



## Tax Administration (Correction of Errors in Employment Income Information) Regulations 2019

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 25th day of March 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 23N of the Tax Administration Act 1994—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Revenue made after consultation undertaken in accordance with section 23N(3).

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## Regulations

### 1 Title

These regulations are the Tax Administration (Correction of Errors in Employment Income Information) Regulations 2019.

### 2 Commencement

These regulations come into force on 1 April 2019.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**ACC levy** means an amount that must be deducted under section 221 of the Accident Compensation Act 2001

**child support amount** means an amount that must be deducted under Part 10 of the Child Support Act 1991

**employee KiwiSaver contribution** means a contribution that must be deducted under subpart 1 of Part 3 of the KiwiSaver Act 2006

**employer** has the same meaning as in section YA 1 of the Income Tax Act 2007 and includes a PAYE intermediary

**employer KiwiSaver contribution** means a contribution that must be paid to the Commissioner under subpart 3 or 3A of Part 3 of the KiwiSaver Act 2006

**employment income information** has the same meaning as in section 23C of the Tax Administration Act 1994

**ESCT** means an amount of tax that must be paid to the Commissioner under the ESCT rules (within the meaning of section YA 1 of the Income Tax Act 2007)

**later payday** includes a payday in a later tax year

**overpayment** means the payment of an amount to an employee by an employer where the amount is paid—

- (a) in error, to the extent to which the employee is not beneficially entitled to the amount; or
- (b) as an advance payment, to the extent to which the employee does not become beneficially entitled to the amount

**PAYE income payment** has the same meaning as in section RD 3 of the Income Tax Act 2007

**student loan repayment** means an amount that must be deducted under sub-part 1 of Part 2 of the Student Loan Scheme Act 2011

**tax**—

- (a) means income tax; and
- (b) includes the following:
  - (i) an ACC levy;
  - (ii) a child support amount;
  - (iii) an employee KiwiSaver contribution;
  - (iv) a student loan repayment

**unrepaid PAYE income overpayment** has the same meaning as in section RD 8B(3) of the Income Tax Act 2007

**withheld** includes deducted.

### *Main provisions*

#### **4 Payroll overpayment errors**

- (1) This regulation applies (subject to subclause (8)) if—
  - (a) an employer makes an overpayment to an employee on a payday; and
  - (b) the employer treats the overpayment as all or part of a PAYE income payment made to the employee on the payday; and
  - (c) as a result, the employer's employment income information for the payday does not correctly report 1 or more of the following:
    - (i) the PAYE income payments that were actually made to the employee on the payday;
    - (ii) the employer KiwiSaver contributions that the employer should have made in respect of those PAYE income payments;
    - (iii) the ESCT payable on those contributions;
    - (iv) the tax that the employer should have withheld in respect of the employee on the payday.

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#### **Example**

Jai has a base salary of \$900 gross a week but, for the last 4 paydays, has been paid a \$100 weekly allowance that should have ceased at the end of the previous month.

The employment income information for paydays 1 to 4 reported gross income of \$1,000 (including \$100 of an extra payment made in error) and reported PAYE of \$180 (including \$29 in error).

This regulation applies (unless Jai's employer reduces the amount paid to Jai on a later payday by the amount of the overpayment, for which see subclause (8)).

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*Position if employee repays or agrees to repay*

- (2) To the extent that the amount is repaid by the employee to the employer, the employer must correct the error in the employment income information for the payday in one of the following ways:
- (a) by notifying the Commissioner in accordance with regulation 10:
  - (b) by netting off the following, as relevant, in the employer's employment income information for 1 or more later paydays:
    - (i) the overpayment:
    - (ii) any excess amount in the employer KiwiSaver contributions reported as made:
    - (iii) any excess ESCT reported as payable:
    - (iv) any excess tax reported as withheld.

**Example**

Jai repays the amount before the employer calculates Jai's pay for payday 5.

The employer adjusts the employment income information for payday 5 to show gross income of \$500 (ie, \$900 - (\$100 x 4)) and PAYE of \$35 (ie, \$151 - (\$29 x 4)).

- (3) To the extent that the amount is repayable to the employer by the employee under an agreement between them, the employer must correct the error in the employment income information for the payday by treating the amount that is so repayable as repaid, and by complying with subclause (2) in respect of that amount.

**Example**

If Jai agrees to repay the amount over the next 4 paydays (paydays 5 to 8), Jai's employer may choose—

- to do the same as in the above example. In this case, Jai's normal income is reported for paydays 6-8, even though he may be receiving less as he pays back the overpayment; or
- to report the amounts being repaid on each payday. In this case, the employer adjusts the employment income information for paydays 5 to 8 to show gross income of \$800 (ie, \$900 - \$100) and PAYE of \$122 (ie, \$151 - \$29).

- (4) Subclauses (5) and (6) apply to the extent that an employer has corrected an error in accordance with subclause (3), but—
- (a) the employee breaches the agreement and does not remedy the breach within 2 months; or

- (b) the employer considers that the employee will not comply with the agreement in future.

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**Example**

Jai repays the amount for the first 2 paydays (5 and 6), but then defaults on the agreement. He has repaid \$200 of the overpayment.

If Jai's employer had adjusted the employment income information for payday 5 to show gross income of \$500 ( $\$900 - (\$100 \times 4)$ ) and PAYE of \$35 ( $\$151 - (\$29 \times 4)$ ), then the employer adjusts the employment income information for a later payday to show gross income of \$1,100 (see the example for subclause (5)).

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*Position if no repayment or agreement to repay*

- (5) To the extent that the amount is an unrepaid PAYE income overpayment, the employer must correct the error in the employment income information by making an upwards adjustment for the amount in the employment income information for a later payday.

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**Example**

The employer adjusts the employment income information upwards for payday 5 to show gross income of \$1,100 ( $\$900 + \$200$ ) and PAYE of \$209 ( $\$151 + (\$29 \times 2)$ ).

- (6) To the extent that the amount is not an unrepaid PAYE income overpayment, the employer must correct the error in the employment income information for the payday by notifying the Commissioner in accordance with regulation 10.

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*Other provisions*

- (7) Unless allowed by the Commissioner, the option in subclause (2)(b) may not be used if that would result in a negative amount being included in the employment income information for the later payday.
- (8) This regulation does not apply if the employer, with the agreement of the employee and in accordance with any applicable law, reduces a PAYE income payment made to the employee on a later payday by the amount of the overpayment.

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**Example**

Jai and the employer agree to reduce the gross amount paid to Jai on a subsequent payday via the payroll. Jai's employer does not need to correct the employment income information. This is because the later payday with the decreased gross amount will be reported as normal and no correction will be needed.

- (9) Subclause (10) applies to the extent that an amount is either of the following:
- (a) an overpayment of a benefit or grant referred to in section RD 5(6)(a) or (c) of the Income Tax Act 2007;
  - (b) an overpayment that is recoverable under section 248 of the Accident Compensation Act 2001.
- (10) The employer must correct the error in the employment income information for the payday in accordance with subclause (2)(a) or (b) unless the employer, with

the agreement of the employee and in accordance with any applicable law, reduces a PAYE income payment made to the employee on a later payday by the amount of the overpayment.

## **5 Other incorrect calculations of PAYE income payments**

- (1) This regulation applies (subject to subclause (4)) if—
  - (a) an employer incorrectly calculates the PAYE income payments made to an employee on a payday; and
  - (b) as a result, the employer's employment income information for the payday does not correctly report 1 or more of the following:
    - (i) the PAYE income payments that were actually made to the employee on the payday;
    - (ii) the employer KiwiSaver contributions that the employer should have made in respect of those PAYE income payments;
    - (iii) the ESCT payable on those contributions;
    - (iv) the tax that the employer should have withheld in respect of the employee on the payday.
- (2) The employer must correct the error in the employment income information for the payday—
  - (a) by notifying the Commissioner in accordance with regulation 10; or
  - (b) by netting off the following in the employer's employment income information for a later payday:
    - (i) any excess amount in the PAYE income payments reported as made;
    - (ii) any excess amount in the employer KiwiSaver contributions reported as made;
    - (iii) any excess ESCT reported as payable;
    - (iv) any excess tax reported as withheld; or
  - (c) by including the following in the employer's employment income information for a later payday:
    - (i) any shortfall in the PAYE income payments reported as made;
    - (ii) any shortfall in the employer KiwiSaver contributions reported as made;
    - (iii) any shortfall in the ESCT reported as payable;
    - (iv) any shortfall in the tax reported as withheld.
- (3) However,—
  - (a) unless allowed by the Commissioner, the option in subclause (2)(b) may not be used if that would result in a negative amount being included in the employment income information for the later payday;

- (b) the option in subclause (2)(c) may be used only if—
  - (i) there is a shortfall in the combined amount of income tax and ACC levy reported as withheld; and
  - (ii) that shortfall is less than 10% of the combined amount of income tax and ACC levy that is withheld for the employee on the later payday on which the error is corrected, disregarding any amount that is attributable to the earlier payday and the correction of the error.
- (4) This regulation does not apply in the case of an overpayment. *See* regulation 4 instead.

## **6 Other errors relating to income tax or ACC levy**

- (1) This regulation applies (subject to subclause (4)) if—
  - (a) an employer incorrectly calculates the income tax or ACC levy to be withheld in respect of an employee on a payday; and
  - (b) as a result, the employer's employment income information for the payday does not correctly report the income tax or ACC levy that the employer should have withheld in respect of the employee on the payday.
- (2) The employer must correct the error in the employment income information for the payday—
  - (a) by notifying the Commissioner in accordance with regulation 10; or
  - (b) by netting off, in the employer's employment income information for a later payday, any excess income tax or ACC levy reported as withheld; or
  - (c) by including, in the employer's employment income information for a later payday, any shortfall in the income tax or ACC levy reported as withheld.
- (3) However,—
  - (a) unless allowed by the Commissioner, the option in subclause (2)(b) may not be used if that would result in a negative amount being included in the employment income information for the later payday;
  - (b) the option in subclause (2)(c) may be used only if—
    - (i) there is a shortfall in the combined amount of income tax and ACC levy reported as withheld; and
    - (ii) that shortfall is less than 10% of the combined amount of income tax and ACC levy that is withheld for the employee on the later payday on which the error is corrected, disregarding any amount that is attributable to the earlier payday and the correction of the error.

- (4) This regulation does not apply—
- (a) if the incorrect calculation results from an incorrect calculation of PAYE income payments. *See* regulations 4 and 5 instead:
  - (b) if there is an incorrect calculation of a child support amount, KiwiSaver contribution, or student loan repayment. *See* regulation 7 instead.

#### **7 Other errors relating to child support, KiwiSaver, or student loans**

- (1) This regulation applies (subject to subclause (4)) if—
- (a) an employer incorrectly calculates any of the following to be deducted in respect of an employee on a payday:
    - (i) a child support amount:
    - (ii) an employee KiwiSaver contribution:
    - (iii) a student loan repayment; and
  - (b) as a result, the employer's employment income information for the payday does not correctly report what the employer should have deducted in respect of the employee on the payday for the item referred to in paragraph (a)(i), (ii), or (iii).
- (2) This regulation also applies (subject to subclause (4)) if—
- (a) an employer incorrectly calculates 1 or both of the following in respect of a payday:
    - (i) the employer KiwiSaver contributions to be made by the employer in respect of an employee:
    - (ii) the ESCT payable on those contributions; and
  - (b) as a result, the employer's employment income information for the payday does not correctly report 1 or both of the following in respect of the payday:
    - (i) the employer KiwiSaver contributions that the employer should have made in respect of the employee:
    - (ii) the ESCT payable on those contributions.
- (3) The employer must correct the error in the employment income information for the payday by notifying the Commissioner in accordance with regulation 10.
- (4) This regulation does not apply where the incorrect calculation results from an incorrect calculation of PAYE income payments. *See* regulations 4 and 5 instead.

#### **8 Reporting errors**

- (1) This regulation applies if any employer's employment income information provided or delivered to the Commissioner includes an error that does not have to be corrected under regulations 4 to 7 (ignoring regulation 4(8)).



- (2) The employer must correct the error in the employment income information by notifying the Commissioner in accordance with regulation 10.

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**Example**

On payday 1, Clara was paid a \$500 discretionary bonus by cheque in addition to her regular pay of \$3,000 a fortnight. The employer correctly calculated the PAYE income payment and tax on the extra pay was withheld and paid to Inland Revenue correctly. However, the employer forgot to include the bonus amount of \$500 in the employment income information for Clara for that payday.

Regulation 5 does not apply because the employer correctly calculated the PAYE income payment and tax on the extra pay was withheld and paid to Inland Revenue correctly.

This regulation applies and Clara's employer must notify Inland Revenue in accordance with regulation 10.

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*Supplementary provisions*

**9 Employer to correct error as soon as reasonably practicable**

An error that must be corrected by an employer under these regulations must be corrected as soon as is reasonably practicable after the employer becomes aware of the error.

**10 Notifying Commissioner of error in employment income information**

- (1) This regulation applies if an employer is notifying the Commissioner of the correction of an error or multiple errors in any employment income information for a payday in accordance with regulation 4(2)(a), 4(6), 5(2)(a), 6(2)(a), 7(3), or 8(2).
- (2) Section 14C of the Tax Administration Act 1994 applies to the notification, and the employer must notify the Commissioner in a manner described in section 14C(2).

**11 Errors in employee's tax code**

These regulations do not apply to an error in any employment income information for a payday to the extent that the error is attributable to a failure of the employee to comply with section 24C of the Tax Administration Act 1994 (which relates to notified tax codes).

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 April 2019, are made under section 23N of the Tax Administration Act 1994 (the **Act**).

Section 23N is in subpart 3C of Part 3 of the Act. Subpart 3C will be inserted into the Act on 1 April 2019 by section 275 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018. Subpart 3C sets out a new regime for how employers will provide information to the Inland Revenue Department (the **IRD**) about their employees' income and the PAYE deductions that are made from that income. This information is called employment income information and will be provided for each payday of the employee.

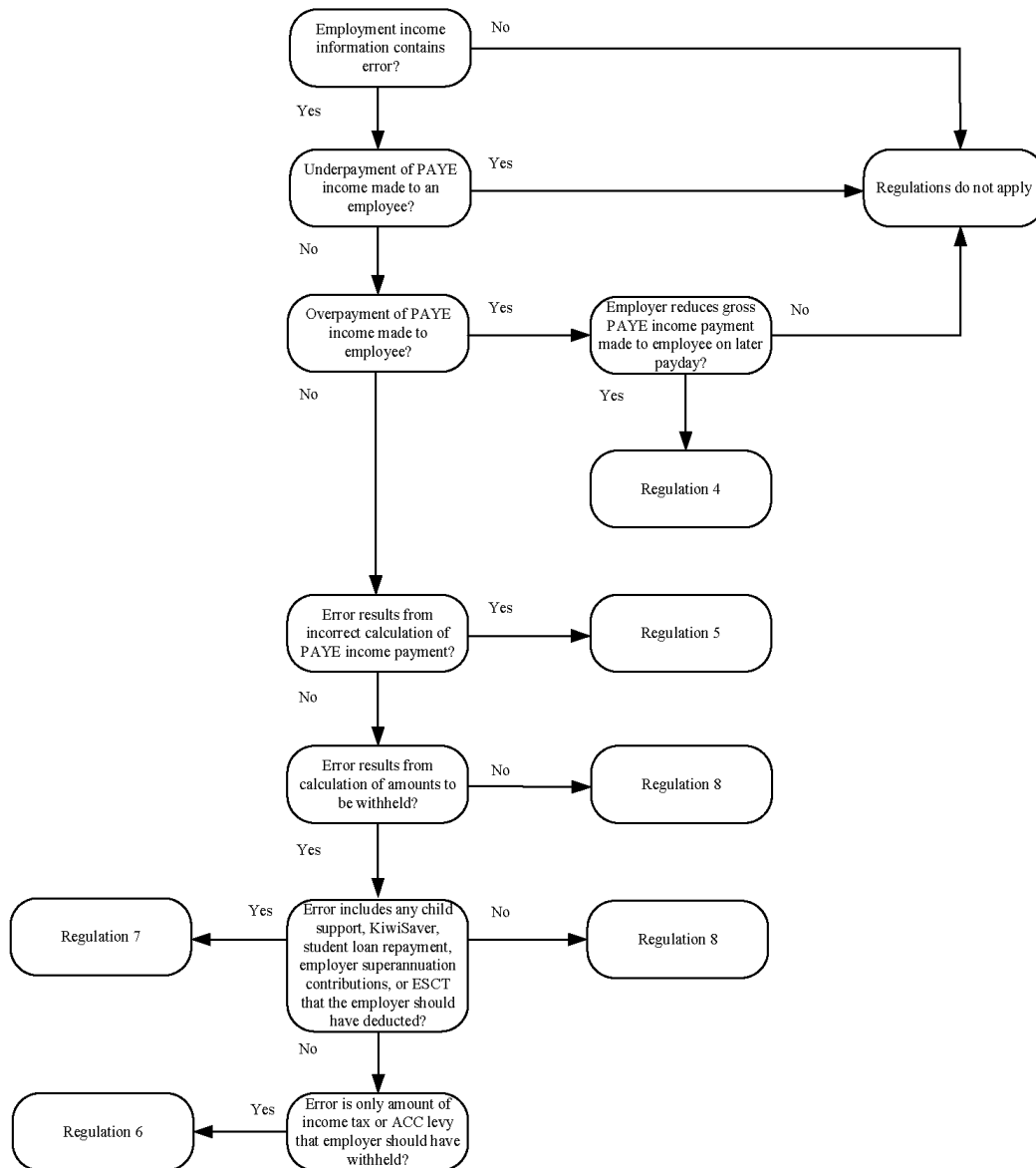
Section 23N allows regulations to be made about how errors in an employer's employment income information for a payday may be corrected. In summary, these regulations provide for 2 main things as follows:

- the nature and types of errors that are able to be corrected by an employer:
- the manner in which errors in employment income information may be corrected.

### *Nature and types of errors that are able to be corrected by an employer*

These regulations apply to the following types of errors:

- payroll overpayment errors that arise when an employee is overpaid and correcting the overpayment requires consequential change to the amounts withheld for PAYE and related deductions such as KiwiSaver (*regulation 4*):
- interpretation errors that arise when the employee receives the correct pay but an incorrect tax treatment is applied (*regulations 5, 6, and 7*):
- reporting errors that arise when the employee was paid and taxed correctly but reporting to Inland Revenue does not accurately reflect what was paid or withheld (*regulation 8*).



However, the regulations do not generally apply—

- to payroll corrections for underpayments:
- where an error is the result of an incorrect tax code being provided by an employee (*regulation 11*).

#### *Manner in which errors in employment income information may be corrected*

Broadly speaking, once the type of error has been established, the relevant regulation provides for options for correction. The 2 main options are as follows:

- same payday correction, ie, correction by amending the employer's employment income information for the payday in which the error is made (these are the options that refer to *regulation 10*):

- later payday correction, ie, correction in the employer's employment income information for a later payday.

An employer must correct an error as soon as is reasonably practicable after the employer becomes aware of it (*regulation 9*).

*Regulation 10* provides for the manner in which a person may notify IRD of the correction of certain errors in the employer's employment income information for the same payday on which the error is made. The options are as follows:

- by electronic means, if the person complies with Part 4 of the Contract and Commercial Law Act 2017;
- in print and delivered in a way referred to in section 14F of the Tax Administration Act 1994;
- in another manner permitted by the Commissioner.

### Regulatory impact assessment

The Inland Revenue Department produced a regulatory impact assessment on 7 February 2018 to help inform the decisions taken by the Government relating to the contents of this instrument. This was updated on 28 February 2019.

A copy of this regulatory impact assessment can be found at—

- <https://taxpolicy.ird.govt.nz/publications/type/regulatory-impact-assessment>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 March 2019.

These regulations are administered by the Inland Revenue Department.