

A-Z Guide

PAYE



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Overview

1. PAYE is the acronym for Pay As You Earn. Only employees have PAYE deducted from their earnings.
2. Most earnings from which PAYE is deducted must also have the ACC earner levy deducted.
3. Employees must complete an IR330 every time they change employer or tax code.
4. A tax code indicates the correct rate of PAYE that must be deducted from an employee's earnings.
5. Employers who fail to deduct PAYE may be fined and/or imprisoned for breaking the law.

Introduction

Employers are required to make deductions from payments made to employee who work for them. PAYE is the basic “pay as you earn” tax which is deducted from payments of wages and salaries to employees. PAYE can incorporate additional charges such as ACC earner premiums. In addition to PAYE there are other deductions that are made from payments to employees. These can include student loan repayments, withholding tax on superannuation fund contributions, and child support. There are several different rates of deduction depending on the circumstances of the employee.



PAYE

Refer to the following A-Z Guides for more information about tax:

- Student Loan Deductions
- Child Support Deductions
- Superannuation Fund Contributions
- Travel Allowances

All employees are required to fill out an IR330 form at the commencement of their employment. These forms are kept by the employer and if the employee's tax status or code changes at any time then they will need to fill in a new IR330 to reflect the change.

Employers are required to file details of employees and contractors' earnings, PAYE and any other deductions every month. At the end of each financial year the employee may receive from the IRD a Personal Tax Summary, which will reflect income and tax from each employer if the employee has more than one employer in that period. Employees are not required to file annual income tax returns, as for most employee's income tax calculation is a straightforward exercise. However, they may choose to if they wish.

The current tax regime requires employers and employees to be vigilant with the information they provide to the IRD because it is updated less often. The penalties for error and dishonesty are more serious now than in the past.

All earners in New Zealand are required to pay an ACC earner levy to cover the cost of non-work-related injuries. The IRD collects this on behalf of the Accident Compensation Corporation. The IRD's PAYE tax tables have the ACC earner levy built into them and the payments are made as part of the PAYE to the IRD. Almost all earnings that are subject to PAYE are also liable for the levy.

This includes:

- Wages and salaries
- Overtime pay
- Back pay and holiday pay
- Long-service leave pay
- Bonuses or gratuities
- Taxable allowances
- Shareholder-employee salaries from which PAYE is deducted
- Salaries to partners in a partnership

The exceptions are:

- Scheduling payments (formerly withholding payments)
- Retirement payments
- Redundancy payments
- Jury fees
- Witness fees
- Taxable and non-taxable pensions
- Tax-free allowances

Tax Codes

Tax codes are incidental to each employment relationship and the job the employee is employed to do. If an employee changes job within an employment relationship and their income increases or decreases dramatically then their tax code may need to be reviewed. If an employee change employment, then the new employer will ask them to complete an IR330 for that new relationship and job. All employees are required to advise their employer of the appropriate tax code to be used in deducting PAYE from their salary or wages.



PAYE

A completed IR330 must include the employee's name, IRD number and tax code. Where an employee fails to complete the IR330 as required the employer is legally required to use the No-notification (formerly No-declaration) rate of PAYE. The No-notification rate is:

- PAYE of 46.70 cents in the dollar for employees (this includes the ACC earner levy)
- Generally, 15 cents in the dollar on top of the normal schedular payment rate for persons or entities receiving schedular payments.

Employers should enter “no notification” or “ND” as the tax code on their Employer Monthly Schedule (IR348) for each employee who is taxed at the No-notification rate because of their failure to complete an IR330.

Check the IRD website for a guide to using the correct tax codes.

Special Types of Workers

Employers should be aware that for the following list of workers, different tax rules may apply and employers should contact the IRD for more information.

- Casual agricultural workers
- Commission agents
- Directors
- Drovers and musterers
- Election day workers
- Fishers
- IR56 taxpayers
- Jockeys and trotting drivers
- Musicians, dance bands and orchestras
- Non-residents
- Partners in a partnership
- Piece-workers and outworkers
- Shareholder-employees in close companies
- Shearers, shed hands and shearing contractors
- Spouses – wages paid to your wife or husband
- Students
- Subsidised workers
- Workers engaged in “activity in the community” projects
- Workers under labour-only contracts in the building industry

School Students

If you employ a primary, intermediate or secondary school student you are required to deduct PAYE from their pay. You should request that they complete an IR330 form. The employee's details should be included on the employer monthly schedule.



Other Deductions through the Paye System

See the **A-Z Guide** on each for information: **Student Loan Deductions; Child Support Deductions; Superannuation Fund Contributions; KiwiSaver**. ACC earner levies are a component of PAYE and have been discussed above.

Record Keeping

IR330 forms must be retained for 7 years after the last payment to the employee and all wage records must be kept for at least 7 years. This includes all pay sheets and PAYE deduction payment receipts. Records must be in English or in any other language approved by the IRD. Employers using a manual payroll system must keep full records; cheque butts are not sufficient. Employers using a computerised payroll system must keep all the same records as for a manual system. Records may be stored on disc, but they must be accessible and printable if the IRD requires.

The following information should be retained:

- Total gross earnings including taxable allowances (this is the amount before PAYE is deducted)
- The amount of the PAYE deductions
- Any child support deductions
- And student loan repayment deductions
- Any specified superannuation contribution withholding tax
- The value of tax-free reimbursing allowances and supporting evidence for their justification

Filing and Payment

Every employer is required to deduct PAYE from employees' wages and salary, and pay the deductions to the IRD by the due date. Every employer is required to file the appropriate forms with the deductions.

If your gross annual PAYE deductions are less than \$500,000 you are a SMALL employer and must pay your PAYE by the 20th of the following month. You will file your Employer Monthly Schedule (IR348) and Employer Deductions (IR345) at the same time as making the payment. If the due date falls on a weekend or public holiday you can make your payment on the next working day without penalty.

If your gross annual PAYE deductions are greater than \$500,000 you are a LARGE employer and must pay your PAYE twice a month. You will pay your PAYE by the 20th of the month for wages paid between the 1st and 15th of the same month, and by the 5th of the following month for wages paid between the 16th and the end of the month. However, the second 2 weeks of December are payable by the 15th of January (an extension of 10 days). You will file your Employer Deductions (IR345) twice-monthly at the same as time as making each payment, and you will file your Employer Monthly Schedule (IR 348) by the 5th of the following month to coincide with the second of the twice-monthly payments.

Employers must file electronically (using the IRD's ir-File) if their gross annual PAYE deductions are greater than \$100,000 (note that this now applies to some SMALL employers as the amount needed to be classed as a SMALL employer has increased), unless they have an exemption from the IRD.



Payday Filing

Employers must:

- File employment information every payday instead of an Employer monthly schedule (IR348).
- Provide new and departing employees' address information, as well as their date of birth - if they have provided it to you.
- File electronically (from payday compatible software or through myIR) if your annual PAYE/ESCT is \$50,000 or more.

Penalties

Late filing

The Tax Administration Act 1994 requires employers to file their tax return on time. At present a late filing penalty applies only to the Employer Monthly Schedule (in regard to PAYE) and it is automatic. A penalty is applied each time; the IRD will send a statement advising you of the penalty and the date it must be paid by. Failing to pay the penalty on time will incur further penalties and interest.

Late payment

There are 3 aspects to payment of PAYE; the employer fails to deduct PAYE as required, it is deducted by the employer but paid late to the IRD, or it is deducted by the employer but not paid to the IRD and there is a failure to account for the deductions to the IRD.

Failure to deduct PAYE (or any other mandatory deductions) can be considered a serious offence under the Tax Administration Act. An employer who knowingly fails to make deductions can be fined on conviction in the District Court up to \$25,000 on the first occasion and up to \$50,000 on any subsequent occasion for offences against this Act.

Failure to pay PAYE to the IRD on time (unless the unpaid amount is less than \$100) will attract an initial 1% penalty on the first day it is late; if it remains unpaid by the 7th day from the due date it will attract a further 4% penalty on the amount outstanding and the penalty. For each month the PAYE and penalties remain unpaid a further 1% penalty will be incurred. Employers are notified if they are late with a payment before a penalty is imposed. In addition to penalties, interest is charged on the unpaid amount.

Failure to pay PAYE deductions to the IRD and a failure to account is the most serious of the offences under the Tax Administration Act. PAYE deductions are not for any other purpose other than payment to the IRD. An employer who knowingly applies or permits the use of PAYE deductions to any other purpose can be fined on conviction up to \$50,000 and/or be sent to prison for up to 5 years.



In addition to the fines and penalties already mentioned the Act makes provision for shortfall penalties. These apply to any offence and are an additional charge. The penalty is a percentage of the tax shortfall (deficit or understatement of tax) which result from certain actions by the employer. There are 5 types of penalties depending on the employer's actions:

- Lack of reasonable care – 20%
- Unacceptable interpretation – 20%
- Gross carelessness – 40%
- Abusive tax position – 100%
- Evasion – 150%

The IRD considers a payment to be late if it is postmarked or received after the due date.

Lump Sum Payments and Regular Bonuses

These are also known as extra-emolument payments and emolument payments. The word emolument means “payment to a miller for the grinding of corn”; in other words, it means the profit or gain from employment. Emolument payments are those that are based on profit or gain from employment; they are effectively earnings because the employee gave their labour in exchange for the payment. They are contractual and often described as obligatory bonuses.

Examples of emolument payments are:

- Performance, incentive or production bonuses, whether paid on a regular or infrequent basis.

Extra-emolument payments are effectively gifts. The employer may have contractually agreed to make these payments in certain circumstances, but they are nevertheless discretionary because they do not arise out of earnings.

Examples of extra-emolument payments are:

- Special bonuses that an employer is not obliged to pay (and which may coincide with an event such as Christmas)
- Redundancy payments
- Retiring allowances
- Restrictive covenants and inducement payments
- Gifts
- Back pay

The IRD treats emolument payments and extra-emolument payments differently. Emolument payments, or obligatory bonuses, are taxed in the period in which they are earned. If the employee was paid weekly for a month and was then paid a bonus with applied to the month, then the PAYE payable would be the PAYE payable for the entire month's earnings minus what had already been deducted.

Extra-emolument payments are treated as a lump sum and are taxed according to the employee's annualised earnings for the last 4 weeks. Not all extra-emolument payments are treated the same however, and while all have PAYE deducted, not all are liable for the ACC levy or FBT deductions.

Personal Grievance Payments

Personal grievance payments may include one or more of the following:

- An award for loss of earnings, related to either a dismissal or change of position
- An award for loss of benefits
- An award for compensation for humiliation, loss of dignity or injury to feelings

Under Public Ruling BR Pub 01/06, the IRD rules that the payment of an award for lost wages or other remuneration (including loss of benefits) under the Employment Relations Act 2000 is “monetary remuneration” and as such it is gross income of the employee from which the employer must deduct PAYE (including the ACC earner levy) and other deductions in the normal way. The appropriate tax rate is dictated by the total value of the employee’s annual salary or wages and the payment.

This ruling does not apply to an award for compensation for humiliation under section 123 (c)(i) of the Employment Relations Act 2000. Therefore, payments made under this section (and only those made under this section) are not subject to PAYE. Out of Court Settlements, often described as full and final settlements, should be treated in the same way awards made by the Employment Relations Authority pursuant to the Employment Relations Act 2000.

You should understand that if you are a party to a full and final settlement and you characterise or describe a payment as being compensation for humiliation when it is in fact for lost wages or benefits, this transaction could be considered illegitimate, and challenged by the IRD.

Redundancy Payments/Retiring Allowances

These payments are treated as a lump sum payment in terms of PAYE, but they are not liable to the ACC earner levy or to FBT (but they may be subject to other deductions). The appropriate tax rate depends on the grossed up annual value of the employee recipient’s last 4 week’s earnings and the payment.

The tax rate applicable to the payment where that gross amount is:

- Less than \$14,000 – is 10.5% or 10½ cents in the dollar.
- Between \$14,001 and \$48,000 – is 17.5% or 17½ cents in the dollar.
- Between \$48,001 and \$70,000 – is 30% or 30 cents in the dollar.
- Between \$70,001 and \$180,000 – is 33% or 33 cents in the dollar.
- More than \$180,000 – is 39% or 39 cents in the dollar.

In addition to this, if the employee has a student loan you will need to add any gross salary or wage payments for the same period to the gross lump sum amount and deduct the pay period threshold (i.e. \$367 per week). The remaining amount will have student loan deductions made at the standard deduction rate of 12 cents in the dollar.



PAYE

The following payments are not redundancy payments or retiring allowances:

- Accumulated annual, long service or sick leave.
- Payments made in the event of a merger or takeover or reconstruction where the employee has ongoing employment in the same or a substantially similar position.

Finally, to treat any payment as a redundancy payment or retiring allowance, the employee must have terminated their employment.

Holiday Pay

Holiday pay is taxed in the pay period when it is paid, and, according to a weekly payment. If payment of annual holidays is paid in one sum, and it is for a 4-week period, then the lump sum must be divided into 4 and the PAYE (and other deductions if relevant) deducted for each weekly sum. This applies to when an employee is being paid holiday when they are exercising an entitlement and when they are taking a holiday in advance of entitlement or have terminated employment part-way through an anniversary year. Cashed-up annual leave is treated as an extra pay or unexpected bonus, and the PAYE should be calculated using the rate for extra pays (see above “Lump sum payments”).

The IRD released operational position on calculating PAYE on holiday pay which is applicable from 1 April 2016.

- I. Holiday pay paid in substitution of the employee's ordinary salary or wages when the employee takes annual paid holiday: This type of holiday pay is “salary or wages”. The gross amount of holiday pay should be appropriately allocated to the number of days/weeks of leave taken and then the PAYE tables applied.
- II. Annual accrued holiday entitlement paid as a lump sum on the termination of an employee's employment: This type of payment is treated as an “extra pay” and PAYE should be deducted using the rates for extra pay.
- III. Annual accrued holiday entitlement paid as a lump sum before the holiday is taken (holiday pay paid in advance): This type of payment is to be treated as an “extra pay” and PAYE should be deducted using the rates for extra pay.
- IV. Holiday pay paid as a lump sum payment on the termination of employment where either there is no accrued entitlement (employment terminated within first 12 months of employment) or before a further entitlement has arisen: The Holidays Act 2003 requires that holiday pay is calculated at 8% of the employee's gross earnings since the start of employment or since the last entitlement to paid holidays arose. For PAYE purposes, this type of payment is treated as an “extra pay” and PAYE should be deducted using the rates for extra pay.
- V. Holiday pay paid as part of an employee's regular pay at the rate of 8% of the employee's gross earnings: This payment is treated as part of the employee's regular salary or wages. The PAYE tables should be applied to the gross amount of holiday pay together with the regular salary and wages.

Restrictive Covenants and Inducement Payments

A restrictive covenant is also known as restraint of trade, which is often accompanied with a payment. It is made to the employee in return for their promise to restrict their ability to perform services. It is most commonly used when an employee is terminated and they agree not to carry on business in competition with their former employer.

An inducement payment is a payment paid to a prospective employee to induce them to surrender their current position and enter employment with the employer paying it, or it is a payment paid to a current employee to induce them into remaining in employment with the employer for a period.



PAYE

Both restrictive covenant and inducement payments are taxed as extra-employment / lump sum payments and the ACC earner levy applies. The appropriate tax rate depends on the grossed up annual value of the employee recipient's last 4 week's earnings and the payment.

The tax rate applicable to the payment where that gross amount is:

- Less than \$14,000 – is 12.20% or 12.20 cents in the dollar
- Between \$14,001 and \$48,000 – is 19.20% or 19.20 cents in the dollar
- Between \$48,001 and \$70,000 – is 31.70% or 31.70 cents in the dollar
- Between \$70,001 and \$111,669 – is 34.70% or 34.70 cents in the dollar
- Greater than \$113,768 – is 33% or 33 cents in the dollar (because the ACC earner levy does not apply to earnings over this threshold)

Student loan repayments must also be deducted from these payments if the employee has a student loan. KiwiSaver contributions must also be made in relation to these payments if the employee is a contributing member of KiwiSaver.

Allowances

There is a tax treatment of allowances of employer-provided accommodation, accommodation payments and other allowances or payments made by employers to cover employee expenditure.

Benefit allowances (accommodation, meals or clothing) are paid to compensate the employee for inconvenience and/or benefit the employee and are taxable in the hands of the employee. A benefit allowance is income so the allowance is added to the salary or wages for the pay period and then PAYE is calculated on the total amount.

Food or accommodation provided to employees may also be a benefit allowance however the taxable portion is the difference between the market value of the benefit (food or accommodation) and the amount the employee has actually paid; if the employee has not paid anything then the entire market value of the benefit is taxable.

The tax treatment of employer-provided accommodation or accommodation payments and payments made to cover meal or clothing allowances may be exempt from tax provided certain conditions are met. The rules around accommodation and meal allowances can be applied retrospectively subject to certain conditions and changes to the definition of the term *"expenditure on account of an employee"*.

Previously whether an accommodation, meal or clothing allowance was taxable was also dependent on how it was paid, i.e. as an allowance, employer provided or reimbursed. When an employer reimburses or otherwise meets a specific employee expense, this payment is known as *"expenditure on account of an employee"* and could be deemed as non-taxable.

This definition has been amended so that any accommodation or food, regardless of if they're paid as an allowance, employer provided or reimbursed, will now come under their own rules and can no longer be treated as *"expenditure on account of an employee"*.

Note: The IRD changes its rulings from time to time on the distinction between what is a non-taxable allowance and what should attract fringe benefit tax. Employers should seek the assistance from the IRD or their chartered accountant on a regular basis about these matters.



Conclusion

If you require more information about your obligations in respect of PAYE, contact the Adviceline Team who can provide further information. As Employment Advisors Adviceline can generally answer all basic payroll legislation questions and will advise you if you may require further accountancy services.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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