

May 2018

*A special report from*  
Policy and Strategy, Inland Revenue

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## **PAYE reporting changes and changes to the payroll subsidy scheme**

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The Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 introduced changes to the administration of PAYE information and to the payroll subsidy scheme.

This special report provides early information on the new rules, in particular on payday provision of PAYE information, and precedes full coverage of the new legislation in the June 2018 edition of the *Tax Information Bulletin*.

These items are covered in this special report:

- payday provision of employment income information;
- transitional provisions;
- consolidation of PAYE administrative requirements; and
- the payroll subsidy.

## **PAYDAY PROVISION OF EMPLOYMENT INCOME INFORMATION**

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*Sections 3(1), 14G, Subpart 3C, sections 24J, 36A, 36B, 36CA, 36D, 36E, 46, 47, 48, 80D, 80KT, 125, 139A, 139AA(1), 139AA(3), 139AA(4), 139AA(7), 141AA, 141ED, 142G, 183A, 278B, 279, and schedules 4 to 6 of the Tax Administration Act 1994; sections 4, 17, 22, 23, 34, 42, 60, 73, 93, 97, 98, 98A and 99 of the KiwiSaver Act 2006; sections CE 1(3B), CE 2(7) to (9), LD 4, LD 5, RD 6, RD 7B(3), RD 10(2C), RD 13(B), RD 22, RD 23, YA 1 and schedule 2, of the Income Tax Act 2007 – other changes to the Income Tax Act are included in the section on “Consolidation of the PAYE administrative requirements”*

### **Background**

PAYE is a withholding mechanism used by employers and PAYE intermediaries to deduct income tax and ACC earners' levy from employees' salary and wages, and as appropriate from schedular payments, and pay it directly to Inland Revenue. The PAYE system is also used to collect payments and information for many income-related social policies including student loan repayments, KiwiSaver contributions and some child support payments.

The amendments introduce changes to the reporting of PAYE information. The current requirement for an employer monthly schedule (EMS) is replaced from 1 April 2019, with a requirement that an employer sends 'employment income information' to Inland Revenue within a few days of each payday. Employers can voluntarily adopt payday reporting from April 2018.

The amendments take advantage of the capabilities of modern payroll software and are intended to reduce the compliance and administrative costs associated with the PAYE system. The changes will improve the timeliness of employment income information. They will create opportunities to improve the accuracy of withholding from individual taxpayers and to improve the administration of social policy.

No changes have been made to employers' obligations to pay PAYE and other deductions to Inland Revenue. Payments will remain due on the 20<sup>th</sup> and 5<sup>th</sup> of the following month for large employers and the 20<sup>th</sup> of the following month for all other employers.

Some employers have indicated that they would like to pay their PAYE and other deductions to Inland Revenue at the same time as they pay their staff. Inland Revenue is managing the transfer of PAYE from its old computer system to the new one in several releases. Once this process is complete, which is not expected to be before 2020, it is intended that it will be easy for employers to choose to pay IRD at the same time as they pay their staff.

### **Key features**

New subpart 3C of the Tax Administration Act 1994 contains the rules for employment income information. Section 23C and schedule 4 set out what 'employment income information' means.

These sections provide that an employer<sup>1</sup> must provide the information in schedule 4 to the Commissioner on a payday basis. The due dates and filing requirements are set out in new

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<sup>1</sup> Except where an exception is noted references to an employer should be read as applying to a payroll intermediary.

sections 23D to 23K and differ depending on which employer group the employer belongs to. There are three employer groups, the non-electronic group, the new group of employers and the on-line group.

### ***Online group***

The online group is the default group. Employers are included in the online group unless they have an exemption or meet the criteria for the non-electronic group or the new group. Payroll intermediaries are included in the online group. Payday filing for this group generally means within two working days of payday. There is an exception, described below, for certain ‘special payments’.

### ***Non-electronic group***

An employer is included in the “non-electronic group” if:

- they have a small payroll, withholding less than \$50,000 of PAYE and employers superannuation contribution tax (ESCT) in the previous tax year, and they submit their employment income information on paper; or
- they are in the new group and submit their employment income information on paper; or
- they have an exemption from the online group and submit their information on paper.

The threshold at which electronic reporting was required was previously \$100,000 of PAYE and ESCT in the previous tax year. Section 23F(6) reduces the threshold to \$50,000 of withholding in the previous year. This threshold may in future be changed by Order in Council following consultation.

Employers in the “non-electronic group” are generally required to provide employment income information within 10 working days of payday. These employers also have an option of providing information about each payday but treating the 15<sup>th</sup> and last day of the month as their paydays for the purpose of calculating the due dates. This option reduces the reporting requirement to twice a month and is intended to reduce compliance costs.

### ***New group of employers***

An employer is in the “new group of employers” for their first six months employing staff, regardless of how much PAYE and ESCT they withhold during that period. An employer in the new group has the same obligations as an employer in the non-electronic group. This categorisation enables the new employer to submit their employment income information on paper. However, if they choose to submit electronically, the employer is immediately included in the online group.

After the six month period the amount of PAYE and ESCT withheld determines which group a new employer is in.

### ***Employees providing information***

The requirements for employees who have an obligation to provide employment income information to the Inland Revenue are in new section 23I. These employees have ten working days after the end of the month to provide employment income information to Inland

Revenue. This group includes what are known as IR56 taxpayers such as private domestic workers and employees of foreign embassies.

### ***Rules for certain special payments***

New sections 23J and 23K recognise that payday reporting of certain categories of payments would be impractical or could impose undue compliance costs. Payments made by an employer to an employee outside of the regular payment cycle may be reported on a payday basis, or reported as if they were paid on the next regular payday. To avoid problems reconciling information and payments the information cannot be included with the next regular payday if that payday falls after the end of the employer's 'payment period'.

The requirements for schedular payments, payments made to persons on shadow payrolls and employee share scheme benefit reporting allow the employer to choose between reporting these payments on a payday basis or twice monthly. In addition, further time is allowed for the value of payments made to persons on shadow payrolls and for share scheme benefits to be calculated.<sup>2</sup>

### ***New employees***

New section 23L and schedule 4, table 2 set out the requirements for information concerning new employees. The objective is to eliminate the need for new staff to fill out paper forms for Inland Revenue and to allow fully electronic onboarding of new employees with the relevant information being electronically transmitted to Inland Revenue.

Employers are required to provide a new employee's date of birth to Inland Revenue, if the employee has supplied it, and to provide address details. This information is required to help confirm the employee's identity and to assist Inland Revenue to maintain up-to-date contact details. This information will only be required from new employees and employers are not required to provide it for existing employees. The Commissioner is currently considering whether to use her discretion under section 23Q to exempt payers of schedular payments from the obligation to provide this information return in respect of schedular payees.

### ***Error correction***

New section 23N provides that regulations can be made to specify how errors in employment income information can be corrected. Before such regulations are made there must be appropriate consultation.

### ***Penalties***

Amendments to sections 139A, 139AA, and 142 and 142G update the penalty provisions for late filing or non-electronic filing of employment income information. These penalties remain monthly penalties. An employer with a weekly payroll who failed to meet the due date on more than one occasion during a calendar month would incur no greater penalty than one who runs a monthly payroll and was late providing their one return. In addition, a discretion is added enabling the Commissioner to adopt an educational approach during the early stages of payday filing.

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<sup>2</sup> These measures do not change the date on which the value of the payment or benefit is determined.

## **Application date**

The changes come into force on 1 April 2019.

As outlined in the transitional provisions section, the transitional provisions allow an employer to elect into payday filing before 1 April 2019. The transitional provisions are effective from 1 April 2018 and come into force for an employer when they elect to submit their information on a payday basis during the period 1 April 2018 to 1 April 2019.

## **Detailed analysis**

### ***Employment income information***

Payday (as defined in section 3) means the day on which an employer makes a PAYE income payment to an employee. For employers instructing a bank to transfer funds to an employee the payday is the date that the employer has instructed the bank to make the funds available, early transfer of the funds, for example on the preceding evening, does not change the payday.

New section 23C defines “employment income information” as the items of information set out in schedule 4, tables 1–3. Table 1 information is required on a payday basis and includes:

- the information currently on the employer monthly schedule (EMS);
- the date of the payday; and
- the amount of ESCT for each employee. This information is currently required on the PAYE income payment form (IR345 or EDF) at an aggregated level.<sup>3</sup>

An amendment to section RD22(2) of the Income Tax Act 2007 repeals the requirement for a separate form to accompany payment (the PAYE income payment form, commonly known as the ‘employer deduction form’ or IR345). To permit payments to be processed, new section 23O(2) authorises the Commissioner to require information to accompany payment. Until all PAYE information is processed in Inland Revenue’s new computer system, estimated as 2020, the existing requirement for the PAYE income payment form (IR345) will continue, and the due date for this information, will continue to be the date that the payment of PAYE and other deductions is paid.

Employers, who have not paid PAYE income in a pay period, will not be required to file a nil payday return. The operational details to support this are still being developed and will be made known through the Inland Revenue website when they are finalised.

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<sup>3</sup> While this reporting requirement is listed in schedule 4, table 1, row 6 at an aggregated employer level, the Commissioner is seeking the amount of ESCT payable for every employee, as applicable, as Other particulars as the Commissioner requires under schedule 4, table 1, row 8.

## *Employment income information for new and departing employees*

New section 23L and schedule 4, tables 2 and 3 set out the requirements for information about new and departing employees. Table 2 brings together the requirements from the IR330 (Tax code declaration) and KS2 (KiwiSaver deduction form) in a way which supports “fully electronic onboarding” of new staff and allows for an electronic interchange of details between the employer and Inland Revenue before the new employee is first paid. Paper forms will still exist and those below the electronic filing threshold may communicate the information on paper.

The objective of an early exchange of information is to ensure that the new employee is set up correctly from the beginning. While Inland Revenue will encourage employers to provide new employee information before the first payday the obligation is to provide it no later than the first time payday information is provided which relates to that employee. The items of information in schedule 4, table 2 about new employees are:

- the name of the employer;
- the tax file number of the employer;
- the contact address of the employer;
- the full name of the employee;
- the contact address of the employee;
- the date of birth of the employee if supplied to the employer;
- the tax file number of the employee if supplied to the employer;
- the tax code supplied by the employee; and
- the KiwiSaver status of the employee under section 22 of the KiwiSaver Act 2006 (the information additional to the above, on the existing KS1 form concerning membership and a new “not eligible” status)

In circumstances where an error has been made with the IRD number the provision of date of birth information will assist the department to resolve the problem without further contact with the employer.

The “if supplied” caveat on the requirement for date of birth information means that the employer must ask the new employee for it but if the employee does not supply it the employer is not obliged to take further action. Unlike an employee who does not elect a tax code, an employee who does not supply their date of birth should not automatically be placed on the non-notified tax code.

The requirement for contact address details has been extended from applying to employees who are enrolled in KiwiSaver to all new employees.

The information required about a departing employee<sup>4</sup> in Table 3 is the date at which the employee stopped being an employee of the employer. This information is required at the time of the last payment to the employee but it can be supplied in advance.

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<sup>4</sup> “Employee” is defined in section YA 1 of the Income Tax Act 2007 as a person who receives or is entitled to receive a PAYE income payment.

**Example**

Carla is on a contract which includes a year-end bonus depending on company results. She resigns in December but under her contract retains an entitlement to a percentage of the bonus to be paid in April.

The company's practice is to leave departing employees on the payroll system until the bonuses have been paid. As Carla is still entitled to receive a PAYE income payment from the company she fits the definition of an 'employee' under the Income Tax Act 2007. Once bonuses have been paid out the company removes Carla from its payroll system and Inland Revenue is advised that she is no longer employed with them.

**Example**

Mathieu works for a company where staff are removed from the payroll as soon as their last substantive pay has been processed. Any subsequent "wash-up" pays for year-end bonuses or other issues are managed manually.

The Company notifies Inland Revenue of a departing employee following the final substantive pay and could subsequently lodge the details of any subsequent wash up via an "error-correction" process rather than by adding the employee back into the payroll system. This optional approach does not change the due dates for information or payment but makes a lower cost channel available for the submission.

The advantage for an employer in promptly reporting that an employee has ceased to be employed is that it will end the relationship between the employer and employee in Inland Revenue's system much more quickly than under the current system. Thereafter Inland Revenue will no longer contact the employer about that employee.

***Amendments to the KiwiSaver Act 2006***

The KiwiSaver Act 2006 has been amended to update references and to repeal the definition of and references to, the KiwiSaver deduction notice.

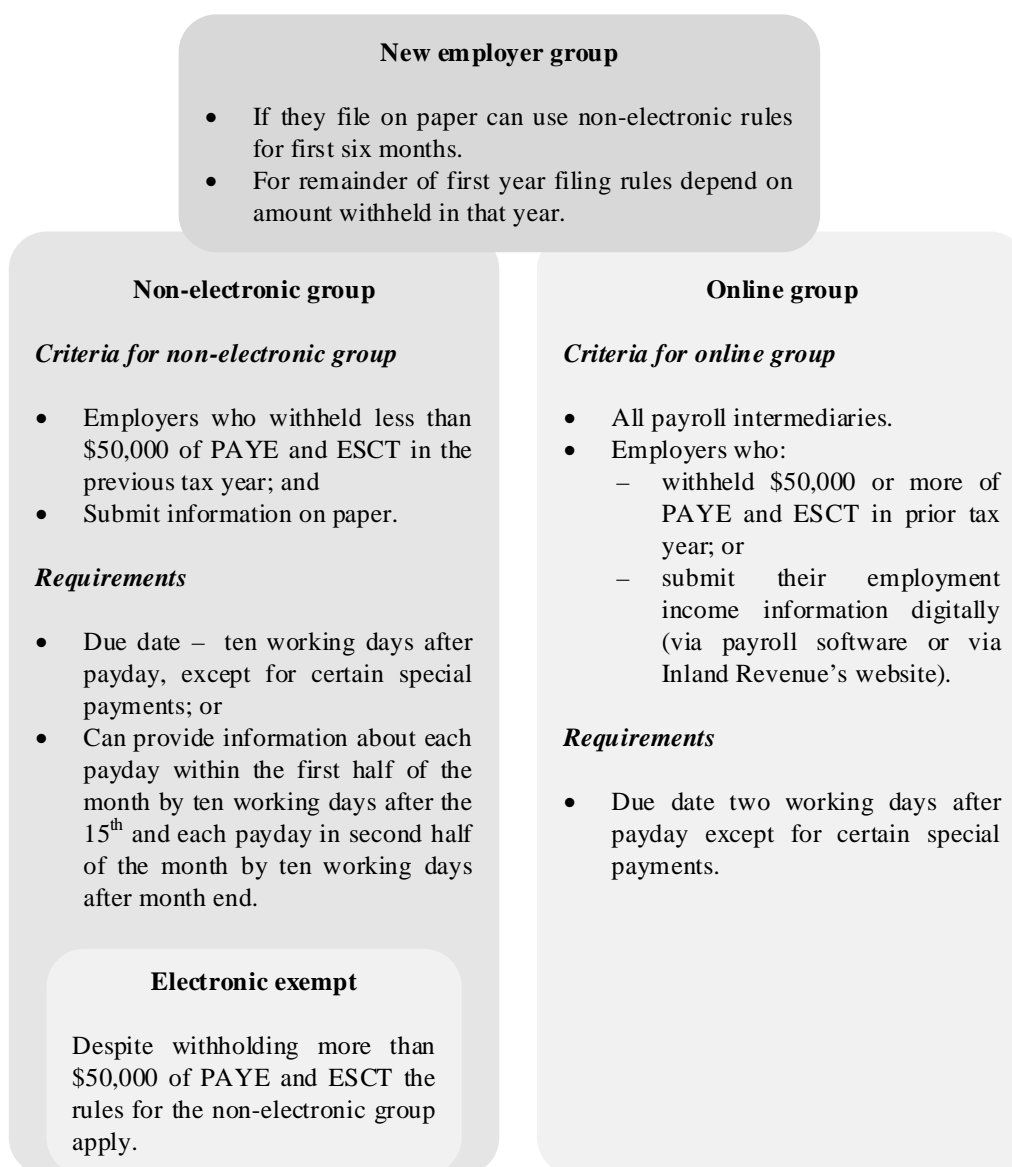
The information previously required on a KiwiSaver deduction notice will in future be required when an employee informs their employer of their "KiwiSaver status" or updates their KiwiSaver status, for example by opting out or taking a contribution holiday. It is intended that these actions could be done electronically. Paper forms will continue to exist. A definition of KiwiSaver status is added to section 4(1)(c) of the KiwiSaver Act.

***Employer groups***

New sections 23D – 23H establish three employer groups, and specify the formats for employment income information and due dates. Due dates are expressed as a number of working days after payday. The new groups are graphically displayed on the next page.

For the purposes of these sections a working day is defined in section YA 1 of the Income Tax Act 2007. In addition to Saturday and Sunday the definition excludes the following from being working days: Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday and Waitangi Day, but not provincial holidays. If Waitangi Day or Anzac Day fall on a Saturday or Sunday the following Monday is excluded. There are no working days between 25<sup>th</sup> December and 15<sup>th</sup> January (both dates inclusive) in the following year. An employer in the online group who paid staff on 24<sup>th</sup> December would therefore not be required to provide employment income information until the second working day after 15<sup>th</sup> of January.

**Figure 1: Employer groups and key requirements**



New section 23I sets out the requirements for employees who are required to provide employment income information. New section 23J establishes options which relax the payday rules due dates for certain special payments. New section 23D(3) allows an employer to provide employment income information before the due dates.

**Example**

Fiona owns a business and always does the payroll herself. If she goes on holiday and will be away during a pay week she instructs the bank before she leaves, to enable standard payments to her staff on the normal payday. She follows the same approach over the Christmas closedown.

Because she has the information she needs in relation to the payday at the time she instructs the bank, she can file the employment income information with Inland Revenue in advance.



The existing constraint in Inland Revenue's system which prevents an employer from filing more than one EMS in a month will not apply. Under the payday regime an employer may submit information more than once on the same day. For example, if they run a weekly and a fortnightly payroll which coincide every second Tuesday.

New section 23D(4) provides that despite the requirements around employer groups an employer may ask the Commissioner for approval to deliver employment income information in another way.

#### *Online group of employers*

New section 23E establishes the online group. The online group is the default group and employers are included in the online group unless they have an exemption or meet the criteria for the non-electronic group or the new group. Payroll intermediaries are, by definition, included in the online group.

Except where they are dealing with certain 'special payments' employers in the online group must provide their employment income information in an electronic format, using an electronic means of delivery, within two working days after payday. New section 23C(2) requires the Commissioner to prescribe electronic form(s) and means of communication. It is intended that acceptable electronic forms of communication for payday reporting will include:

- completing an onscreen form;
- uploading files through the Inland Revenue website; and
- filing direct from payroll software.

Most employers who use payroll software obtain it from a commercial provider of payroll software. However, a number of employers have developed their own 'bespoke' software packages. Inland Revenue is in contact with providers of payroll software to the New Zealand market and with the employers which it knows use bespoke software. Any providers of payroll software or employers using bespoke software that are not already in contact with the Department about payday reporting should contact their relationship manager at Inland Revenue or if they do not have one, make contact through [PaydayReporting@ird.govt.nz](mailto:PaydayReporting@ird.govt.nz).

An employer who otherwise meets the criteria for the non-electronic group or the new group, or who has an exemption from electronic filing but who chooses to file electronically, is included in the online group and has two working days to submit their employment income information.

#### *Non-electronic group of employers*

The non-electronic group of employers is established by new section 23F. An employer is included in the non-electronic group if they withheld less than \$50,000 of PAYE and employers superannuation contribution tax (ESCT) in the preceding tax year and they do not deliver their employment income information electronically. Inland Revenue monitors the amounts withheld and will advise employers when they exceed the \$50,000 threshold. A period is allowed for the customer to transition to electronic filing.

An employer which has an exemption from the online group under new section 23G is also included in the non-electronic group. As set out below, new employers may also be included in the non-electronic group.

An employer in the non-electronic group is permitted to submit their information in a prescribed paper format and can choose to either:

- deliver the information within 10 working days of each payday; or
- to provide details for each payday but to deliver information relating to payments made or benefits provided between the 1<sup>st</sup> and the 15<sup>th</sup> of the month within 10 working days of the 15<sup>th</sup>; and for payments made and benefits provided between the 16<sup>th</sup> of the month and month end within 10 working days of month end.

Consistent with the requirements for the receipt of tax payments, for information to be received by the due date, it must actually be received on or before the due date, not simply be posted by that date.

**Example**

Leonie and her husband farm in partnership and employ one full time employee who they pay on a weekly basis and at certain times of year they employ casual agricultural employees. They withheld less than \$50,000 of PAYE and ESCT in the previous year and they have chosen to continue to file their employment income information on paper which places them in the ‘non-electronic group of employers’.

Leonie has chosen to file their employment income information twice a month. When their only employee is their full timer the return identifies what was paid and withheld for each weekly payday within the half monthly period. When they employ casual staff, the half monthly return also includes the details for each payment made to casual workers. Their employment income information is due ten working days after the 15<sup>th</sup> of the month and ten working days after month end.

If an employer who has withheld less than \$50,000 of PAYE and ESCT in the previous year files their employment income information electronically they are included in the online group. However, if they wish they can revert to filing on paper, in which case the non-electronic group filing rules will apply.

**Example**

Mark runs a small business which withheld less than \$50,000 of PAYE and ESCT in the previous tax year. He does not use payroll software and he initially filed employment income information for his one part time and two full time employees on paper because that is how he always filed his employer monthly schedules. He pays his staff weekly and took advantage of the ability to send his employment income information twice a month.

Mark uses myIR to file his GST return and would prefer to get the payday details off his desk when he sends the payment instructions to the bank rather than having to come back to the task on the 15<sup>th</sup> and at month end. Mark starts filing his employment income information through myIR using the onscreen form. Because he files electronically he now belongs to the online group and the information is due within two working days of payday.

Mark knows that for as long as his business withholds less than the threshold of \$50,000 of PAYE and ESCT in the previous tax year he could however elect to go back to paper filing if he wanted to.

Inland Revenue asks to be notified in advance should customers wish to revert to paper filing. Notice will enable the ‘customer group’ indicator, which establishes the expectations for when employment income information will be received, to be changed.

*Threshold may be amended by Order in Council*

The \$50,000 threshold in new section 23F(6) may be amended as set out in new section 23F(8), by Order in Council on the recommendation of the Minister of Revenue following appropriate consultation.

*Exemption for certain employers in the online group*

New section 23G of the Tax Administration Act 1994 allows the Commissioner of Inland Revenue to exempt an employer in the online group from the requirement to deliver their employment income information electronically. The exemption can be time limited.

Factors the Commissioner will take into account when considering whether to exempt an employer under the new provision are:

- the nature and availability of digital services to the employer, in particular whether the services are reliable;
- whether the employer is capable of using a computer; and
- whether the cost the employer would incur in delivering employment income information electronically would be unreasonable in the employer's circumstances.

The Commissioner will consult and publish guidelines on how the exemption will apply.

**Example**

Jack's company withholds around \$60,000 of PAYE and ESCT annually. Because this is more than the threshold, the company will be in the online group. Jack has been advised by Inland Revenue that the company is required to start filing electronically. He has also been advised that if he believes he has grounds, he can apply for an exemption from electronic filing.

The company is located in a rural area where Jack also lives. Jack, who does the payroll and filing of employment income information with Inland Revenue, uses an internet connection to sometimes send business emails. However, the connection is not reliable, the speed is always slow and drops out frequently, particularly during peak internet usage times. He writes to Inland Revenue explaining his issues seeking an exemption from filing employment income information electronically.

Inland Revenue advises Jack that his company is exempt from the requirement to file employment income information electronically until the Commissioner notifies Jack that the exemption for his company is to be cancelled. The reason stated for the exemption is that the digital services available to Jack's company are not reliable for the purpose of delivering employment income information on a payday basis electronically.

*New group of employers*

The rules for new employers are included in new section 23H and 23F(3) – (7). For their first six months employing employees an employer can choose to file employment income information using non-electronic means (on paper) regardless of how much PAYE and ESCT they have withheld. If they file on paper they are subject to the rules of the non-electronic group. If the employer chooses to file electronically they are included in the online group.

If the amount withheld reaches \$50,000 during the first year the new employer may continue to file on paper for the remainder, if any, of the initial six month period. Thereafter, if the amount withheld exceeds \$50,000 in the first tax year, the employer is in the online group and

must file electronically within two working days of payday. Inland Revenue will advise the employer when the accumulated amount reaches \$50,000 for the year.

#### **Example**

Mel and Sefina have established a company and bought an existing business which employs 12 full time staff. Rather than take over the antiquated business systems which the previous owner used they intend to use a modern business software package which will look after invoicing and accounting as well as payroll. They know that there are packages which can be used to meet their obligations for GST, provisional tax and employment income information.

At the time they take the business over they have not chosen their new software system and know that, regardless of how much PAYE and ESCT they withhold, they have a six month period during which they can file their employment income information on paper.

#### ***Delivery of employment income information for certain special payments***

The definition of payday “the day on which an employer makes a PAYE income payment to an employee” includes “out-of-cycle” payments made to employees who are on a regular payroll as well as schedular payments and payments to employees on shadow payrolls. New section 23K(1)(a) of the Tax Administration Act 1994 allows an employer to treat the 20<sup>th</sup> day after the share scheme taxing date for an employee share scheme beneficiary as the payday.

To reduce the compliance costs associated with reporting these payments, new sections 23J and 23K provide employers with a choice. The employer can report these payments on a payday basis as set out in new sections 23E to 23H, and new section 23K(1)(a) in the case of benefits under employee share schemes, or they can choose to report them as set out in:

- schedular payments: new sections 23J(2) and 23C(4);
- a payment made to a person on a shadow payroll: new sections 23J(3) and (6) and 23C(4);
- benefits under employee share schemes: new sections 23K(1)(b) and 23C(4); or
- out of cycle payments: new sections 23J(4) and (5).

New section 23J(7) provides that the provisions in section 23J do not extend to employers who are delivering their information as set out in new section 23F(3)(b). This is because these employers are only required by section 23F(3)(b) to deliver their employment income information twice a month which will reduce compliance costs in a similar way to the provisions in section 23J.

#### ***Schedular payments***

Schedular payments are defined in schedule 4 of the Income Tax Act 2007 and include payments made to certain classes of contractors, company directors and commission sales people. Many businesses pay those entitled to receive schedular payments through their accounts payable rather than the payroll system. Payments may be made on a daily or irregular basis.

Sections 23J(1) and (2) allow an employer to either report schedular pays on a payday basis or twice-monthly. Twice monthly filing is defined in new section 23C(4) and allows the employer to report payments made between the 1<sup>st</sup> and 15<sup>th</sup> of the month as if they had been

made on the 15<sup>th</sup> of the month. For the second half of the month the payments can be reported as if they were made on the last day of the month.

The due dates for twice monthly reporting of schedular payments depend on the employer group and are either two working days or ten working days after the 15<sup>th</sup> of the month and two or ten working days after month end.

**Twice monthly reporting schedular payments**

Mon	Tues	Wed	Thurs	Fri	Sat	Sun
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31 (month end)						

For any schedular payments made in the blue period (1 <sup>st</sup> – 15 <sup>th</sup> ) the reporting due date is as if the payments were made on the 15 <sup>th</sup> .	Any payments made in the purple period can be reported as if they were paid on the 31 <sup>st</sup> (month end).
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**Example**

Curran and Co is in the online employer group. It pays sales people on a commission basis and payments are made from the accounts payable system on an almost daily basis.

They run reports on the schedular payments made and the amounts withheld, in the first half of the month, on the first working day after the 15<sup>th</sup> and the on the payments made and the amounts withheld in the second half of the month, on first business day of the following month.

Curran and Co’s employment income information relating to schedular payments is electronically reported within two working days of the 15<sup>th</sup> of the month, and within two working days of month end.

### **Example**

Sacha and his wife farm in partnership. In addition to employing two staff who are paid fortnightly, they occasionally employ contractors who are paid schedular payments. They pay contractors at the end of their period of engagement.

They do the payroll manually but the partnership files electronically, using the onscreen form, and is in the online group. If there is a regular payday between the date of the schedular payment and the end of the half monthly period for schedular payments Sacha reports the schedular payment at the same time as the next report for his employees.

If the schedular payment falls after the last regular payday in the half month Sacha knows he could wait until the end of the half monthly period, but he generally files the information relating to the schedular payment on a payday basis, at the same time he calculates the payment. If he chose he could however wait until the end of the half monthly period to electronically file the information.

### *A payment made to a person on a shadow payroll*

Employers of internationally mobile employees working in New Zealand may have PAYE reporting and payment obligations in New Zealand even though the employees have been paid in a foreign jurisdiction. New Zealand obligations are worked out on what is referred to as a shadow payroll. New section 23J(6) defines what is meant by a payment to a person on a shadow payroll.

The process of determining the New Zealand taxable income includes obtaining employee payment information from offshore payroll providers and confirming the calculation of New Zealand taxable income of that employee. This takes time.

New section 23J(3) provides that the employer (or their New Zealand based agent) has twenty days after an amount is paid to a person before the obligation to provide employment income information arises. The employer then has the option of reporting it on a payday basis or can report it twice-monthly with the 20<sup>th</sup> day after payment being treated as the 'relevant day' (payday). Twice monthly delivery is defined in new section 23C(4) and operates as it does for schedular payments except it is the 20<sup>th</sup> day after payment (the relevant day) that dictates the reporting obligation. For the purposes of this rule, which also applies to reporting benefits under employee share schemes under new section 23K(2)(b), the 20<sup>th</sup> day is not calculated on a working day basis but in actual days.

If the relevant day falls in the first half of the month it must be reported no later than two working days after the 15<sup>th</sup> and if it falls in the second half of the month it must be reported no later than two working days after month end. Twice monthly delivery allows all payments, to employees on a shadow payroll, made by that employer in that half monthly period to be reported in the same return.

An amendment to section CE 1(3B) of the Income Tax Act 2007 provides that where an employer reports their employment income information under 23J(3) such a payment is treated as being derived by the person on the 20<sup>th</sup> day after the payment. Under this provision, the 20<sup>th</sup> day after the payment is made to the person is the date of the PAYE income payment for the purposes of section RD 4 which sets the requirements for when PAYE and other deductions must be paid to Inland Revenue.

### **Example**

Jones and Lowe provide professional services which include acting as a tax agent for offshore employers who employ staff working on projects in New Zealand. Jones and Lowe report this information electronically and are in the online employer group for the work they do for their clients.

Jones and Lowe have established processes with their offshore clients so that they usually receive details of the amounts paid to the employees by the home country payroll, within a few days of the payment being made.

An offshore employer paid an employee working in New Zealand on Thursday 12 April and Jones and Lowe received the information the following week. Jones and Lowe have twenty days after the original payday (12 April) to calculate the New Zealand taxable income. In this example, the twentieth day is Wednesday 2 May.

Because the twentieth day falls on 2 May, in the first half of the month Jones and Lowe must report the information at the latest as if the payday was the 15<sup>th</sup>. The information would be due two working days after the 15<sup>th</sup> of the month. If the twentieth day falls in the second half of the month Jones and Lowe must report it at the latest as if the payday was the last day of the month. This information would be due two working days after month end.

The second of May is date the payment is deemed to be derived which, because the employer withholds less than \$500,000 of PAYE and ESCT a year, means that PAYE on the payment is due on 20 June.

### **Benefits under employee share schemes**

Amendments have been made to section CE 2 of the Income Tax Act 2007 which defer the date that an employee who receives a benefit under an employee share scheme is treated as deriving income in relation to the benefit by 20 days from the taxing point. The amendment names this 20<sup>th</sup> day after the share scheme taxing date for the employee share scheme beneficiary as the “ESS deferral date”. This deferral applies for all employees who receive benefits under an employee share scheme that their employer is required to report to Inland Revenue about as part of employment income information.

An amendment to section RD 6 of the Income Tax Act 2007 provides that an employee share scheme benefit from which an employer has chosen to withhold tax under the PAYE rules is treated as paid on the 20<sup>th</sup> day after the taxing point for the benefit received by the employee. The date on which an employee share scheme benefit is treated as paid will be the end date of the four-week period referred to in the extra pay tax rate calculation in section RD 17, which employers will use to calculate the amount of tax they must withhold for the benefit. It also influences when the employer is required to pay the withheld tax to Inland Revenue by.

An amendment to section RD 7B of the Income Tax Act 2007, which specifies how an employer makes an election to withhold tax for an employee share scheme benefit, replaces the requirement to report the value of the benefit to Inland Revenue on their employer monthly schedule by the relevant due date with a requirement to include the value of the benefit in their employment income information under new subpart 3C of the Tax Administration Act 1994.

Replacement section RD 22(3) of the Income Tax Act 2007 requires employers to provide employment income information in relation to employee share scheme benefits to Inland Revenue under new sections 23E to 23H of the Tax Administration Act 1994 as modified by new section 23K of that Act.

A new defined term “ESS deferral date” has been inserted into section YA 1 of the Income Tax Act 2007 and section 3(1) of the Tax Administration Act 1994 which refers to the definition of that term in new section CE 2(9) of the Income Tax Act 2007.

New section 23K(1) of the Tax Administration Act 1994 sets out the two options an employer has for reporting information about employee share scheme benefits. An employer may report the information to Inland Revenue:

- on a payday basis, treating the 20<sup>th</sup> day after the taxing point for the benefit received by the employee as the payday; or
- on a twice-monthly basis as described in new section 23C(4) of that Act, treating the 20<sup>th</sup> day after the taxing point for the benefit received by the employee as the “relevant day” that dictates the reporting obligation.

New section RD 22(4) of the Income Tax Act 2007 and new section 23K(2)(a) of the Tax Administration Act 1994 specify that employers are not required to provide Inland Revenue with information on:

- employee share scheme benefits received by former employees if they have not chosen to withhold tax for the benefit; or
- benefits arising under tax-exempt employee share schemes.

New section 23K(2)(b) and new schedule 4, table 1 of the Tax Administration Act 1994 specify the particulars in relation to employee share scheme benefits that must be provided to Inland Revenue by employers who are subject to the reporting requirements.

The employee share scheme benefit-specific information that employers who are required to report employee share scheme benefit information for current employees is:

- the value of the benefit to the employee; and
- the amount of tax withheld for the benefit, if any.

Employers who are required to report employee share scheme benefit information for former employees because they have chosen under the PAYE rules to withhold tax from the benefit, must report:

- the employee’s name;
- the employee’s IRD number, if known by the employer;
- the value of the benefit; and
- the amount of tax withheld for the benefit.



### **Example**

Under the new rules, if an employee received a benefit under an employee share scheme on 5 July 2019 (that is, the share scheme taxing date for the employee share scheme beneficiary is 5 July 2019) they would be treated as deriving income in relation to the benefit on 25 July 2019.

Their employer would have two options as to how they meet their obligation to provide information in relation to the benefit to Inland Revenue:

#### ***Option 1: reporting on a payday basis***

If their employer chooses to report information in relation to the benefit on a payday basis, 25 July 2019 would also be the relevant payday. This would mean that their employer would be required to report information about the value of the benefit received by the employee and any tax withheld in relation to the benefit by the 2nd working day after 25 July 2019 if they are an employer in the online group, or by the 10th working day after 25 July 2019 if they are an employer in the non-electronic group (or an employer in the new group who provides their employment income information on paper).

#### ***Option 2: reporting on a twice-monthly basis***

If their employer chooses to report information in relation to the benefit on a twice-monthly basis, 25 July 2019 would be treated as the “relevant day” for the purposes of new section 23C(4) of the Tax Administration Act 1994. This would mean that their employer would be required to report information about the value of the benefit received by the employee and any tax withheld in relation to the benefit by the 2nd working day after 31 July 2019 if they are an employer in the online group, or by the 10th working day after 31 July 2019 if they are an employer in the non-electronic group (or an employer in the new group who provides their employment income information on paper).

25 July 2019 would also be the relevant date for determining the due date for the payment of tax withheld in relation to the benefit (assuming that the employer elected to withhold tax in relation to the benefit). In this example, the due date for paying the tax withheld to Inland Revenue would be 5 August 2019 if the employer was above the \$500,000 per annum of PAYE and ESCT threshold, or 20 August 2019 if they are below the threshold.

### ***A payment to an employee made outside the employee’s regular payment cycle***

Many employers make out-of-cycle payments. These might be made to pay an employee’s final pay on their last day of employment, or to correct for the omission of a payment that was not included with the previous pay run because the information was received late. Some employers will process these payments through the payroll system and they can be reported on a payday basis. Other employers will not process the payments through the payroll system until the next regular payday.

To reduce the compliance costs of out-of-cycle payments, new sections 23J(4) and (5) permit the employer to report such payments with the information for the next regular payday. An exception applies where the next regular payday falls after the employer’s “end date” for the payment of PAYE and other deductions to Inland Revenue.<sup>5</sup> Where the exception applies, the

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<sup>5</sup> Because they operate on a twice monthly basis as defined in new section 23C(4) the previously described rules for reporting employee share scheme benefits, schedular payments and shadow payrolls do not require this exception. Reporting the information on a twice monthly basis will ensure that the information can always be aligned with payments.

out-of-cycle payment must be reported to Inland Revenue as if it was made on the last day of the payment period,<sup>6</sup> at the latest.

For example in the month illustrated below if information relating to any payments made between the 28<sup>th</sup> and 31<sup>st</sup> was held over beyond the end date of the 31<sup>st</sup> into a report for the next month, the information provided for the illustrated month would not reconcile with the payment made.

Under section RA 15(3)(b) of the Income Tax Act 2007 most employers have an end date for the payment of PAYE at the end of the month. All amounts withheld in the month up to month end, have to be paid to Inland Revenue by the 20<sup>th</sup> of the following month. If an out of cycle payment was made after the last regular payday in the month but before month end the deductions would be paid to Inland Revenue with the other amounts deducted in the month. If the information was held over and included with the next regular payday it would appear as if it related to a payment made in that (subsequent) month. This would cause problems reconciling the amounts paid to Inland Revenue with the information provided.

Under section RA15(3)(a) of the income tax Act 2007 the largest employers have two 'end dates' in a month; the 15<sup>th</sup> of the month and month end and as illustrated in the Cork and Co example below, the exception could arise twice monthly for these employers.

In the Advantage All example illustrated below if information relating to any payments made between the 28<sup>th</sup> and 31<sup>st</sup> was held over beyond the end date of the 31<sup>st</sup> into a report for the next month, the information provided for the illustrated month would not reconcile with the payment made.

As noted earlier employers in the non-electronic and new employer groups, or who have an exemption from electronic filing and who are choosing to deliver their employment income information twice a month as set out in sections 23F(3)(b) and 23F(4) are not able to also take advantage of new section 23J(4). This exclusion, contained in new section 23J(7), reflects that these employers already have reduced reporting obligations and eliminates the need for these employers to apply the exception in section 23J(5).

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<sup>6</sup> The requirement that the out-of-cycle payment must be reported at the latest as if it was made on the last day of the payment period is intended to allow an employer to report all out-of-cycle payments made during the exception period in the same return.

**Example**

**Reporting out-of-cycle payments**

Mon	Tues	Wed	Thurs	Fri	Sat	Sun
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Regular payday.

Any out-of-cycle pays on the blue dates can be reported with next regular pay.

Out of cycle pays on the orange dates cannot be included with the next regular pay and must be reported at the latest as if they were paid on the last day of the month.

The calendar illustrates the obligations for Advantage All New Zealand, a charity which is above the electronic filing threshold and is in the online employer group.

Advantage All has an “end date” for the payment of PAYE at the end of every month and must remit the amounts withheld during the month to Inland Revenue by the 20<sup>th</sup> of the following month.

Advantage All can report out-of-cycle payments made on any of the blue dates at the same time as the next regular payday return.

If Advantage All makes an out-of-cycle payment between the last regular payday (27<sup>th</sup> in the month illustrated above) and the end of its payment period, at month end, it must report the payments within two working days of month end.

## Example

### Reporting out-of-cycle payments

Mon	Tues	Wed	Thurs	Fri	Sat	Sun	
					1	2	Regular payday.
3	4	5	6	7	8	9	Any out-of-cycle pays on the blue dates can be reported with next regular pay.
10	11	12	13	14	15	16	Out of cycle pays on the orange dates cannot be included with the next regular pay and must be reported at the latest as if they were paid on the 15 <sup>th</sup> or last day of the month as appropriate.
17	18	19	20	21	22	23	
24	25	26	27	28	29	30	
31							

Cork and Collins Ltd are a large business which pays the PAYE and other deductions they withhold to Inland Revenue twice a month. Cork and Collins have two payment periods in a month, with end dates of the 15<sup>th</sup> and month end. Amounts withheld between 1<sup>st</sup> and 15<sup>th</sup> inclusive are paid to Inland Revenue by the 20<sup>th</sup> and amounts withheld between the 16<sup>th</sup> and month end must be paid by the 5<sup>th</sup> of the following month.

Cork and Collins are in the online employer group. The organisation runs a single fortnightly payroll and makes occasional out-of-cycle payments during other days in the month, most often to pay departing staff on their last day. In the month illustrated, payments made between the 1<sup>st</sup> and 5<sup>th</sup> (shown in blue) could be reported with the regular payday on the 6<sup>th</sup> and payments made between the 16<sup>th</sup> and 19<sup>th</sup> could be included with the regular payday on the 20<sup>th</sup>.

If Cork and Collins made ad hoc payments between the last regular payday and the end of the payment period they must be separately reported no later than two working days after the end of the payment period. In the month illustrated above out-of-cycle payments made between the 7<sup>th</sup> and 15<sup>th</sup> need to be reported at the latest within two working days after the 15<sup>th</sup> of the month. Similarly, any payments made during the period 21<sup>st</sup> to 31<sup>st</sup> must be reported at the latest by the second working day after month end. Payments on different days during the period that falls between the last regular payday and the end of the payment period can be reported in the same return.

The need for the exception relating to out-of-cycle payments which occur after the last regular payday but before the end of the employer's payment period will be reviewed after Inland Revenue has completed the transfer of PAYE from its old to its new computer systems after 2020.

### ***Employment income information when employment ends***

New section 23M requires an employer, who intends to permanently cease to employ, to notify Inland Revenue within 30 working days of the date on which they ceased to employ any staff. This notification will deregister the customer as an employer. The previous obligation in RD 22(6) of the Income Tax Act 20017, to inform the Commissioner if the employer ceased business has been repealed.

### ***Correction of Errors***

New section 23N provides a regulation making power for matters relating to correcting errors in employment income information. The Governor-General may make regulations by Order

in Council on the recommendation of the Minister of Revenue following appropriate consultation.

If regulations for the correction of errors are required during the transitional period (1 April 2018 to 1 April 2019) new section 46(8) provides a regulation making power on the same basis as described above in relation to 23N.

Consultation was conducted through an officials' issues paper *PAYE error correction and adjustment* released in August 2017 and officials are advising Ministers on the recommended content of regulations which it is anticipated will be made with effect from 1 April 2019.<sup>7</sup>

### ***Filing requirements, payroll software and variation of requirements***

New section 23O(1) requires the Commissioner to prescribe both electronic and non-electronic forms and modes of delivery and permits the Commissioner to set specifications for payroll software.

To permit payments to be processed new section 23O(2) authorises the Commissioner to require information to accompany payment. Until all PAYE information is processed in Inland Revenue's new computer system (estimated for 2020), this section will be used to require the continuation of the existing requirement for a PAYE income payment form (IR345). This form is due at the same time as the payment to which it relates.

New section 23P defines payroll software as a commercially available payroll system or service or bespoke equivalent. This definition is not intended to capture those who use spreadsheets or electronic calculators to assist in the calculation of their payroll.

New section 23Q allows the Commissioner to vary the requirements set out in the subpart 3C and schedule 4 for an employer or class of employers.

### ***Penalties***

#### ***Late payment penalties (shortfall penalty)***

Because there are no mandatory changes for the timing of PAYE and related deductions, there are no changes in the penalty provisions around non-payment of PAYE and related deductions, other than updating the references and terminology. Section 141ED, previously "Not paying an employer monthly schedule amount" becomes "Penalty for unpaid amounts of employers' withholding payments".

#### ***Educational approach during co-existence***

New sections 139(9) and 139AA(7) provide that the Commissioner has a discretion not to impose late filing and non-electronic filing penalties if it is necessary because of resource constraints during the period of co-existence between Inland Revenue's old and new software platforms, and the non-compliance is not serious or unreasonable.

These provisions will allow the Commissioner to use her resources to support an educational approach during the early stages of payday filing. The capacity to impose late filing and non-

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<sup>7</sup> Note: one of the changes consulted on in the officials' issues paper – accepting negative values in a return – would not be possible until after the end of the period of co-existence for PAYE on Inland Revenue's old and new computer systems, which is not expected before 2020.

electronic filing penalties remains in cases where the employer is deliberately non-compliant or otherwise behaves unreasonably.

The explanation of the late filing and non-electronic filing penalties as they will apply following the educational period, is set out below.

### *Late filing penalties*

An amendment to section 139A provides that the late filing penalty will remain a monthly penalty of \$250. The late filing penalty under section 139A will not be imposed for the first occasion of late filing in a twelve month period. This continues the current approach. After the first instance of late filing in a month, an employer will be advised that a penalty will be imposed if there is a further failure to file on time within 12 months.

The monthly calculation of the penalty means that an employer who pays employees on a weekly basis and who fails to meet the due date for filing on more than one occasion during a month will incur the same penalty as an employer who runs a monthly payroll and is late providing their one submission.

#### **Example**

Matias and Carrie run a business which withholds more than \$50,000 of PAYE and ESCT a year so they are in the online group. Matias manages the payroll which runs every week but he does not always meet his filing obligations with Inland Revenue.

In February Matias missed two due dates for filing employment income information. Because it was not the first time in a twelve month period, a penalty of \$250 was imposed.

Three months later Matias again missed a filing obligation, for one payday return during the month, and was again penalised \$250.

The key date for determining whether there is a penalty is the month in which the information is due, not the month in which the payday fell. The examples below illustrate this point.

#### **Example**

Every Wednesday Jennie does the pay for her partner's company which is in the online group. The company has already received a notice that if its employment income information is late again within a twelve month period it will receive a late filing penalty.

The last Wednesday in February is the 27<sup>th</sup> and the information is due on the 1<sup>st</sup> of March. Jennie failed to provide the information by the 1<sup>st</sup> of March and subsequently missed the due date for information for one payday in March. Because the due dates which were missed were both in March, a single late filing penalty of \$250 is imposed.

**Example**

After several months of on time filing Jennie failed to provide employment income information on time for the last three paydays in October which occurred on the 17<sup>th</sup>, 24<sup>th</sup> and 31<sup>st</sup> of October. The due dates for information relating to the first two paydays are the 19<sup>th</sup> and 26<sup>th</sup> of October and a late filing penalty of \$250 is imposed for information due in October.

The due date for the last October payday is the 2<sup>nd</sup> of November and the company also receives a late filing penalty of \$250 for the late filing of information due in October.

*Non-electronic filing penalty*

Under an amendment to section 139AA the non-electronic filing penalty remains a monthly penalty. An employer who failed to file electronically information relating to each of the four paydays in a month would face the same penalty as an employer with the same sized payroll, who failed to meet their obligation on one occasion during the month. The penalty is the greater of \$250 or \$1 for each employee whose information has not be returned electronically in the month.

**Example**

F Charm Ltd withholds more than the threshold amount of \$50,000 of PAYE and ESCT. The company has been notified by Inland Revenue that from a specified future date, they will be in the “on-line group” and required to provide employment income information electronically and that the due date for the information will be two working days after payday. They are also advised that if they believe they have grounds, they can apply for an exemption from electronic filing.

F Charm Ltd does not seek an exemption and has not changed their filing method by the time the notice period expires. They pay staff weekly and the number employed varies. In July the numbers reported each week varied from 70 to 90 but over the month 95 different employees were reported as being paid. The last payday in July was Thursday the 26<sup>th</sup> and the information should have been received electronically on 30<sup>th</sup> of July. The returns were submitted on paper and failed to meet the new due dates.

The non-electronic filing penalty for the month is the greater of \$250 or \$1 for each employee whose information is not filed electronically which in this case was 95. F Charm Ltd is penalised \$250 for not filing electronically in July.

Because it was the first occasion (month) in a twelve month period on which they had failed to file on time, F Charm is notified that a further failure to file on time will incur a late filing penalty.

*Due dates for payment of late filing penalties*

New section 142(1A) provides that a late filing penalty is due 30 days after the end of the month in which the employer is required to deliver the employment income information in question.

**Example**

R V Winkle Ltd is in the online group and run a fortnightly payroll. The company is occasionally late to file their employment income information.

Information for May was due on the 5<sup>th</sup> and 19<sup>th</sup> of May but the second return was not received until the 26<sup>th</sup> which was the fifth working day after payday. Because it is not the first time in twelve months that the company has filed late they have already received a letter advising that a penalty will be imposed for a further failure to file on time within twelve months.

A late filing penalty is imposed on RV Winkle and Associates. It has a due date of 30<sup>th</sup> of June which is 30 days after the end of the month (May) in which the information was due.

**Example**

S White and Associates is in the non-electronic employer group and runs a weekly payroll. They have elected to provide their employment income information twice a month (due dates ten working days after the 15<sup>th</sup> and ten working days after month end). S White and Associates are sometimes late to provide their information. They have received notice that a penalty will be imposed for a further failure to provide information on time within twelve months.

S White and Associates provide information on time in April and their first return in May is received on time. Because all the information expected in May (the information for the second April payment and for the first May payment) is received on time no penalty is imposed in April.

However S White and Associates are late to provide their second return for May. It was due ten working days after the end of the month on the 14<sup>th</sup> of June but was not received until the 22<sup>nd</sup>, six working days late.

A late filing penalty is imposed on A White and Associates. It has a due date of 30 July which is thirty days after the end of the month (June) in which the information was due.

*Due dates for payment of non-electronic filing penalties*

Amended section 142G provides that non-electronic filing penalties are due 30 days after the end of the month in which the employer was required to file in the prescribed electronic form or by way of the prescribed electronic communication.

**Example**

F Charm Ltd.'s penalty for non-electronic filing, for due dates in July, is due on 30 August.

As illustrated above for the late filing penalty it is the date that the information should be received in electronic format that determines whether a penalty will be imposed for that month, not the date of the payday.



**Example**

F Charm Ltd continues to submit employment income information on paper through August. The information for the paydays on 2<sup>nd</sup>, 9<sup>th</sup>, 16<sup>th</sup> and 23<sup>rd</sup> of August is due in August.

F Charm Ltd's failure to submit its employment income information electronically in August will give rise to a non-electronic filing penalty for August due on the 30<sup>th</sup> September.

The last payday in August is Thursday the 30<sup>th</sup>, with the information due to be received in electronic format by Monday the 3<sup>rd</sup> of September.

For the failure to file electronically on the 3<sup>rd</sup> of September a non-electronic filing penalty will be imposed with a due date of the 30<sup>th</sup> of October.

## **TRANSITIONAL PROVISIONS**

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### ***Sections 227C and 227D of the Tax Administration Act 1994***

#### **Background**

The transitional provisions allow an employer or payroll intermediary in the online group to adopt payday filing on a voluntary basis during the period April 2018 to March 2019. The opportunity for early adoption on a voluntary basis is restricted to those who submit their information electronically. The voluntary adoption period is intended to allow those who need to install upgrades to their payroll systems to choose a time that is convenient to them.

The last employer monthly schedule, prior to commencing payday filing, is due on its normal timetable, the 5<sup>th</sup> or 20<sup>th</sup> of the following month as appropriate, during the first month of payday filing.

#### **Application date**

The transitional provisions come into force on 1 April 2018. However, section 227C(8)(a) provides that for an employer the provisions come into effect when the employer elects to submit their employment income information on a payday basis during the voluntary period.

The election process for employers who chose to adopt payday filing during the voluntary period will vary depending on the filing method the employer chooses to use. If the employer chooses to payday file using the 'onscreen form' in myIR or through 'file upload' in myIR, they are asked to contact Inland Revenue on 0800 377 772 (small or medium business) or 0800 433 553 (significant enterprise customers). Depending on demand the telephone process may be replaced with an online process, if so details will be available on Inland Revenue's website.

Employers who choose to provide employment income information direct from their software will need to talk to their software provider to ensure that the functionality is available. Beginning to file payday information direct from software will constitute an election.

#### **Detailed analysis**

Payday provision of employment income information is required from 1 April 2019. Notwithstanding the new regime being effective from 1 April 2019, new section 227D(1) provides that the old rules apply to the employer monthly schedule and employer deductions form(s) for March 2019. These returns will be due in April 2019 on the 5<sup>th</sup> or 20<sup>th</sup> as appropriate.

New section 227D(3) applies to employers who are required to remit PAYE deductions to Inland Revenue on a twice-monthly basis. These employers are required to apply the new rules in relation to the tax treatment and reporting of employee share scheme benefits received by their employees or former employees during the 16 March 2019 to 31 March 2019 period. This rule prevents an EMS relating to April 2019 being filed during May 2019.

New section 227C identifies a transitional period for the voluntary application of the employment income information provisions. The transitional period starts on 1 April 2018 and ends on 31 March 2019.

An employer in the online group can choose to adopt the payday filing rules during the period from April 2018. The rules for the voluntary application of the employment income information provisions are set out in new section 227C. An employer can voluntarily adopt payday filing at the beginning of any month<sup>8</sup> during the transitional period.

For an employer's first month under the payday filing rules, new section 227D(2) provides that the old rules still apply to the employer monthly schedule and employer deduction form(s) relating to the previous month.

**Example**

R Stilt and Co are in the online group and have elected to opt in to payday filing from the beginning of September 2018. R Stilt and Co pay their staff fortnightly. The company withholds less than \$500,000 of PAYE and ESCT so they pay PAYE and related deductions to Inland Revenue once a month – by the 20<sup>th</sup> of the following month. In September 2018 their paydays are on the 12<sup>th</sup> and 26<sup>th</sup> of the month.

R Stilt and Co's employer monthly schedule, employer deduction form and payment for August 2018 is due on the 20<sup>th</sup> of September 2018.

R Stilt and Co's first payday return is due two working days after payday, on the 14<sup>th</sup> of September. The second return is due two working days after the second payday, on the 28<sup>th</sup> of September.

No changes have been made to the due dates for the payment of PAYE and other deductions so the employer deduction form and payment are still due for the September paydays, on the 20<sup>th</sup> of October.

If an employer chooses to provide employment income information on a payday basis during the transitional (voluntary) period, they must also apply the other relevant provisions including, for example, the requirements for employment income information for new and departing employees and the reporting of benefits under employee share schemes.

New section 227C(4) requires that an employer who chooses to adopt payday filing of employment income information during the transitional period applies the modifications to the rules relating to benefits under employee share schemes (otherwise effective from 1 April 2019) for all employee share scheme benefits received by their employees or former employees on or after the date that is 20 days before they made their election.

New section 227C(9) provides that an employer who elects to provide employment income information on a payday basis during the transitional period may not opt out without the Commissioner's agreement. This provision is intended to ensure that support is provided and that Inland Revenue is aware of the nature of any difficulties employers are having. Inland Revenue also needs to be aware of the employer's intended method of submitting information. It is not intended to unreasonably prevent an employer opting out during the transitional period.

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<sup>8</sup> Because an 'employer monthly schedule' relates to a month payday filing should begin from the beginning of a month.

## **CONSOLIDATION OF PAYE ADMINISTRATIVE REQUIREMENTS**

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*Sections 22, 22AA, 23, 24B to 24IB and schedule 3, tables 1 and 5 of the Tax Administration Act 1994; sections RD 4, RD 12, RD 21 and RD 22 of the Income Tax Act 2007; sections 34 and 202 of the Student Loan Scheme Act 2011; and section 163 of the Child Support Act 1991*

### **Key features**

This Act consolidates and simplifies the structure of the administrative requirements relating to PAYE in the Tax Administration Act 1994. This change sees much of the detail being placed in schedules to the Act. In addition to the changes already outlined, the provisions relating to record keeping and tax codes are restructured.

The consolidation necessitates some changes to the Income Tax Act 2007 and consequential changes to the Student Loan Scheme Act 2011 and Child Support Act 1991.

In addition, there are a small number of policy clarifications and changes. These include clarifying the circumstances in which the non-notified tax codes applies and providing that the threshold for twice monthly remittance of PAYE and other deductions can be changed by Order in Council following consultation.

### **Application date**

The changes come into force on 1 April 2019.

### **Detailed analysis**

#### ***Record keeping***

The Act brings together the sections that impose PAYE record-keeping requirements on employers. New schedule 3 itemises the information that employers must record and keep.

New section 22AA contains the PAYE record keeping obligations and also requires employers to keep the records required under the KiwiSaver Act 2006, the Student Loan Schemes Act 2011, and Child Support Act 1991. The new section places the detail of the specific records in new schedule 3 Table 1: Record-keeping requirements for employers and PAYE intermediaries. This table sets out the items for which records, certificates and notifications are required to be kept.

An amendment to section 23(2) provides that where information has been transmitted electronically, an employer is not required to retain the employment income information that has been provided to the Commissioner.

#### ***PAYE tax codes***

The Act consolidates the core requirements relating to tax codes in subpart 3D, placing the detail in schedule 5 parts A and B. The intent is to restructure the existing provisions to improve clarity.

The amendments clarify the circumstances in which an employee must be taxed at the “no notification” rate. Section 24B(3B) previously provided that this rate (currently 45 cents in the dollar) applied when the employee had not provided their employer with a tax code notification and the Commissioner has not provided the employer with a tax code or special tax code for the employee.

The prescribed form for a tax code notification requires the employee to provide their name and tax file number, in addition to their tax code. The employee’s name and tax file number are critical to establishing their identity. New section 24E now makes explicit that not providing a name, tax file number, or tax code, will result in the employee being placed on the “non-notified” tax code. The exceptions are where the Commissioner has provided the information to the employer or the employee is a non-resident seasonal worker in their first month of employment in New Zealand. The no notification tax code has now been renamed the “non-notified” tax code.

The requirement that an employee must certify their entitlement to work in New Zealand when completing their tax code certificate is repealed on 1 April 2019. Under the Immigration Act 2009 employers have a positive obligation to determine that workers are legally able to work for them. Holding a copy of the employee’s tax code declaration, where an employee self-certifies their immigration status, does not discharge this obligation and the requirement has been repealed.

Schedule 5 part A contains detailed provisions in relation to the application of general (not special) tax codes. As noted above, the intent is to improve clarity, not to amend the provisions. Part A contains provisions relating to:

- combining tax codes;
- changes to tax codes and when changes to tax codes apply;
- the steps the Commissioner may take if she considers that an incorrect tax code is being used, and the consequential requirements on the employer;
- when entitlement to use a tax code ends; and
- a table of tax codes.

Schedule 5 part B contains detailed provisions relating special and particular tax codes:

- the Commissioner’s ability to provide a special tax code;
- what a special tax code may apply to, what it may require and how the Commissioner is to calculate it;
- the requirement on the Commissioner to notify the relevant department if the code is issued in relation to superannuation or veteran’s pension income;
- the overriding nature of a special tax code;
- the Commissioner’s ability to cancel a special tax code;
- tax codes for private domestic workers; and
- tax codes for non-resident seasonal workers.

New section 24IB allows the Commissioner to vary requirements relating to tax codes in a similar way as was previously set out in the now repealed section 24P.

### ***Amendments to the Income Tax Act 2007***

With the exception of the change which enables the threshold for twice monthly remittance of PAYE and related deductions to be amended by Order in Council, the PAYE related changes to the Income Tax Act 2007 are largely consequential on consolidating the administrative requirements for PAYE into the Tax Administration Act 1994.

New section RD 4(7) provides that the Governor-General may, on the recommendation of the Minister of Revenue, make an Order in Council amending the threshold amount for twice monthly remittance of PAYE and related deductions. Before making a recommendation, the Minister must undertake appropriate consultation.

Section RD 4 previously expressed the requirements for monthly or twice monthly remittance of amounts of tax withheld in terms of the information obligations set out in RD 22. Replacement section RD 4 now includes the criteria previously prescribed in RD 22 namely the \$500,000 a year threshold for twice-monthly payment, the rules for new employers, and how the threshold is to be applied if the employer runs more than one business or is a person to whom control has become vested or passed.

Section RD 22 as amended provides that obligations on employers to provide employment income information are as set out in the Tax Administration Act sections 23E – 23H.

New subsection RD 22(2) clarifies that where an employee has a special tax code of zero, or is a recipient of schedular income that has a special tax rate of zero the employer or PAYE intermediary, despite not withholding PAYE, must nonetheless report employment income information to the Commissioner.

The obligation on an employee to provide information to the Commissioner in certain circumstances was previously set out in both RD 4(2)(b) and RD 21(1)(a). The Act repeals RD 4(2)(b) and amends RD 21(1) (a) which now provides that the requirement on an employee to provide employment income information is as set out in new section 23I of the Tax Administration Act 1994.

Section RD 12 relating to multiple payments of salary or wages has been clarified so that the requirement to treat the amounts as one payment only applies where the employment situations are with the same employer.

## **CHANGES FOR THE PAYROLL SUBSIDY**

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*Sections 3 “tax” and “tax position”, 15C, 15G, 15H, 15I, 15J, 15M, 185, 185C and 185D of the Tax Administration Act 1994; sections RD 2, RD 64, RP 2 – RP 5, RZ 14, YA 1 “listed PAYE intermediary” and “subsidy claim form” of the Income Tax Act 2007; Income Tax (Payroll Subsidy) Regulations 2006; Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2014*

The eligibility threshold for the payroll subsidy is lowered to \$50,000 of PAYE and employer’s superannuation contribution tax (ESCT) withheld annually by the employer, from 1 April 2019. The payroll subsidy will be repealed the following year with effect from 1 April 2020.

### **Background**

Inland Revenue currently pays a payroll subsidy to listed PAYE intermediaries taking on the PAYE obligations of eligible employers. It is available for up to five employees of an employer per PAYE income payment. To reduce compliance and administrative costs the subsidy is paid by Inland Revenue directly to the listed PAYE intermediary on a monthly basis.

The subsidy was introduced to encourage small employers to outsource their PAYE obligations to approved listed PAYE intermediaries to make compliance easier for them, give small employers more time to run their business, and improve the overall operation of the PAYE system.

The changes to the payroll subsidy are included in the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act, which contains a range of measures to modernise the administration of PAYE.

### **Key features**

For the 2019–20 tax year from 1 April 2019, to better target assistance to small employers, the eligibility threshold for the payroll subsidy is lowered from currently \$500,000 to \$50,000 of PAYE and ESCT withheld by the employer for the preceding tax year. The new eligibility threshold is contained in section RP 4 of the Income Tax Act 2007. New subsection RP 4(1D) of the Income Tax Act 2007 allows the Commissioner to continue to pay the payroll subsidy for an employer who would typically fall below the threshold of \$50,000, but who is above the threshold because of a one-off event such as a redundancy payment or a payment on retirement.

The payroll subsidy is repealed on 1 April 2020. New section RZ 14 contains a transitional provision to ensure that PAYE intermediaries can claim and receive the payroll subsidy for PAYE income payments made before 1 April 2020 within the then existing rules and timeframes.

**Application dates**

The payroll subsidy threshold reduction from \$500,000 to \$50,000 applies from 1 April 2019.

The payroll subsidy provisions are repealed in their entirety effective 1 April 2020. New transitional provision section RZ 14 also applies from 1 April 2020.