

INFOexpress

INFOexpress offers an alternative means of obtaining information about your clients. You have immediate access to a range of automated services specially designed to help you with the enquires you make most often.

You can use INFOexpress from any touchtone phone. Phone **0800 456 678** and enter your tax agent IRD number. Simple recorded messages will guide you each step of the way.

With INFOexpress you can obtain or provide information outside our normal office hours—INFOexpress operates between 6 am and midnight, 7 days a week.

INFOexpress provides the following services.

1. Account balances

You can check balances for income tax, GST, PAYE and ACC levies, as well as FBT, student loan, and SSCWT deductions. You can check total arrears balances, provisional tax payments and PAYE running totals.

1. Specific revenue balances
2. Total arrears balances
3. Provisional tax payments to date
4. PAYE running totals (total gross and PAYE)
5. Student loan balances.

2. Return and account information

You can find out if we have received a GST or income tax return. You can also request a statement of account for any tax type your client is listed for. If your client has not provided you with their records you can request the issue of an L letter (for details see the extension of time agreement between Inland Revenue and the Institute of Chartered Accountants, available at www.ird.govt.nz/business/tax_agents or www.icanz.co.nz/tax).

1. GST refund details
2. Income tax refund details
3. Ordering account statements (for the other tax types your client is listed for)
4. Change a client's RWT rate
5. Issue an L letter.

3. Brochures or forms, client list, client linking or delinking, or a new pin

You can order extra copies of returns, tables, guides, forms and brochures. It will help if you know the stationery numbers of the brochures you require. You can also request a printout of your current clients, or change your INFOexpress pin number.

1. Brochures or forms
2. List of current clients
3. Change your pin (via master account only)
4. Link or delink clients.

4. Faxback account balances and details

Faxback lets you order a printout of account balances for all accounts a client is linked for (for up to as many as ten clients at a time). You can also request a fax printout of penalty and interest calculations applied to a specified return period. A new facility recently introduced allows you to obtain financial transactions of a client's account for a specified period.

1. Account balance fax
2. Penalties and interest fax
3. Transaction detail fax.

5. Personal Tax Summary or summary of earnings

You can request a summary of earnings or a Personal Tax Summary. You can also confirm a Personal Tax Summary, update interest or dividends and provide rebate information.

1. Request a summary of earnings
2. Request a Personal Tax Summary
3. Confirm a Personal Tax Summary
4. Update interest
5. Update dividends
6. Provide rebate information.

Family Assistance

The Family Assistance registration form and guide have been updated for the tax year ending 31 March 2002.

The new form and guide are available through INFOexpress, our website using the StationeryXpress service, or from the agents' CD Rom.

Through INFOexpress and StationeryXpress you have the options of ordering a registration pack, which includes a cover letter and registration form and guide. You may also order the form and guide separately.

Here are the order numbers for each option:

FS 1 – Family Assistance registration pack
 FS 102 – Family Assistance registration form
 IR 200 – Family Assistance registration guide.



Restrictive covenants and inducement payments

Legislation has been passed to make payments for restrictive covenants and exit inducements taxable. Any payments of the following nature will be taxable if made on or after 27 March 2001.

Restrictive covenants

Restrictive covenants are payments made in return for an undertaking by a person restricting their ability to perform as an employee, office holder or independent contractor.

The payment need not be made to the person who is subject to the restrictive covenant—this is to cover the situation when an employee enters into a restrictive covenant with a wholly owned company and then sells the shares in that company to their employer. Affected payments will be classed as source deduction payments, so PAYE must be deducted.

Exit inducement payments

The legislation defines exit inducement payments as the consideration given by a prospective employer or contractor to a person to give up a particular status or position. These payments will also be defined as source deduction payments, so PAYE must be deducted.

The law extends to those employees who do not undergo a change in career but merely a change in job status.

Deduction for person making the payment

Payments that are taxable will also be deductible in the same circumstances as salary and wages. The timing of deductions will be governed by the ordinary timing rules. For example, section EF 1 requires an up-front lump sum restrictive covenant payment to be spread over the life of the restrictive covenant. Exit inducement payments will ordinarily be deductible in full in the year of payment.

Approved issuer levy

Due date for payment of approved issuer levy

The due date for paying approved issuer levy is the 20th of the month following the month in which the interest is paid.

An amendment in the legislation allows taxpayers with a small annual approved issuer levy liability to file on a six-monthly basis. The returns will be for the periods ending 30 September and 31 March, with payments due 20 October and 20 April respectively.

This option to file six-monthly returns is restricted to persons who pay less than \$500 in an income year. Any payer wishing to file on a six-monthly basis must elect to do so.

Late payments and short payments

Previously, if your client paid approved issuer levy after the due date, and the circumstances were not beyond the payer's control, then the levy was liable for the full rate of NRWT.

An amendment means any payments made after the due date will be considered for penalties under the compliance and penalty regime set out in Part IX of the Tax Administration Act 1994. The legislation provides that a taxpayer may be liable to pay a shortfall penalty if, in taking a tax position, the taxpayer fails to make a payment or the approved issuer levy is not fully paid by due date.

Also, the late payment will attract interest from the day after the due date until paid.

Requirement for companies to adopt minimum 33% withholding tax rate

Legislation has been passed that removes the ability of companies to use the RWT rate of 19.5%.

This change does not apply to companies that are trustees.

Application date

This measure applies from 1 April 2001.

Key features

- Companies that begin receiving interest on or after 1 April 2001 must notify the interest payer that they are a company. This notification must be made on becoming entitled to receive interest.
- Interest payers must deduct RWT at the appropriate rate (either 33% or 39%) on or after receiving a notice. The appropriate rate is dependent on the election made by the company and whether it has provided an IRD number.
- Companies already deriving interest, or that have an entitlement to receive interest, as at 31 March 2001 have until 31 May 2001 to notify the interest payer that they are a company.
- A company entitled to receive interest payments may elect the 33% or 39% withholding rates. A no-declaration rate of 39% applies to those companies that have not provided an IRD number. The election rules mirror those applying currently, except the 19.5% RWT rate option is excluded.
- Companies that are trustees are not required to notify their company status and may continue to use the 19.5% rate. This reflects the obligation on trustees to have regard to the tax position of the trust's beneficiaries.



Notice to trustees

Taxing beneficiary income of minors at 33% rate

The Taxation (Beneficiary Income of Minors, Services-Related Payments and Remedial Matters) Act was passed on 22 March 2001. It introduced the minor beneficiary rule, which ensures that certain distributions of beneficiary income to a minor will be taxed at a final tax rate of 33%. For the purposes of the rule, a minor is defined as a New Zealand resident who is under the age of 16 years on the balance date of the trust.

The legislation applies in respect of income derived from 1 April 2001 or the equivalent income year.

Taxed as trustee income

Distributions to which the rule applies will be taxed as trustee income and accounted for in the trust's income tax return. They will be taxed at 33%, and be included in the trustee's provisional tax calculation along with other trustee income. If the trustee underestimates their provisional tax, use-of-money interest will apply.

Sources of beneficiary income

The minor beneficiary rule applies to all beneficiary income distributed to a minor from a trust, unless all of the settlements on that trust fit within any of the exceptions specified below.

The minor beneficiary rule does not apply if the settlements were made:

- by a person who is neither a relative or legal guardian of the minor, nor a person associated with the relative or legal guardian
- by a relative, legal guardian or associated person as an agent of the minor if the settlor has received the property from someone other than a relative, guardian or associated person
- by a relative, legal guardian or associated person against whom a protection order has been made under section 14 of the Domestic Violence Act 1995. This exception only applies if the minor is a protected person in relation to the protection order and the settlement on the trust is made before the protection order is made or during the time the protection order is in force
- by a relative, legal guardian or associated person if the settlor is required by a Court order to pay damages or compensation to the minor, or
- under the terms of a will, codicil or intestacy, if the minor
 - is alive within 12 months of the date of the settlor's death, or
 - has a brother, sister, half-brother or half-sister who is alive within 12 months of the date of the settlor's death.

Mixed trusts

If a trust includes both some settlements that fit within one of the exceptions above and some that do not (a "tainted settlement"), this is referred to as a mixed trust. The minor beneficiary rule will apply to all beneficiary income distributed by a mixed trust to the minor unless the tainted settlements are of a relatively small value.

The rule will not apply to beneficiary income from a mixed trust if:

- all tainted settlements on the trust were either dispositions of property or settlements of a loan for less than market value, and
- the total value of those dispositions of property at the date of settlement does not exceed \$5,000, and
- the underlying value of the loans themselves does not exceed \$1,000 in total at any time during the income year.

However, if a relative, guardian or their associate has provided services to the trust, all minor beneficiary income from that mixed trust is subject to the rule.

For the purposes of the rule, a loan is provided for less than market value if the interest rate on the amount borrowed is at any time during the income year less than the interest rate set out in the Income Tax (FBT, Interest on Loans) Regulations of 31 March of the previous income year. A loan for less than market value will only constitute a settlement if the low-interest loan is in existence on or after 1 April 2002.

Financial assistance to a trust in the form of a guarantee for less than market value will not constitute a settlement until the guarantee has been called upon.

The minor beneficiary rule does not apply if:

- beneficiary income is \$1,000 or less in an income year
- the minor is in receipt of a child disability allowance under the Social Security Act 1964, or
- the beneficiary income is derived directly from a group investment fund or from the Maori trustee or a Maori authority.

Liability of non-trading trusts to file income tax returns

Where a trust has no prospect or intention of deriving any assessable income, Inland Revenue does not require an income tax return to be filed.

However, if the trust receives any assessable income, for example, interest, the trustee must file a tax return, regardless of the amount of income derived.

If the trust does not derive assessable income, please contact Inland Revenue on 0800 377 771 and tell us the name and IRD number of the trust, and confirmation that the trust is not receiving assessable income and will not be filing income tax returns.

If the trust subsequently commences to derive assessable income, it must file a trust return for that period.



Exposure draft for comment and discussion only

Please let us know what you think of our drafts. Are they:

- technically accurate, and do they fairly reflect taxation legislation?
- in line with commercial reality and useful in practical situations?

Your input into the consultation process, as perhaps a user of that legislation, is highly valued. Send your comments, using the Draft reference as the subject, and including your name and your organisation or company name (if applicable), by email to: rulings@ird.govt.nz

Shortfall penalties *(please quote reference QW1204)*

We have been asked whether shortfall penalties should be determined at the same time as an agreed adjustment and included on the agreed adjustment form.

Background

During an audit, Inland Revenue may identify discrepancies in taxpayers' returns, the effect of which will be an alteration to the amount of a taxpayer's liability to tax as stated in the return.

In most instances, both the taxpayer and Inland Revenue will come to an agreement as to what adjustments are to be made to the return, thus avoiding the necessity to enter the disputes process.

As a result of this agreement, both the taxpayer and Inland Revenue sign an agreed adjustment form that lists the items and amounts that have been agreed upon as requiring adjustment.

However, where the agreed adjustment will result in an increased tax liability, the taxpayer may also incur shortfall penalties as provided for in section 141 Tax Administration Act 1994 ("TAA").

Section 94A(3)TAA allows the Commissioner to make the shortfall penalty assessment either before or after unpaid tax has been assessed, has become assessable or payable, or has been paid.

Based on the legislation, there is nothing that prevents the Commissioner from being able to assess the shortfall penalty at the same time as the adjustments are being determined or negotiated.

Tax Information Bulletin, Vol 8, No 3, August 1996, states:

One of the objectives of the new disputes resolution process is the prompt and efficient resolution of disputes. To be consistent with this objective, the Commissioner will raise the issue of penal tax or shortfall penalties as soon as is practicable, which in most cases will be at the same time the substantive issues are being discussed.

Practice

The Commissioner's practice is to reach agreement with the taxpayer on any shortfall penalties at the same time as other tax adjustments and include these shortfall penalties on the agreed adjustment form unless the taxpayer advises otherwise, or circumstances exist where it is inappropriate to do so, for example, prosecution.

Where the shortfall penalty is not included, the expectation is that the matter would have been discussed with the taxpayer prior to the presentation of the agreed adjustment form. This will allow the taxpayer to know up front their total liability at the time of negotiation.

The Commissioner considers it is desirable, from the view of both the taxpayer and Inland Revenue that there is a speedy resolution to taxation matters in dispute. This also provides certainty for the taxpayer that all matters have been dealt with.

Disclaimer: This is a draft item only. It may not be relied on by taxation officers, taxpayers or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

Faster turnaround for E-File correspondence

There are benefits to be derived from E-Filing correspondence. These include having the letter text transmitted to the Inland Revenue mainframe within 24 hours and receiving a confirmation report that verifies the item has been received.

The attached destination codes list replaces the previous E-File subject codes list and comes into effect from 1 April 2001. The destination codes are still used to electronically direct the correspondence to the correct Inland Revenue office.

We've simplified the E-File correspondence codes we use because under the previous system a large amount of E-File correspondence was incorrectly coded "other". This sent the item to the wrong Inland Revenue office for action and delayed its completion. This change will save up to two days on the turnaround of correspondence.

We encourage you to use the attached destination codes list as a quick reference guide when E-Filing correspondence. Please ensure staff who E-File correspondence are aware of these changes and use the correct destination codes to ensure a prompt reply.

Note from the editor

If our mailing details are incorrect, we have missed someone off the distribution list or you have suggestions for future topics, please contact:

The Editor
AGENTSanswers
Inland Revenue
PO Box 2198
Wellington

Email: agents.answers@ird.govt.nz

AGENTSanswers is also on our website:

www.ird.govt.nz/business/tax_agents/index.htm