

# NEWSLETTER SPRING 2016



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## URLICH LANDER LTD

**Phillipa Urlich**  
**Denis Lander**

Phone 04 939 0899  
Level 1, 21 Broderick Road  
Johnsonville 6037  
P O Box 13339  
Johnsonville 6440

[admin@urlichlander.co.nz](mailto:admin@urlichlander.co.nz)  
[www.urlichlander.co.nz](http://www.urlichlander.co.nz)

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## HOLIDAY PAY MISHAPS

As seen through the media lately, mistakes within holiday, sick and bereavement pay calculations are more common than we would like to think and are not just limited to Government organisations. Due to the complexity of the calculations required to monitor and record holiday pay, errors or deviations from the Holidays Act 2003 (the Act) requirements can occur.

Common payroll **mistakes** which can result in under or over payments include:

- Incorrect leave payments for employees returning from maternity/paternity leave
- Payroll Systems incorrectly calculating the amount of leave paid based on hourly rates instead of daily rates (for sick, bereavement, public holiday or alternate day) or weekly rates (for annual leave)
- Previous allowances (such as shift allowances or regular commissions) earned and/or regular overtime are not included in leave payments which causes underpayment
- Time and a half earned on public holidays is not included in subsequent leave payments which causes underpayment
- Discretionary payments (such as one-off bonus) are included in leave payments which causes overpayment

Staff members with fluctuations in their normal hours worked can be prone to holiday/sick/bereavement pay mistakes, with the most commonly affected being waged employees.

The implications from incorrectly calculating holiday pay can be significant. Not only might an employee have been paid too much or too little, it also has flow on effects to PAYE, KiwiSaver, Working for Families and Student Loans and breaches to individual and collective employment agreements.

If you think you may have fallen into any of the above Annual/Sick/Bereavement Leave traps as either an employee or employer, please contact your client manager for assistance.



## SHOULD YOU BE A DIRECTOR?

Many clients who are in traditional “Mum and Dad” businesses have companies set up where both Mum and Dad are directors of the company. Often, the reality is that only one person operates the business on a day to day basis.

The Companies Act sets out director responsibilities, and they can be quite strict and include not operating in personal interest, knowing and understanding the operations of the business and not allowing the business to operate in a way which may cause loss to creditors. However every other piece of legislation that regulates your business also imposes obligations on company directors, for example the new health and safety legislation that came into force in April this year.

The new rules mean that directors can be prosecuted personally for injuries or accidents that happen at work. There is now a much greater burden on directors to fully understand, assess and minimise risks in the workplace.

There is no such thing as a passive director, and claiming lack of knowledge of the business operations is no defence should something go wrong. For this reason, we suggest our clients review their own situations and looking at resigning directors who are not really involved in the day to day operations. Give your client manager a call to discuss.

## TAX TALK

### Provide GST registration details to remote vendors

From 1 October 2016 non-resident businesses must charge and return GST where they meet the criteria to register for GST and they supply remote services (including online services) to New Zealand residents. As a New Zealand resident business, you won't be charged GST on these supplies, if;

- you are GST-registered
- the supplies are part of your taxable activity, and
- you let the non-resident supplier know you're GST registered and provide your New Zealand GST registration number or business number



Non-resident suppliers don't have to give you a tax invoice and you can't claim back any incorrectly charged GST in your GST return, except where the supplier treats your business as an individual customer and charges you GST by mistake. If that happens, you contact the supplier who either refunds the amount to you or issues a tax invoice for you to claim the refund on your GST return. You can only obtain a tax invoice when the supply is less than \$1,000. So it's just easier to let the supplier know upfront.

You might like to advise your regular suppliers ahead of time and word up your purchasing team to highlight it in their calendars to start reminding suppliers at time of purchase.



## Tax changes for LTCs: watch this space

Proposals to change the rules governing look-through companies (LTCs) and closely held companies are currently going through parliamentary hearings and consultations. If passed, the Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Bill is expected to take start taking effect from the 2017 tax year.

The proposed changes are part of the moves to simplify tax, however there are some proposals which have a significant favourable effect. One such proposal is the removal of the loss limitation deduction in most cases (that is, where LTC losses are effectively limited to the amount the owner has at risk economically).

Another proposal affects situations where companies are liquidated and distributions of capital gains are made to shareholders. Currently, distributions of tainted capital gains (arising through a transaction with an associated party) involved in the transaction giving rise to the capital gain, are taxable. The new proposal is to exclude genuine capital gains from this by only taxing those distributed capital gains where the purchaser is a company and the shareholders of the company disposing of the asset retain an interest in the asset of at least 85% after the disposal.

If you would like more detail on how the proposals would affect your business, please contact us.

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## WINDING UP A COMPANY

Recently, there has been an increased level of sophistication on the part of Inland Revenue (IRD) when reviewing company windups. Important points to bear in mind when winding up a company are outlined below.

Before applying to the Companies Office for removal from the companies register, a company should have discharged its liabilities to all creditors and distributed its surplus assets to its shareholders. The distribution of the company's surplus assets should be recorded by way of the directors' resolution. The amounts distributed to shareholders on liquidation are taxed depending on the nature of a distribution, as follows:

- Available subscribed capital (ASC) - represents a company's paid up share capital and can be distributed tax free to shareholders on liquidation.
- Capital gain amounts - are generally able to be distributed tax-free on liquidation of a company.
- Remaining funds - to the extent that the distribution exceeds ASC and capital gain amounts, the balance will comprise a taxable dividend. This is typically a company's retained earnings.

In order for capital gains to be distributed tax-free, the process to windup the company must have commenced. Ideally, commencement of a liquidation is evidenced by a shareholders' resolution signalling the intention to commence winding up the company. The IRD accept that in some circumstances, a less formal step may be sufficient to commence the liquidation, provided the step is overt and carried out with the aim of achieving removal from the register.

We have seen an increasing number of cases where IRD has specifically requested documentation to evidence when the liquidation process was commenced. Therefore it is important to ensure the commencement resolution is drafted and dated correctly, or alternatively, a less formal course of action (if applicable) is supplemented by supporting documentation.

The Income Tax Act also prescribes a specific formula that is to be used to calculate the capital gain amount. This will not

necessarily equate to the capital gains recorded on the company's balance sheet. Through its review process IRD are asking for a copy of taxpayers' capital gain calculations.

During the removal process approval must be obtained from IRD to remove a company from the register. The request to IRD should be made in writing after the liquidation process has commenced and once all tax compliance obligations have been met, e.g. final GST and income tax returns have been filed.

If the final distribution is subject to resident withholding tax, this will also need to be filed and paid before IRD approval is given. The IRD have a list of information that must be provided as part of this request, which is available on their website

<http://www.ird.govt.nz/yoursituation-bus/ceasing/business-ceasing-incometax.html>

If approval is obtained, IRD will issue a letter stating they have no objections to the company being removed from the register. However, this approval provides no defence if a subsequent review, as described above, identifies mistakes when the various elements of the distribution were calculated.

Care must be taken. If IRD take the view that a capital gain was distributed prior to 'commencement', the costs could be significant.

### Process for winding up a Company

- Complete last set of Financial Statements
- File last PAYE, GST & FBT returns
- File the last income tax return.
- Complete Minutes including Special Resolution to wind up
- Complete Business Cessation Form to advise IRD.

This is a complicated process that Ulrich Lander can help with. Please contact your client manager for further assistance.

## VULNERABLE EMPLOYEES

The Labour Inspectorate is upfront about targeting employers who exploit vulnerable employees — for instance, those new to New Zealand, without long term visas or people to advise them.

In August, the Employment Relations Authority (ERA) ordered a Wellington grocery store to pay \$53,000 in penalties and arrears for employment law breaches. The employer had failed to pay the employee minimum wage, holiday pay or additional pay for working on public holidays; had not paid the employee for all hours worked; and had charged the employee more than \$10,000 in premiums by way of a payment of \$5,000 upfront, \$3,240 in regular small cash payments, and \$2,167 funding company expenses on the employee's personal credit card.

The penalty for breaches of the legislation was \$25,000, in addition to \$28,781.23 to be paid to the employee for minimum wage arrears, reimbursement of premiums and holiday pay arrears. 'This ruling sends a clear message to employers that failure to comply with minimum employment labour standards will not be tolerated,' said Loua Ward, Labour Inspectorate Regional Manager.



## IRD Audits & Risk Reviews

IRD have been very busy wanting to review and/or Audit taxpayers and their businesses. We have seen a sharp increase in the number of taxpayers coming to us with their affairs being audited, or risk reviewed by IRD. Depending on any of the circumstances, we will suggest ways of how to deal with IRD and whether extra expert advice is required to manage the IRD enquiry. It usually is best to work with IRD to work out the most successful result. We aim to come to a practical result however the IRD may become unreasonable sometimes from your point of view, so therefore you will need to get assistance to ensure there is a fair result. It is always better for clients to avoid becoming distressed when they have to endure battles with IRD.

Please be aware that if your business has had years of losses accumulated and are accepted by IRD, an offset may be considered and used for taxes outstanding. Please call your client manager for assistance.

## TAX DATES

Note: these dates apply to those clients for whom we prepare tax returns. Different dates will apply for those clients for whom we don't prepare returns. Please ask us if you'd like more information.

Tax Type	Who / What	When it's due
PAYE	large employers return and payment	5 September
		5 October
		7 November (as 5th falls on a weekend)
	large and small employers return and payment	20 September
		20 October
		21 November (as 20th falls on a weekend)
GST	return and payment	28 September
		28 October
		28 November
FBT	quarterly return and payment (if you pay it quarterly)	20 October
	return and payment (if you pay it on an income year basis under the close company option) and you have an October balance date	7 November

## Provisional and Terminal Tax

I pay provisional tax...	And my balance date is...	So my provisional tax is due next...
2 monthly (6 times a year)	February, April, June, August, October or December	28 September AND 28 November
	January, March, May, July, September or November	28 October
4 monthly (3 times a year)	April, August or December	28 September
	January, May or September	28 October
	February, June or October	28 November
6 monthly (twice a year)	February or August	28 September
	March or September	28 October
	April or October	28 November
Terminal tax	October	Terminal tax payment due 7 November

## NEW LENDING RULES FOR PROPERTY INVESTORS

The Reserve Bank has decreed that from 1 September banks will need to ensure that 95% of their lending to property investors is with a 40% deposit, nationwide. Banks will also need to ensure that 90% of lending to owner occupiers has at least a 20% deposit.

Clearly this is being done in an attempt to slow the housing market, however many argue that large scale investors will have no issue coming up with a 40% deposit due to the rapid rise in house prices recently, which will have given investors good equity to work with. The 40% does not have to be cash, and can be fully equity.

The new rules seem like they will impact smaller scale investors – Mum and Dad buying a single rental property for example, however usually these investors will already have a house, and again due to recent rises may find their equity gets them over the threshold.

*Investors in the Auckland market had previously required a 30% deposit, and it does not appear to have had much impact it remains to be seen what impact the new rules will have.*