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Making Tax Simpler: Better Administration of PAYE and GST

The New Zealand Law Society appreciates the opportunity to comment on *Making Tax Simpler: Better Administration of PAYE and GST – A Government Discussion Document* (discussion document).

The Law Society supports the objective of streamlining the provision of information with taxpayer compliance obligations. Aligning PAYE and GST processes with filing requirements will assist greatly in reducing compliance burdens for businesses.

The discussion document identifies a number of proposals regarding possible changes to the administration of the present PAYE and GST regimes. The discussion document (from Chapter 3 onwards) sets out a number of “Questions for Readers” seeking feedback on those proposals. The Law Society responds to those questions, following the numbering used in the discussion document.

Chapter 3: Modernising the PAYE Rules

This section considers some potential changes to improve the PAYE rules, particularly in relation to the accuracy of withholding of PAYE.

3.1 Do you support the Government’s vision for reducing existing pressure points around secondary tax through improved administrative intervention during the year as a result of Inland Revenue receiving more timely PAYE information?

The Law Society supports the government’s vision for reducing existing pressure points around secondary tax through improved administrative intervention during the year. This will ensure Inland Revenue receives more timely PAYE information. It is recognised that the current withholding system in certain situations results in overpayment or underpayment of income tax for individual taxpayers. Modernising the way PAYE information is provided, in conjunction with improved administrative intervention by Inland Revenue during the year, should help to reduce these pressure points.

3.2 *While maintaining our current income tax rate structure, do you have any better suggestions for reducing pressure points around secondary tax by improving the accuracy of withholding tax at source?*

The Law Society agrees with the proposal for Inland Revenue to intervene on a “real-time” basis in order to make corrections to a taxpayer’s tax code during an income tax year. This will ensure that an accurate amount of PAYE is paid by taxpayers throughout the year. This should be beneficial for both taxpayers and Inland Revenue, given that income tax paid and collected should more accurately represent as nearly as possible what will actually be due for the relevant year. It is noted that the means of communicating the requirements to adjust an individual’s tax code have been considered within the discussion document. The Law Society recommends that a standardised means of notification to the taxpayer (and to each individual affected) should be adopted (e.g. this could be a form to be provided by Inland Revenue to the employer and the employee), which explains why a particular change to a tax rate has been made, in order to ensure transparency.

3.3 *What do you think is more important – making the method for calculating tax on extra pays simpler for employers, or making the method for calculating tax on extra pays more accurate, to reduce instances of too much tax being withheld for employees?*

The Law Society recognises the importance of balancing accurate calculation methods for employees with administrative burdens for employers in respect of tax on extra pays. A more effective method could be utilised which achieves a better balance than the current system, which should not be too onerous for employers. This is discussed in the following section.

3.4 *How do you think the amount of tax to be deducted from an extra pay should be determined? Do you think the current method is acceptable, or can you suggest a better alternative?*

An improvement to the current formula for calculating the amount of tax to be deducted from extra pay would be to exclude any previous extra pays made in the four-week period prior to the payment date when calculating the proxy for annual earnings; then to add all extra pays made in the current tax year to this proxy. This should give a more accurate representation of the amount of employment-related income earned in the tax year by that taxpayer. This method would allow for a more accurate calculation of the applicable tax rate for the extra pay. The calculation should not be unjustly burdensome for employers, given the majority of employers should in any event hold information on extra pays paid to employees for the current tax year.

Whilst this calculation should represent an improvement from the current calculation, it is recognised that this method may still result in certain cases of under (or over) withholding of PAYE. In the case of under withholding (e.g. in the case of a person earning high commissions but earning a comparatively low salary/wages), it should be ensured that the employee does not suffer adverse consequences as a result of that under payment in the form of late payment penalties or use of money interest (e.g. where their extra pay causes the employee effectively to become a provisional tax payer).

3.5 What do you think about the idea of introducing two options – a simple method or a complex, but more accurate, method – that an employer could use to determine the amount of tax to be withheld from an extra pay? If you like this idea, what do you think the two calculation methods should be?

The Law Society submits that it should not be necessary to introduce two different calculation methods if the calculation method outlined at 3.4 above is adopted. Introducing two separate calculations is likely to cause confusion. It is also likely inadvertently to penalise taxpayers who are employed by employers using a simplified method of calculation, given this is generally recognised to cause more inaccuracies in calculations of tax payable. Before separate methods of calculation are adopted, the consequences for employers and employees who use the simple method must be determined to ensure they do not face adverse tax consequences on any underpayment (e.g. the imposition of late payment penalties or use of money interest).

3.6 Are you unclear about when holiday pay should be treated as an extra pay and when it should be treated as salary or wages?

The Law Society notes that the policy intent is that tax treatment of holiday pay depends on whether the holiday pay constitutes a lump sum payment (to be treated as extra pay), or paid in substitution for an employee's ordinary salary/wages when annual paid holidays are taken (to be treated as salary/wages). Current legislation is not explicit in this respect¹ and causes confusion amongst employers. It would be beneficial to clarify when holiday pay should be treated as extra pay and when it should be treated as salary or wages.

3.7 If you think clarifying the tax treatment of holiday pay is desirable, do you think it should be clarified by legislation, or do you think clarification in an Inland Revenue publication would be sufficient?

The Law Society submits that the definitions of "salary or wages" and "extra pay" in sections RD 5(1) and RD 7(1) of the Income Tax Act 2007 (ITA), respectively, should be amended to cover holiday pay and clarify the policy intent outlined at Q3.6 above. This represents a more unequivocal and accessible method of clarifying the rules and should provide a greater level of certainty than publishing a non-binding Interpretation Statement.

3.8 Do you think a mechanism should be introduced for withholding additional amounts of tax from employees' salary or wages in years when an extra pay day will occur?

A mechanism should be introduced for withholding additional amounts of tax from employees' salary or wages in years when an extra pay day will occur, in order to prevent potential

¹ Section RD 5(1) of the Income Tax Act 2007 defines "salary or wages" as "... a payment of salary, wages, or allowances made to a person in connection with their employment"; and section RD 7(1) of the Income Tax Act 2007 defines "extra pay" as "... a payment that — (i) is made to a person in connection with their employment; and (ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and (iii) is not overtime pay; and (iv) is made in 1 lump sum or in 2 or more instalments ...".

unexpected tax bills arising for filing taxpayers. This is discussed in more detail in the following section.

3.9 *If you think that a mechanism should be introduced, which of the options outlined would you prefer?*

In order to promote consistency for all employees, the Law Society submits that it should be mandatory for employers to withhold additional amounts of tax from affected employees for years when an extra pay day will occur. In order to assist employers in this process, it is suggested that the Commissioner's published PAYE tables should be updated to address the situation where an extra pay day occurs in a tax year, and employers should be required to adjust the calculation of the amount to be withheld from payments of salary or wages accordingly. Payroll software could additionally be programmed to detect if an extra pay will occur in a tax year, and calculate this accordingly, to assist employers.

3.10 *Do you think that legislated rate changes should be applied in the same way across PAYE-related tax types/products?*

The Law Society submits that legislative rate changes should be applied in the same way across all PAYE-related tax types/products, in order to achieve consistency. This should promote certainty for employers when applying a new rate. The method for alignment is discussed in the following section.

3.11 *Do you think that a pay date approach is the best option for alignment?*

The Law Society considers that a pay date approach is the best option for aligning the application of a rate change to all PAYE-related tax types/products. This approach represents the simplest option for employers because not all payments relate to a specific pay period (e.g. in the case of extra pays). Whilst this approach will reduce compliance costs, it will also result in reduced withholding accuracy in some circumstances. Assurances will be required that if any inaccuracy results in underpayment of tax for an employee, that taxpayer should not face any adverse tax consequences (e.g. the imposition of late payment penalties or use of money interest).

Chapter 4: PAYE – Modernising how information is provided

This section considers how to improve the way in which PAYE information is provided to Inland Revenue, in order to minimise compliance costs through more simplified processes.

4.1 *What are the key areas of concern with the PAYE information process from an employer's perspective?*

The Law Society agrees with the list identified in the discussion document, of the key areas of concern with the PAYE information process from an employer's perspective:

- difficulties in setting up new staff;
- problems changing deductions;
- difficulty in making changes to information already filed;

- problems with understanding and reconciling the information Inland Revenue makes available to employers; and
- concerns about the time it takes Inland Revenue to process employer monthly schedules and action amendments.

4.2 *Are there other aspects of the process of providing PAYE information that are significant sources of frustration/wasted time that should be rectified?*

Additionally, the following aspects of the process of providing PAYE information could be rectified:

- The Inland Revenue website could be simplified in relation to PAYE information and optimised for relevance.
- Whilst examples are given to assist employers in providing the correct information, these are often simplistic. The examples should be expanded to cover more complex situations.
- There are often delays in Inland Revenue advising of the correct deductions to be made. It would be helpful for employers to be advised of the correct deduction on “day one”.

4.3 *Do current PAYE processes cause other problems for employees that should be addressed?*

Enabling PAYE information to be shared on a timelier basis should result in fewer inaccuracies in PAYE deductions (and related deductions). This would ensure employees are less likely to suffer a cash flow disadvantage (in the case of over withholding during the income tax year), or be in an unexpected tax payable position (in the case of under withholding during the income tax year).

4.4 *Do you support the proposal that employers should notify Inland Revenue of a decision to commence, temporarily cease or permanently cease to be an employer?*

The proposal that employers should notify Inland Revenue of a decision to commence, temporarily cease or permanently cease to be an employer is supported. This should eliminate:

- the risk of an ex-employer being wrongly pursued for failure to file PAYE information; and
- the requirement to file nil returns when someone has temporarily ceased to be an employer.

This would represent more efficient utilisation of Inland Revenue resources and a reduced administrative burden for employers.

4.5 *Should these requirements be included in legislation?*

The requirement for employers to notify Inland Revenue of a decision to commence, temporarily cease or permanently cease to be an employer should be included in legislation.

It is noted that the discussion document does not discuss whether and how a new employer, ex-employer or temporarily suspended employer would be penalised if the required notification is not made to Inland Revenue, and this should be considered before any new obligation is imposed. In particular, if penalties for non-notification are to be imposed, it is recommended they are not draconian and are only a small monetary fine (similar to the present late filing

penalty in section 139A of the Tax Administration Act 1994), in order to strike a balance between encouraging compliance and fairness to employers.

4.6 Do you agree with the proposal that employers should be able to use their payroll software to provide relevant employee details to Inland Revenue at the time those details are entered, changed, or removed from the payroll system?

The Law Society agrees with the proposal that employers should be able to use their payroll software to provide relevant employee details to Inland Revenue at the time those details are entered, changed, or removed from the payroll system. This should significantly improve accuracy in relation to PAYE (and related) deductions and enable more employees to have the correct tax withheld on their income during a tax year.

4.7 Would using payroll software to provide Inland Revenue with details of new employees before they are first paid and being notified of deductions as set out above, reduce or increase compliance costs? If you can quantify the effect please do so.

The cost of using payroll software to provide Inland Revenue with details of new employees before they are first paid and being notified of deductions would need to be assessed. Employers would have to compare the costs associated with purchasing or upgrading current payroll software, plus the related payroll staff training, against the potential long term benefit of (at least partially) automated provision of information to Inland Revenue. Uptake would depend upon whether, under such an evaluation, it would lead to a reduction or increase in compliance costs. It is therefore submitted that the proposal should not be adopted as it may cause a significant increase in compliance costs to a material number of employers.

4.8 Do you support the proposal that Inland Revenue should continue to communicate any change of employee obligations or details to the employee?

The Law Society supports the proposal that Inland Revenue should continue to communicate any change of employee obligations or details to the employee, in order to ensure the highest degree of transparency for the employee and to ensure they understand their tax obligations.

4.9 Do you agree with the proposal that employers should obtain date of birth information and provide this information about their new employees to Inland Revenue?

The Law Society does not agree with the proposal that employers should obtain date of birth information in relation to its new employees and provide this to Inland Revenue. This proposal gives rise to security and privacy concerns, unless the employee agrees to the provision of such information.

It is recognised that in certain instances a person may cite an incorrect Inland Revenue number, or spell their name in multiple ways. However, where there is a problem in confirming a particular employee's identity, the employee should be contacted so that he or she can provide the correct date of birth directly to Inland Revenue for the purposes of identification and otherwise review their information to ensure it is correct. But the standard provision of this information for all employees, before any confusion or uncertainty of identification arises, is not justified.

4.10 Should the requirement on the employee to provide date of birth information be included in legislation?

The Law Society does not support this. It would impose additional compliance costs without any justification.

4.11 If your payroll software could send payroll information to Inland Revenue at the time staff are paid, would it increase or reduce your compliance costs? If you can quantify the effect please do so.

This proposal (payroll software sending payroll information to Inland Revenue at the time staff are paid) would be likely to reduce compliance costs. However it is not clear whether corrections or amendments could be made efficiently, nor whether this proposal would work in practice given the many different payroll software systems available.

4.12 If payroll software could calculate the information required to amend payroll records and could be used to send that information to Inland Revenue at the time payroll records are amended, would that increase or reduce your compliance costs? If you can quantify the effect please do so.

The Law Society is not in a position to comment on this.

4.13 Do you prefer one or other of the two options outlined above for the information to be provided when PAYE information is amended?

Increasing the speed with which PAYE information is made available to Inland Revenue may result in more errors. Under the current system, payroll staff have the opportunity to amend matters that come to their attention before the information is sent to Inland Revenue the following month. The Law Society supports the proposal for an employer's payroll system to be able to calculate and submit amending data to Inland Revenue at the same time the changes are made to the employer's own record. This should be done by the payroll system informing Inland Revenue what was paid and what should have been paid and deducted, thereby automating the process and providing the information on a pay day basis.

4.14 Do you think there is a need for legislation to explicitly provide for the correction of minor errors in a subsequent pay period? If so, at what \$ value should the threshold be set?

Currently, section 113A of the Tax Administration Act 1994 provides for the correction of minor errors in subsequent periods in relation to income tax, FBT and GST; unfortunately there is no equivalent for minor errors of PAYE. The legislation provides for a "minor error" to be corrected in the subsequent return where the error was caused by a clear mistake, simple oversight or mistaken understanding and for a single return, where the total discrepancy in the assessment that is caused by the error is \$500 or less.

The Law Society submits that this legislation should be extended to cover PAYE and that the same dollar threshold should be used, for the sake of consistency.

4.15 Would the following attributes of the proposed new PAYE processes be of value?

- **Faster processing of PAYE information by Inland Revenue;**
- **Greater access to your PAYE information;**
- **The ability to filter and drill into your PAYE information; and**
- **The ability, if necessary, for you and an Inland Revenue staff member to see the same information.**

These attributes of the proposed new PAYE processes are likely to be of value to employers, in terms of simplifying the administrative process and allowing more timely access to information.

Chapter 5: PAYE Information – Implementing Change

This section considers potential changes that could be made to improve the speed with which PAYE information is made available to Inland Revenue and to increase the reliance on electronic filing of PAYE information.

5.1 Provided a straightforward internet portal exists do you agree that employers with more than \$50,000 a year of PAYE and ESCT obligations should be required to file PAYE information electronically?

Employers with more than \$50,000 a year of PAYE and ESCT (Employer Superannuation Contribution Tax) obligations should be required to file PAYE information electronically. It is recognised that this represents a more efficient and cost-effective method of submitting PAYE information than via paper returns, and the current threshold of \$100,000 was introduced in 1999, when online services were significantly less utilised.

However, the Law Society supports an exemption being available where an employer is unable to access digital services, to ensure the requirement is fair for all employers.

5.2 If you believe the threshold for electronic filing should be based on something other than the value of PAYE and ESCT deductions, please describe how the alternative would work and where you think the threshold should be?

In addition to the \$50,000 threshold, an employer with more than ten full-time employees at the minimum wage, or more than four full-time employees at the average wage, should be required to file electronically. For the sake of consistency, there should be a single definition of “full-time”, defined as staff who work more than 25 hours per week.

5.3 Are there factors, other than inability to access digital services, which should be grounds for an exemption from a requirement to file PAYE information electronically?

No.

5.4 How should “inability to access digital services” be defined for the purposes of an exemption to a requirement to file PAYE information electronically?

The Law Society suggests the following definition for “inability to access digital services”:

“Digital services” are those services which rely on access to the internet to enable an employer to file PAYE information electronically with the Inland Revenue Department. An “inability to access digital services” occurs for an employer where either of the following conditions is met:

- (a) Where the employer does not own or does not have readily available to it, any physical items required to access digital services, such as a computer and/or modem.*
- (b) Where the employer owns or has readily available to it, any physical items required to access digital services, but the geographic location of the ordinary place of office of the employer limits the speed and reliability of the internet such that the employer only has intermittent access to digital services.*

5.5 *Do you think there should be a more flexible framework under which changes to the threshold for electronic filing are considered in future?*

The Law Society considers the current framework is preferable and should be retained. It allows for public consultation, which is an important element when considering changes to the threshold for electronic filing, and due legislative process. Giving the Commissioner of Inland Revenue the power to update the threshold would confer a significant degree of discretion and would remove public consultation from the process. Similarly, whilst changing the threshold by Order in Council would provide for parliamentary scrutiny, again it would not allow for public consultation.

5.6 *If you think so, which of the options outlined above do you prefer?*

Not applicable (the Law Society opposes the proposal outlined at Q5.5).

5.7 *Do you agree that Government needs to be able to balance the employer’s interest in choosing how to provide PAYE information against the wider system benefits?*

The anticipated benefits of obtaining more timely PAYE information are acknowledged, but it is important to weigh employers’ interests in choosing how to provide PAYE information, against the wider system benefits. The wider system benefits need to be evaluated against the implementation costs for employers, in economic terms (e.g. the cost to employers of purchasing new software or updating existing software) and the administrative burden (e.g. in training payroll staff how to use new software and submit information to Inland Revenue, or where staff are required to manually input data). As these costs fall on employers, they (rather than Inland Revenue) are best placed to undertake the cost/benefit evaluation.

5.8 *Do you think Government should require employers to use payroll software capable of providing PAYE information at the time of the business process?*

The government should only require large employers to use payroll software capable of providing PAYE information at the time of the business process; and this should only take place following the implementation approach discussed below (Q5.9). It would be inequitable to require small employers to use payroll software capable of providing PAYE information at the time of the business process, unless this was funded by the government (i.e. provision of the requisite software and associated payroll staff training). Otherwise this could represent a significant unnecessary cost to small employers.

5.9 *If you prefer one or other of the outlined implementation approaches to the provision of PAYE information at the time of the business process (voluntary-first, review or legislated) please identify your preferred option.*

A review approach should be adopted: this should achieve the appropriate balance between certainty and flexibility for employers, compared with the two alternatives. This is on the basis that, under the review approach, it is initially not mandatory to submit information automatically, unlike the legislative approach (which could represent a significant burden for employers). Further, the review approach provides certainty as to when the review phase will be completed (the proposed timeframe for this review period is discussed in Q5.11, below); this means the delay to benefit realisation is limited, when compared with the voluntary-first approach.

5.10 *If you would prefer another approach entirely please outline it.*

Not applicable.

5.11 *If you support the 'review approach' how long after it first becomes possible to meet PAYE obligations by submitting PAYE information at the time of the business process, should the review occur?*

The review should occur 36 months after it first becomes possible to meet PAYE obligations by submitting PAYE information at the time of the business process. This timeframe will maximise uptake and allow for a significant time for utilisation before reviewing the efficacy of the scheme.

5.12 *If your answer to any of the above questions would vary depending on an employer's size or other characteristics, please outline the considerations you think are relevant.*

Not applicable.

5.13 *If you were required to provide PAYE information at the time the business process occurs, would you seek to change the frequency with which you paid your staff?*

If employers were required to provide PAYE information at the time the business process occurs, it is likely that certain employers would decrease the frequency with which staff members are paid in order to reduce the associated administrative burden of providing such information. Such a response would depend on various factors such as the cost, accessibility and usability of software which might help simplify the process, as well as employment law considerations (e.g. what the relevant employment agreement says about its terms being varied) and the amenability of staff to a variation of their pay periods. We note that where employees are on minimum or low wages, decreasing the frequency of the pay run may cause undue hardship.

5.14 *If you have a large payroll, what factors would influence whether you would upgrade it to take advantage of the new PAYE services?*

For employers with a large payroll, the cost and complexity of implementation and the time required to be spent on implementation would likely be the key factors influencing whether an employer would upgrade.

5.15 Does an upgrade to your payroll system to provide PAYE information at the time of the business process depend on the law being changed to make this a legal requirement?

An upgrade to an employer's payroll system to provide PAYE information at the time of the business process is generally unlikely to depend on the law being changed to make this a legal requirement. Many "large" employers are likely to commence the process in advance of a legal requirement to comply once the proposed change is strongly indicated, on the understanding that the change is likely to be legislated at a later date. However the timing of any upgrade would be influenced by the evaluation of resources saved on using an automated basis, in comparison with the cost and complexity associated with upgrading the payroll system, given that the change may be of limited benefit to employers.

5.16 Do you think that financial assistance, such as the existing payroll subsidy or something else, should be available to assist employers take advantage of the new digital services proposed to modernise PAYE information?

Financial assistance should be available to assist employers to take advantage of the new digital services proposed to modernise PAYE information. Whilst it is noted that there are currently over 50 payroll providers active in New Zealand (meaning increased competition), this change is still likely to represent a significant cost to many employers.

5.17 If so what factors should any such assistance target?

Currently, a payroll subsidy is available to employers with less than \$500,000 a year of PAYE deductions, including ESCT. The subsidy discounts the cost of payroll services by \$2 per employee each pay period, for up to five employees, provided the employer uses a listed payroll intermediary (which, following the transition period, is likely to be required to upgrade the services to provide PAYE information at the time the business process occurs). This subsidy should be retained or even increased to assist employers to take advantage of the new digital services proposed to modernise PAYE information.

5.18 If you run a small or medium payroll, what factors would be most influential in determining whether you would choose to upgrade to software offering the new PAYE services?

For employers with a small or medium payroll, the factors outlined above in relation to large employers would also be relevant in considering whether to upgrade to take advantage of the new PAYE services. Additionally, the size of the payroll is likely to be influential (e.g. where there is only one employee, this is unlikely to justify utilising software to supply information to Inland Revenue with the business process, as this could easily be manually input through the IR portal).

5.19 If you run a small or medium payroll and were required to provide PAYE information at the time of the business process what options would you consider and why?

5.20 Are there additional issues beyond those identified for small and medium organisations, and those with very simple payrolls, that need to be considered when thinking about how the proposed new PAYE services would work for not-for-profit organisation?

5.21 Are there additional issues that need to be considered when thinking about how the proposed new PAYE services would work for third parties such as bookkeepers, accountants, payroll bureaus and payroll intermediaries?

No comment.

5.22 If there is a general requirement to provide PAYE information when the business process occurs, is it reasonable to expect employers who have an exemption because they cannot use digital services, to nonetheless provide disaggregated PAYE (pay day) information?

No, it is not considered reasonable to expect employers who have an exemption because they cannot use digital services, to nonetheless provide disaggregated PAYE (pay day) information. To do so would impose a significant administrative burden.

5.23 If there is a general requirement to provide PAYE information at the time the business process occurs, is it reasonable to expect that exempt employers should be required to provide PAYE information by the 5th of the following month?

No, it is not considered reasonable to expect that exempt employers (i.e. those employers who are not required to file digitally) should be required to provide PAYE information by the 5th of the following month. To do so would impose a significant administrative burden. The current timeframe of the 20th of the following month should be retained.

5.24 Do you agree that IR56 taxpayers should remain responsible for submitting their own PAYE information and paying their own PAYE deductions to Inland Revenue, rather than their employers?

IR56 taxpayers, rather than their employers, should remain responsible for submitting their own PAYE information and paying their own PAYE deductions to Inland Revenue. This is the most straightforward method of collecting PAYE information and payments in respect of IR56 taxpayers. In particular we note that there may be difficulty enforcing such obligations against foreign states and non-resident companies that do not have a New Zealand presence.

5.25 Do you think that IR56 taxpayers should have to provide their PAYE information to Inland Revenue earlier (for example, by the 5th of the following month), or do you think that by the 20th of the month following payment is still sufficient?

IR56 taxpayers represent only a small proportion of taxpayers and, as employees, in many cases it may take them longer to calculate and confirm their payroll liabilities. It should be sufficient for their PAYE information to be due by the 20th of the following month, as per the current rules, rather than being obliged to provide this information to Inland Revenue earlier.

Chapter 6: PAYE – Aligning payments

This section considers the potential alignment of the payment to Inland Revenue of PAYE deductions and related payments, with the payment of employees' salary and wages.

6.1 Should the timing and process of employers' PAYE payment obligations be aligned with the process of paying salary and wages to employees?

The timing and process of employers' PAYE payment obligations should not be aligned with the process of paying salary and wages to employees. The current system of monthly payment of

PAYE is sufficient as it covers all types of pay cycles (i.e. weekly, fortnightly and monthly). Aligning payment of PAYE deductions with the payment of salary/wages is likely to introduce additional administrative burdens to many employers, given the increase in frequency of payments being due, which is also likely to mean increased costs for employers.

Currently, employers may offset some of their PAYE compliance costs with the time benefit of holding the PAYE until payment is due, which would be lost if payment of salary/wages and payment of PAYE were aligned.

Small businesses, which are often under-capitalised, are likely to be adversely affected given the impact on cash flow if PAYE is required to be paid every pay day. Where this causes delayed payments of PAYE, not only will employers be charged penalties and use of money interest, but additional Inland Revenue resources may be required, for example where contact is made to request delayed payment.

6.2 *Do you think this alignment would increase or reduce compliance costs and effort? If you can quantify the effect please do so.*

The alignment of employers' PAYE payment obligations with the process of paying salary and wages to employees would increase compliance costs and effort due to the increased frequency in which payment would be due in most cases, due to many employers running a weekly or fortnightly payroll.

6.3 *Do you believe that the timing of PAYE payments made to Inland Revenue is necessarily linked to when PAYE information is provided?*

The timing of PAYE payments made to Inland Revenue has not historically been linked to when PAYE information is provided. There is no significant rationale for linking the two now.

6.4 *Do you think PAYE payment to Inland Revenue on a pay day basis would influence the frequency with which you will pay your staff?*

If an employer was required to make PAYE payments to Inland Revenue on a pay-day basis, it is likely that certain employers may seek to reduce the frequency with which staff members are paid in order to reduce the associated administrative burden of payment. As noted at Q5.13 above, this could have significant employment law ramifications, and where there are employees on minimum or low wages, decreasing the frequency of the pay run may cause undue hardship.

6.5 *Do you think, for IR56 taxpayers, the due date for payment of PAYE deductions should remain aligned with the due date for providing PAYE information to Inland Revenue?*

The due date for payment of PAYE deductions for IR56 taxpayers should remain aligned with the due date for providing information to Inland Revenue.

Chapter 7: GST – Modernising how information is provided

This section considers how to improve the way in which GST information is provided to Inland Revenue, in order to create an easier, cheaper and more effective system for customers to comply with their GST information and payment obligations.

7.1 If you could submit GST information directly from integrated accounting software in the way described, would this reduce or increase your compliance effort and costs? If you can quantify the amount please do so.

The direct submission of GST information would reduce compliance time and costs. However, this result would only be achieved if the interface between the taxpayer's own electronic accounting system and Inland Revenue's platform is both smooth and secure. Inland Revenue's platform must be compatible with a range of different commercial accounting packages available for calculating GST – and must interface with each of them equally. Obviously compliance costs would increase dramatically if taxpayers were obliged to purchase new software packages or upgrade existing packages in order to achieve a smooth and secure interface with Inland Revenue's platform.

7.2 Are there additional issues that need to be considered when thinking about how the proposed new digital services would work for third parties, such as tax agents, tax advisors, accountants and bookkeepers, in relation to the provision of GST information?

No comment.

7.3 Do you support the proposal that adopting the new digital services should be voluntary for GST information?

Adoption of electronic accounting systems for all taxpayers, let alone the requirement for direct submission of GST information electronically, must remain voluntary for all taxpayers (at least for the foreseeable future). While the proposal will be welcomed by many taxpayers, it may prove unworkable for some. These taxpayers may be:

- large enterprises, who own accounting systems that are so complex and specialised that direct submission of the information would not be practical, or
- small taxpayers who lack the resources or sophistication to purchase and/or run commercial accounting packages.

While the uptake of direct submission of GST information may increase, to make such a system mandatory would be unwarranted as it fails to address the circumstances of individual taxpayers and may impose unjustified compliance costs.

7.4 Would you take up the new GST services? If your answer is "it depends", what does it depend on?

As stated above, the proposal depends on a smooth and secure interface between the taxpayer's accounting system and Inland Revenue's platform. The more types of accounting packages that achieve this interface, presumably the wider the voluntary uptake by the tax community. It is encouraging that Inland Revenue is presently working with software providers to ensure that the widest range of different packages and delivery options will be available.

7.5 Do you support the proposal that GST refunds should only be made by direct credit into a customer's nominated bank account unless it would cause undue hardship to a customer or is not practicable?

Given the prevalence of electronic payment methods, it is reasonable that GST refunds should be paid by Inland Revenue electronically (either to the taxpayer's account or its authorised agent). The benefits of such payments are identified in the discussion document. However, as

acknowledged in the document, it is important Inland Revenue continues to ensure that “*an exemption to this rule would be available if the taxpayer expresses hardship or direct crediting is not practical*”. It would be helpful for Inland Revenue to publish guidelines on when the exemption may apply and how taxpayers can utilise it.

7.6 Do you think GST-registered persons over a certain threshold should be required to submit their GST information to Inland Revenue in an electronic format?

The discussion document indicates that approximately 65% of GST returns are already provided electronically, and that this proportion is increasing annually. Given the majority of GST returns are already filed electronically, it is appropriate that “*the discussion document does not propose compulsory adoption of the new digital services*” in all instances. Some compliant taxpayers will always lack the resources or sophistication to complete GST returns electronically. The Law Society agrees it would be improper for Inland Revenue to punish such taxpayers.

Furthermore, the Law Society does not agree that an exception to the requirement for electronic filing should be available only to taxpayers who fall under a prescribed turnover threshold. The exception should remain available to all taxpayers. Presently 35% of all returns are filed in paper form. The discussion document provides no break-down as to the types of taxpayers who file paper returns or their level of turnover. Accordingly, it is impossible to tell what proportion of taxpayers still filing paper GST returns fall below a particular turnover threshold. While taxpayers should continue to be encouraged to file GST returns electronically, and therefore uptake should continue to increase each year, that method should not become mandatory for any taxpayers, regardless of their turnover. Perhaps Inland Revenue could survey those taxpayers who continue to file paper GST returns to identify the circumstances preventing them from choosing to file electronically.

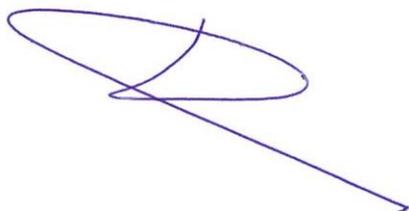
7.7 At what level do you think such a threshold should be set?

Not applicable (see the Law Society’s response to Q7.6).

Conclusion

This submission was prepared by the Law Society’s Tax Law Committee. If you wish to discuss this further, please do not hesitate to contact the committee convener Neil Russ, through the committee secretary Jo Holland (04 463 2967 / jo.holland@lawsociety.org.nz).

Yours sincerely



Mark Wilton
Vice President