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## Make the most of the new **RESEARCH & DEVELOPMENT (R&D)** Tax Incentive Program

**N**ew Zealand's recently introduced R&D Tax Incentive program offers some of the most generous R&D funding benefits available across Asia Pacific.

This tax incentive program will play a major role over the next 10 years in lifting New Zealand business R&D spend to an ambitious 2% of GDP (up from 0.63%) by the year 2030. It will also assist in countering the phasing out of the existing Callaghan Innovation Growth Grants due to end on 31 March 2021.

### Overview of key points includes:

- 15% tax credit rate per year (should certain criteria be met)
- A minimum R&D spend of \$50,000 per year
- \$120 million cap on eligible expenditure
- Applies from 1 April 2019 for businesses undertaking eligible R&D activities

### Refund parameters:

- In the first year there is a refund cap of up to a maximum of \$255,000 – reflective of an R&D spend of \$1.7 million (refundable provided certain criteria are met)
- R&D tax credits not refunded are carried forward (subject to shareholder continuity rules applying to losses as per the Income Tax Act 2007)
- Tax credits applied as refunds can be coupled with the R&D Tax Loss cash-out regime which can result in up to 43% refunds on R&D spend
- In the first year the maximum amount of R&D tax refund available is \$255k + \$476k R&D tax loss refund cap
- Special rules apply to the management of tax loss cash-outs in future tax years

### Defining R&D eligible activities:

To meet R&D tax incentive criteria, R&D projects must contain at least one 'core' R&D activity. Factors determining eligibility will include whether a business can confirm if:

- Proposed activity is included/excluded under schedule 21 of

the Income Tax Act 2007

- Eligible R&D activity is undertaken in/out of New Zealand (although eligibility is limited for work outside of New Zealand)
- Material purpose of the activity will create new/improved knowledge, processes, services or goods, or resolve scientific or technological uncertainty
- Work is undertaken in an organised and planned manner and is able to formulate and test possible outcomes

Note: R&D activity will not be 'core' if the knowledge required to resolve scientific or technological uncertainty is:

- Publicly available, or
- Deductible by a competent professional in that relevant field

### Support in claiming Tax Incentives

Claiming R&D tax incentives is easy with the right advice and documentation. We are able to provide support in determining eligibility of opportunities to maximize additional tax credits and refunds enabling greater investment into your ongoing R&D program. The Government has committed \$1 billion over the next four years, for this program. Speak to us now about establishing a correct governance and documentation process to take full advantage of this program. Source: [www.rsmnz.co.nz](http://www.rsmnz.co.nz)



# Company Directorship

## Director duties and risk mitigation strategies

**B**eing a company director comes with a number of important responsibilities. There are clear directors' duties set out in the Companies Act as well as other best practice guidelines to follow. In addition, it is important to consider how best to protect your assets in the event that your position as a director leads to personal liability.

### Directors' duties:

The Companies Act sets out the obligations of company directors, which includes the following:

- 1** To act in good faith and in the best interests of the company;
- 2** To exercise powers for a proper purpose;
- 3** Not trade in a reckless manner or a manner that is likely to create a substantial risk of loss to the company's creditors;
- 4** Not agree for the company to incur an obligation unless the director believes that the company will be able to perform the obligation;
- 5** To perform directorship duties with care and diligence;
- 6** To ensure that the company is solvent, meaning that it can pay its debts as they fall due and that it has more assets than liabilities;
- 7** To ensure that the

company meets its filing obligations with the Companies Office and to keep and maintain all company records as required by the Companies Act; and

**8** To exercise due diligence to ensure that the company complies with its health and safety obligations. This requires directors to take reasonable steps to understand the business's health and safety risks and to ensure that they are managed so that the company meets its legal obligations.

In addition to the statutory obligations, the Institute of Directors publishes a code of practice for directors. This code details a number of other principles for directors when observing best practice. These include:

- 1** Observing and fostering high ethical standards;
  - 2** Recognising and managing risk through identification, monitoring and control;
  - 3** Engaging in the development, approval and monitoring of company strategy; and
  - 4** Structuring the board for a balance of skills, knowledge and experience, to provide effective oversight and add value.
- There are many others and the code includes details of what each principle means. Those interested in learning more about the principles of directorship might consider undertaking a course run by the Institute of Directors.

### Insurance:

A company may indemnify its directors and employees and take out insurance to protect them if the company's constitution expressly allows for this. This includes insurance for liability for any act or omission when that person is acting in their capacity as a director. It may also include insurance to cover costs incurred by the director in defending or settling any claim relating to that liability.

### Asset Protection:

It can also be prudent for directors to structure ownership of their personal assets to provide the best protection in the event of a claim against them. Often this will involve the director's home and other personal assets being purchased by or transferred to a family trust.

### Where to next?

The above information provides a very brief overview of some matters for company directors to consider. It is important that legal and accounting advice specific to a director's individual circumstances is taken. If you require any further information about your responsibilities as a director, or options for protecting your personal assets, please feel free to contact our commercial team using the details below:

Source: [www.davenportsharbour.nz](http://www.davenportsharbour.nz)

[www.davenportsharbour.nz](http://www.davenportsharbour.nz)

### GST on low value imports

On 17 June 2019, the government extended the start date for requiring overseas suppliers to charge GST on low value imports (\$1000 or less) to 1 December 2019.

Do you deal with overseas suppliers?

If the answer is yes, be sure to let them know you are GST registered before GST on low value imports comes into effect on 1 December 2019. For business to business transactions, an overseas supplier can zero rate your purchase.

### A case of a nice surprise for customers

A customer recently took a suitcase to a shoe repairer to fix a small tear in the corner and on the outside of a much-loved suitcase.

When the owner picked up the bag he was surprised to find a matching, very neat patch on the opposite corner of the suitcase, so it would look as though there had never been a repair.

Needless to say, the customer was happy.

The lesson: Always look for a chance to surprise and impress your customers.

### Property transfers

For the IRD to get a complete picture of property transfers, a supplementary order paper has been prepared requiring IRD numbers from all buyers and sellers of property, including when they are selling their own home. This will help IRD to trace those who make a habit of doing up houses and moving on, claiming the gains they make are free of tax.

### School donations

The Budget has provided, from the beginning of the 2020 school year, an entitlement of \$150 per student per year if the school agrees to stop requesting donations from parents. This funding applies only to decile 1-7 State and State-integrated schools.

### Interest paid on borrowings for tax

Where money is borrowed by an individual just to pay tax, the interest will generally not be tax deductible. However, if the money has been raised to preserve an income-earning asset, the interest is tax deductible. For example, borrowing money to pay tax in order to avoid selling shares that would otherwise have to be sold.

### Petrol for motor mower

Petrol used for off-road vehicles is not subject to tax. If you use this equipment, which requires petrol to drive it, such as a mowing contractor, you should claim the rebate.





# MANAGING RISK in an uncertain economy

A significant number of clients over the last two months have been reducing their staffing levels in response to a weakening and uncertain economy.

## Reasons for Restructuring

- Increases in the minimum rate from \$15.75 in 2017 to \$17.70 at 1 April 2019
- Anticipating the minimum rate increases in 2020 and 2021 (indicative rates of \$18.90 and \$20 respectively)
- Relativity pressure on wages as a result of the minimum rate increases and living wage pressure
- Increased regulation resulting in business decisions to shrink overheads, maintain profitability and “wait it out”
- A move to automation
- Moving work offshore because of cost and regulation (Thailand, Samoa)
- A drop in tourism numbers causing reduced sales volumes

As one client (GM of a very large international retailer) put it:

*The crazy thing is what these people don't realise, is that companies won't simply increase their over all wage costs, they will simply pay the extra money to the staff and then reduce staff numbers, meaning 2 out of 3 staff members will be earning more money, but one poor staff member will end up on the dole queue.*

In this substantial and well run business, the minimum wage increases, and associated relativity pressures will see \$4.0 million over 4 years added to payroll. Money will be taken from other areas; job loss will continue; expansion and capital expenditure will be delayed.

Other restructures have not been driven by the minimum wage. Rather, Boards have decided that with a raft of industrial reforms in the pipeline and regulatory tightening, it is better to strip costs out, manage profitability with less capital risk, and wait for the current environment to pass.

## Impact of a Weakening Economy

Job creation numbers have slumped – 10,000 a month in 2017 and negative 4000 in the last quarter.

The unemployment numbers released this week are not consistent with what business owners are saying, nor does it add up to the significant job loss seen at close range. But data takes time to work through and if the OCR does not work its magic, we are picking the next set of numbers will be different.

Tax increases, wage pressure, spending, regulation, business confidence at GFC levels – add this to the tensions in the international sphere and it is no wonder we are hunkering down.

We have our hands in our pockets, carefully evaluating any new expenditure and delaying. We are unsure what the Reserve Bank will do if they run out of basis points.

## Time to Evaluate

For employers it is time to evaluate.

Companies who knew their numbers and took early steps to contain costs and limit expenses managed through the GFC. They did not “cut into the muscle” but protected their core business and their key people by reducing all costs that could be stripped out – and they didn't dally – they acted.

It is important to continually assess a business in terms of underutilised resource, unnecessary costs, non-essential work, waste, and options to do things differently and more efficiently.

If there are changes you can make to protect your business in a weakening economy, and if that involves restructuring of employee positions, to protect the business as a whole, there are a few factors to consider:

- Having seen the “death by a thousand cuts” approach our advice is - if you are going to make changes – make them all at one time. If you make a series of changes over a period of months employees are likely to question their security, the viability of the business, the intelligence of management in not getting it right first time. Good employees will be waiting for the next raft of changes and assessing whether they should go before they are pushed.
- Employees become unsettled, concerned for their own security and afflicted by “survivor guilt”. It is particularly relevant in small, close teams and can affect the morale and productivity for some time.
- Employers need to factor in the impact on cashflow of the payment of annual leave entitlements and notice periods.

## Risks of Getting it Wrong

There are strict requirements regarding consultation, providing relevant information and potential redeployment options before an employer can reach a decision to disestablish positions. It's not rocket science but it is reasonably intricate.

If the process is found to be flawed and the outcome predetermined, employers face the risk of a personal grievance (PG) claim for unfair or unjustified dismissal.

The financial risks of a PG are significant. If a claim is successful the penalty, is a minimum of 3 months' pay. There are now bands for compensation for hurt and humiliation which are differentiated by the level of damage or injury:

- Band 1 (low level damage or injury): awards up to \$10,000;
- Band 2 (mid-level damage or injury): awards between \$10,000 and \$40,000; and
- Band 3 (high level damage or injury): awards above \$40,000.

Add to this representation costs at Mediation or the Employment Relations Authority and the time and stress involved for you – it is not worth getting it wrong.

The economy is weakening. Whether we maintain modest growth or dip into recession there is always an argument to operate with the most efficient cost structure.

Source: [knowhow.co.nz](http://knowhow.co.nz)



## Use of home for business

OS 19/03 is an operational statement, which sets out the correct way of claiming Use of home for business, using the square metre rate method (Section DB 18AA). It arises out of ED0207. Using the square metre rate is voluntary. You should note the following: There needs to be an area separately identifiable as being set aside for business. This area has to be obvious to a reasonable person that it is being used primarily for business. For example, one might expect to see a computer. Any area that cannot be used for a business purpose has to be excluded. Should you wish to use the square metre rate, which is set down at \$41.70 per square metre for the 2019 tax year, you will also need to calculate the share of mortgage interest and rates or rent.

## Personal claim – use of home by company

We recently saw a question about claiming use of home in a personal tax return. This, of course, cannot be done because the expense cannot be claimed against a salary. The shareholders in a company wished to keep their current accounts equal. One of them was using their home for the benefit of the business. Solution: Record in a simple agreement, before year-end, to pay rent of a specific amount to the person using their home for business. Pay the other shareholder a corresponding amount of salary. The person incurring costs would deduct them from the rent and return the difference as income.

## Landlords and Tenancy changes

From 12 December 2018 tenants could no longer be charged letting fees.

All new tenancy agreements from 1 July 2019 must include a separately signed statement confirming the intention to comply with the healthy homes standards. If you own a tenanted property, we suggest you go online and make yourself familiar with all the law changes. If you want to be keep up to date with changes regularly, you could subscribe to Tenancy Services news at [www.tenancy.govt.nz](http://www.tenancy.govt.nz)

## International visitors levy

From 1 July 2019 international visitors will be charged a levy of \$35.

# Phishing emails

You may have received a number of emails or notifications from IRD since their new system launch this April. Claiming your tax refunds seems more effortless and straightforward than ever, just by a few clicks and your refunds are on their way. But, have you double checked the websites you are clicking into, the forms you are completing, or even the emails that you are reading? Phishing emails have been keeping up to date with the new IRD system, and developing their fraudulent scams to appear more convincing by altering and editing genuine IRD emails.

Here are some tricks to differentiate IRD notifications and scams.

Check the sender's email address. All emails sent by IRD will be from ird.govt.nz. Scammers usually give out site names that look almost correct – but not quite, such as ird.co.nz or ird.govt.nz, so it's important to look twice.

Personalised greetings: notifications should be addressed directly to you with your name. Your contact email address should not appear to be your title.

If it includes a specific dollar amount, it is a scam.

IRD never wants your password for anything. You should keep all your passwords safe, and update your protection software and apps regularly.

You'll only be asked to provide your bank account details via logging onto IRD website using MyIR. IRD normally does not ask for credit

card information, if it asks so, be extra cautious.

Should you have already come across or accidentally clicked into a suspicious website, erase any information you have provided, and shutdown the website. If you feel you have been caught with a scam, notify the organisation immediately, such as your bank and IRD department, to avoid further loss.



# Transferring pension scheme from overseas

Pensions or lump sums received by a New Zealander who returns to New Zealand after being a non tax resident, are non-taxable for the first four years after their return. The 10 year rule for transitional residency does not apply to foreign superannuation. You might have been out of the country for eight years and could still take advantage of this concession. Certain NZ pension schemes have been approved as "Qualifying Recognised Overseas Pension Schemes" by the UK government. KiwiSaver is not one of them because it is possible to draw

money out of the scheme, before the age of 55, to pay New Zealand tax. You may find some useful information on this website (GOV.UK) To find out how the tax law works between countries, refer to the appropriate DTA (Double Taxation Agreement). If you retain your overseas pension scheme, you will be taxed on a cash basis after the four years has elapsed. Likewise lump sum withdrawals received after four years are taxed in accordance with either the schedular or formula method. This also applies if the scheme is transferred to New Zealand. Lump sum payments are likely to work out better than pension payments. Be careful if you want to bring home lots of lump sum payments as IRD is aware of this and could consider them to be taxable income. There are specialists doing this type of work. It could be prudent to consult with us before making decisions.

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Southey Sayer - Masterton	(06) 370-0811
Sudburys Limited - Whangarei	(09) 430-4888
Vazey Child Limited - Hamilton	(07) 838-2169
Wallace Diack - Blenheim	(03) 578-7389
Whitelaw Weber Limited - Kerikeri	(09) 407-7117
- Kaikohe	(09) 401-0991
- Kaitiaia	(09) 408-1220
Young Read Woudberg Limited - Tauranga	(07) 578-0069

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Please remember to let us know of any changes in:

- Physical address • E-mail address • Phone and/or fax numbers
- Shareholdings • Directorships • Trustees

Or anything else that may be relevant.

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