

## **Operational statement**

**OS 19/01**

### **Exemption from electronic filing**

#### **Introduction**

All legislative references are to the Tax Administration Act 1994 unless otherwise stated.

This Operational Statement sets out the criteria for a person to be granted an exemption from the requirement to file returns/information electronically in relation to:

- (i) An employer who is included in the online group of employers;
- (ii) A GST registered person who exceeds the statutory threshold for filing returns electronically;
- (iii) A person who makes a payment of investment income.

#### **Application**

This Operational Statement applies to the exemptions from electronic filing that the Commissioner may grant under sections 23G, 25P and 36BD(3). It does not apply to requests for variations from the requirements of the Act under sections 23Q and 25R. If a person has concerns with complying with the legislation outside the matters covered by this statement, they should contact Inland Revenue immediately to discuss their situation.

#### **Background**

1. The Taxation (Annual Rates for 2017-2018, Employment and Investment Income, and Remedial Matters) Act which received royal assent on 29 March 2018 contains, amongst other measures, changes to improve the administration of the PAYE rules and to improve the collection of investment income information and the provision of GST information.
2. From 1 April 2019, employers that are included in the online group of employers will be required to supply their employment income information electronically to Inland Revenue. An employer is in the online group if their gross amounts of tax payable for the preceding tax year exceeds \$50,000 or the amount set by Order in Council.
3. Payers of investment income will be required to supply their investment income information electronically from 1 April 2020.
4. GST registered persons whose taxable supplies exceed the threshold set by an Order in Council will be required to file their returns electronically. An Order in Council setting the threshold has yet to be made.

5. An exemption from the requirement to file returns/supply information electronically will be available for those who are unable to comply due to the lack, or inadequacy, of digital services.

## Legislation

6. The relevant provisions of the Tax Administration Act 1994 are:

### **23G Exemption for certain employers in online group**

- (1) The Commissioner may exempt an employer in the online group from the online group requirements if it is reasonable in the circumstances, taking into account
  - (a) the nature and availability of digital services to the employer, including the reliability of those services for the purposes of the employer; and
  - (b) the capability of the employer relating to the use of computers; and
  - (c) the costs that the employer would incur in complying with the requirements if those costs would be unreasonable in the circumstances.
- (2) The Commissioner must provide a statement of reasons for the exemption
- (3) Subject to subsection (4), an exemption under this section remains valid until the Commissioner notifies the employer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.
- (4) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.
- (5) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

### **25P Non-electronic filing of investment income information**

- (1) Despite **sections 25F to 25N**, the Commissioner may exempt a payer from the requirement to deliver their investment income information in electronic form and by means of an electronic communication. The Commissioner must provide a statement of reasons for the exemption.
- (2) In determining whether to exempt a payer under **subsection (1)**, the Commissioner must have regard to—
  - (a) the nature and availability of digital services to the payer, including the reliability of those services for the purposes of the payer; and
  - (b) the capability of the payer relating to the use of computers; and
  - (c) the costs that the payer would incur in complying with the requirements, if those costs would be unreasonable in the circumstances.
- (3) Subject to subsection (4), an exemption under this section remains valid until the Commissioner notifies the payer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.
- (4) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.
- (5) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

## **36BD Electronic filing requirements for registered persons**

...

- (3) The Commissioner may exempt a registered person, or a class of registered persons, whose taxable supplies exceed the threshold from the requirement to file in the prescribed electronic form or by the prescribed means of electronic communication. The Commissioner must provide a statement of reasons for the exemption.
- (4) In determining under subsection 3 whether to exempt the person or class of persons, the Commissioner must have regard to—
  - (a) the nature and availability of digital services to the person or persons in the class, including the reliability of those services for the purposes of the person or persons; and
  - (b) the capability of the person or persons in the class relating to the use of computers; and
  - (c) the costs that the person or persons in the class would incur in complying with the requirements if those costs would be unreasonable in the circumstances.
- (5) Subject to subsection 6, an exemption under this section remains valid until the Commissioner notifies the employer that the exemption is to be cancelled. The exemption expires on the date that is 6 months after that given in the Commissioner's notice.
- (6) In making an exemption under this section, the Commissioner may set a time limit on the exemption, stating a start date and an end date, as applicable, for the exemption and the reason for setting the limit.
- (7) An exemption under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

## **Discussion**

7. In relation to an employer, a payer of investment income or a GST registered person who must provide information to the Commissioner in electronic form and by an electronic means of communication (the use of digital services), the legislation grants the Commissioner the power to exempt a person from this obligation. The exemption provisions for an employer, a payer of investment income or a registered person are the same and can be considered together.
8. In deciding whether to grant a person an exemption, the Commissioner must consider:
  - the nature and availability of digital services to the person, including the reliability of those services for the purposes of the person; and,
  - the capability of the person relating to the use of computers; and
  - whether the costs that would be incurred by the person in complying with the requirements of the legislation would be unreasonable.

### **Nature, availability and reliability of digital services**

9. The term "digital services" refers to the delivery, processing, recording, generating and the displaying of information electronically. It includes but is not limited to, internet-enabled systems, email, text, and apps. For a person to send information electronically to Inland Revenue they will require at least a computer, tablet or similar device that is able to connect to the internet. No specific or special software will be required as a person will be able to file electronically through the myIR portal on Inland Revenue's website.
10. In regards to the nature and availability of digital services to a person, the Commissioner will take into account the availability of connection to the internet and type of connection. Some rural areas of New Zealand do not have any access to the internet. Without the ability to connect to the internet, a person is not going to be able to comply with the legislation. The Commissioner accepts that a person will need

at least a broadband internet connection to be able to supply information electronically.

11. The Commissioner will also consider the reliability of the internet connection that the person has access to. If the connection is prone to frequent disconnections or slow speeds, these may be a factor in the Commissioner granting an exemption. An unreliable internet connection will be a significant factor in granting an exemption from the requirement to file returns/information electronically.

### **Capability**

12. The Commissioner will consider whether the person has the necessary computer skills to be able to use the digital technology. If not, do they have an employee, or can they engage the services of someone, who is able to use the technology? Or does the person have some disability that affects their ability to use digital services?
13. If a person uses a computer with an internet connection in their business or as part of their everyday affairs, it is reasonable to expect that they will have little difficulty in sending the necessary returns/information electronically to Inland Revenue.

### **Are the costs in complying unreasonable?**

14. As well as considering the nature and availability of digital services, the Commissioner must also take into account whether the costs that would be incurred by the person in complying with the legislation would be unreasonable.
15. This is a question of what is unreasonable in the circumstances of the person. The use of computers and other digital devices is now common place in New Zealand. Typically, an employer or a registered person would use a computer as part of their business and in all likelihood that computer will be connected to the internet (if access is available). The Commissioner expects that where a person is connected to the internet and uses digital services as part of their everyday business, e.g. email, internet banking, electronic invoicing for instance, there will be no impediment for the person meeting the requirements of the legislation and to file returns/information electronically. No material compliance costs will necessarily result as the person can use the myIR portal on Inland Revenue's website to provide the information electronically.
16. The Commissioner will consider whether the costs that would be incurred by the person are materially more than would be expected to be borne by a person in similar circumstances. For instance, a high-country farmer without access to the internet through the copper wire network or fibre may be faced with a substantial cost to connect via satellite (installation of equipment and ongoing subscription costs) compared to a farmer in another area of the country who has ready access to broadband.
17. It is accepted that the circumstances for some payers of investment income may be different to that of an employer or a registered person in that they may not necessarily be in business and are perhaps less likely to have a computer or any other means to connect to the internet. It is the Commissioner's view that it would be unreasonable to expect such a person to incur the cost of buying a computer and connecting to the internet for the sole purpose of meeting the requirements of the legislation. An exemption would appear appropriate in such circumstances.

### **Applying for an exemption**

18. The following information is to be provided when applying for an exemption from electronic filing:
  - Name;

- IRD/GST Number;
  - The exemption that is being applied for, i.e. employer, registered person or investment income payer;
  - Whether the person owns or has access to a computer, smart phone, tablet or similar device that is capable of connecting to the internet;
  - A detailed reason for requiring an exemption. Specifically, what issues are faced in filing returns or providing information electronically that would impose unreasonable compliance costs on the person.
19. Where the Commissioner decides to allow an exemption to the person, she will provide the reasons for the exemption being granted.
20. When granting an exemption, the Commissioner may set a start date and an end date on the exemption. In such a case the Commissioner will provide the reason for setting the time limit.
21. Where no time limit is set, the exemption will apply until the person is notified by the Commissioner that it is to be cancelled. In this case the exemption will expire on the date that is 6 months after the date given in the notification. The Commissioner reserves the right to revoke a person's exemption at any time it is determined that the person's circumstances have changed and now must file electronically.

This Operational Statement is signed on 7 February 2019

Rob Wells  
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