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# Client Newsletter

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February & March 2010

## Managing Tax Debt

We all know that we must pay tax and that failure to do so by due date means we will incur penalties of all sorts. However, it seems that in difficult times there is a tendency for business owners to push tax payments down the list of priorities. Inland Revenue Department (IRD) has payment options available and is willing to help businesses to keep their taxation commitments.

If you are having difficulties meeting your tax obligations then it pays to contact the IRD before the due date. They will discuss the issues with you and if appropriate set up an instalment arrangement whereby you pay an agreed amount over a period of time. As long as you meet all your obligations under the arrangement you will only be charged one late payment penalty of 1%. No further penalties will be charged.

In some cases you can apply to have part of the debt written off if it is determined that full payment would cause you serious hardship. You will need to apply in writing setting out what your current financial position is, and reasons to support your request. If you are granted relief and you have a loss or excess imputation credits carried forward, these balances will be reduced in proportion to the amount written off.

Always be sure to contact the IRD immediately if you receive a statement of account or letter requesting payment and you disagree with the amount owing.

For more information, contact your accountant who will help you when dealing with these tax issues.

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## Time Bar Waiver

There is a time bar of 4 years for an income tax audit by the Inland Revenue Department (IRD). The 4 years run from the income year in which the tax return is lodged with the IRD - for example if a 2005 tax return (with a standard balance date) was filed before 31 March 2006 then the IRD has until 31 March 2010 to audit or investigate the 2005 income tax. The IRD can re-assess the 2005 year after 31 March 2010 if the taxpayer waives the time bar before 31 March 2010.

There have been instances in the past where the IRD investigators have sent letters close to 31 March along with a Time Bar Waiver form (IR775) requesting the taxpayer to sign and fax it to them before 31 March without explaining what the consequences of signing or not signing the form will be. Even the IR775 form itself does not explain anywhere that the taxpayer does not have to sign.

This effectively leaves the IRD to dispute a tax return that is no longer time barred.

In actual fact, the taxpayer is not obliged to sign the Time Bar Waiver and there is no prejudice to him in not signing. However, once it is signed, the taxpayer may not be able to escape out of it because legally he was not forced to sign.

It is always prudent to seek professional advice before signing any IRD forms received directly from the IRD.

## Tax Treatment of Certain Payments to Employees

Recent amendments to the Income Tax Acts ensured that certain payments and allowances made by employers to their employees are tax-free in the hands of the employees, provided certain conditions are met. These are listed below and are effective from the 2002-03 income year.

## Relocation payments

Work-related relocation payments made by an employer are tax-free to the employees provided all of the following conditions are met:

1. The employee's relocation is required as the result of: taking up new employment with a new employer, or taking up new duties at a new location, or continuing in their current position but at a new location.
2. The employee's existing home is not within reasonable travelling distance of their new workplace (unless accommodation is provided as part of the job).
3. The expense is on the list of eligible relocation expenses.
4. The payment is no more than the actual expenditure incurred.
5. The expenditure is incurred before the end of the tax year in which the employee relocates following the tax year in which the relocation occurs.

## Overtime meal allowances

For these payments to be tax-free all of the following conditions must be met:

1. Either the employee's employment contract specifies they're eligible for a payment for overtime hours worked, or the employer must have a policy or practice of paying an overtime meal allowance.
2. The amount paid must be the actual cost incurred by the employee, with receipts/invoices for amounts over \$20 per meal, or a reasonable estimate of the expenditure likely to be incurred.
3. The employee is required to have worked at least two hours overtime on the day of the meal.

## Sustenance allowances

For sustenance allowances to be exempt income of the employee, all of the following criteria must be met:

1. The employer must have an established policy or practice of paying sustenance allowance.
2. The employee must work a minimum of seven hours on the day.
3. Their employment must require them to:
  - work outdoors and away from their employment base for most of the day; and
  - undertake a long period of physical activity in travelling through a neighbourhood or district on foot or by bicycle.
4. It's not practicable for the employer to provide sufficient sustenance on the day for the period when the employee is working outdoors.
5. The allowance recognises:
  - the demanding physical nature of the employee's work; and
  - that the employer would normally provide tea, coffee, water, or similar refreshments at their place of employment.

Where employees have paid PAYE on relocation payments, overtime meal allowances or sustenance allowances which meet all of the above requirements, they will be entitled to a credit for overpaid PAYE from 1 April 2002 since these rules apply from the 2002-2003 income year. Similarly, if the employer has claimed these payments as a business expense for income tax purposes, an adjustment may be required in the corresponding income tax returns.

The PAYE credits can be claimed by completing an Employer monthly schedule amendments (IR344) form for the return periods affected and advise the IRD in writing about any adjustments required for the PAYE expense claimed in the income tax returns.

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## An update on associated persons

The associated persons rules have been reformed and are effective from the 2010-2011 income year (except those applying to the land provisions).

The changes can impact on the provision of fringe benefits to employees or associates. For example, where an entity, particularly a trust that had been placed between the employee and employer, was previously considered not to be an associated person, under the new rules the entity will probably be an associated person.

The new rules apply to land acquired on or after 6 October 2009, and for persons involved in a building business, when improvements are commenced from that date.

There are a number of other changes to the associated persons definitions. For more information refer to your tax advisor.

Important: This is not advice. Clients should not act solely on the basis of the material contained in the *Client Newsletter*. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The *Client Newsletter* is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval. 188/2010.