly schedule. However, wage records must still be kept for the children.

## Snippets

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### **Student Loan Repayment Threshold**

From 1 April 2008 the student loan repayment threshold will rise from \$17,784 to \$18,148.

### **Tax Legislation Enacted**

The second major piece of tax legislation introduced in the 2007 Budget finally received Royal Assent in December 2007. The passing of the legislation introduces various changes, some of which received considerable attention by the media at the time of the Budget.

Key amendments include:

- the introduction of employer and employee KiwiSaver tax credits and the requirement for employers to contribute to an employee's KiwiSaver scheme
- the introduction of tax credits for research and development
- measures to enable a smooth transition to a 30% company tax rate.

### **Inland Revenue Alerts**

The Inland Revenue (IRD) has launched what it has called an early warning system for tax professionals. The service is intended to highlight significant or emerging areas of concern that have been identified by the IRD. This could involve a scheme, arrangement or particular transaction. By fully informing tax professionals of these issues, the IRD hopes that voluntary compliance will improve as taxpayers become aware of what the IRD considers risky.



Most recently the Revenue Alert Service has been used to express the IRD's concern over "the family home" being sold to a Loss Attributing Qualifying Company (LAQC), which then rents it back to the family, thus "allowing" what were non-deductible personal expenses to be claimed for tax purposes. Depending on the specific facts, the IRD may consider this tax avoidance.

*If you have any questions about the newsletter items,  
please contact us, we're here to help*