

## Contractors and Withholding Tax Changes

The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 ("the Act") was enacted on 21 February 2017. The Act includes changes relating to contractors, namely:

- (a) allowing contractors to elect their own withholding tax rate;
- (b) extending the schedular payment rules so that labour-hire firms now have to withhold tax from payments made to contractors; and
- (c) allowing contractors who are not subject to the schedular payment rules to enter into voluntary withholding arrangements with their payers.

This Tax Press outlines the above changes. This will be followed by a AC Tax Desk Newsletter (in the next few days) which will cover the other changes in the Act as well as the Taxation (Annual Rates for 2016–17, Closely Held Companies, and Remedial Matters) Act, which was passed on 23 March 2017.



## Contractors and withholding tax rates

Source: Special Report (Inland Revenue) Simplified Business Tax Processes (February 2017)

Contractors can now choose their own withholding tax rate - the current rates are:

	Description	Rate
Elected rate	Chosen by the payee.	10% – 100% (15% – 100% for non-residents and holders of temporary visas)
Special rate	Payee can request from Commissioner.	Only necessary if the payee wants a rate lower than 10% (or 15% as above)
No notification rate	When the payee does not provide name or IRD number to the payer.	20% for non-resident companies 45% for other contractors
Prescribed rate	Set by Commissioner when the payee has not met a liability under the Inland Revenue Acts.	Cannot exceed 50%
Non-resident entertainer rate	This rate must be used by non-resident entertainers.	20%
Standard rate	The rate for the activity or arrangement set out in schedule 4, which will apply if none of the rates set out above apply.	Vary between 10.5% and 33% depending on the type of activity or arrangement

### Electing a rate of withholding and how to change it

To elect a rate of withholding, the contractor must provide the rate to the payer using the IR330C Form.

The rate will apply unless and until the payee elects to change it. However, if the payee has elected a withholding rate twice in 12 months for the same payer, then the payer’s agreement is required for any subsequent change in rate.



### Extending withholding to labour-hire firms

#### Are you a labour-hire firm?

A labour-hire firm is defined as “a person which has as one of its main activities the business of arranging for a person to perform work or services directly for clients of the entity”.

#### Are the payments you are making covered by the schedular payment rules?

Payments will be covered if the payment is made under a “labour hire arrangement” and one of the payer’s main activities is the business of arranging for a person(s) to perform work/services for the payer’s client.

#### What is a “labour hire arrangement”?

An arrangement which involves (in whole or part) the performance of work/services by a person (payee) for a client of the payer or directly for a client of another person.

#### Example 1

IT World Limited provides IT services to customers. IT World Limited engages Tom, an IT contractor, to provide these services for clients, as and when required.



Labour-hire firm - IT World Limited.

Labour hire arrangement - Tom providing services to Customer, a client of IT World Ltd.

Payment by IT World Ltd to Tom - IT World Ltd must withhold from payments to Tom.

#### What if Tom operates via a company, Tom IT Ltd?

Same as above. IT World Ltd must withhold from payments to Tom IT Ltd. These withholding obligations apply regardless of the entity type the contractor is utilising.

#### What if Tom IT Ltd provides services to the Customer directly - so IT World is not in the picture?

No withholding is required under the labour-hire amendments as the payment will be for services directly provided between by Tom to the customer.

## Example 2

Source: Special Report (Inland Revenue) Simplified Business Tax Processes (February 2017)

Ben is Jane's solicitor. Jane is engaged in litigation and requires a barrister to represent her in court. For this purpose, Ben instructs Tara and pays Tara on Jane's behalf.

Ben is arranging for a contractor (Tara) to provide work directly for their client (Jane). However, Ben is not required to withhold from these payments because arranging for people to work for his clients is not one of his main activities. The payment is incidental to his business of providing legal services.

### What if the payer and the payee are associated persons, for tax?

The payer may choose not to treat the payment as being subject to the labour hire firm rules.

### Certificate of exemption

New Zealand resident contractors who provide services to labour-hire firms cannot obtain a certificate of exemption to exempt themselves from the schedular payment rules. However, they can apply to the Commissioner for a special tax rate (which can be 0%) under in section 24N of the Tax Administration Act 1994.

### Voluntary withholding

A contractor who is not subject to the schedular payment rules can enter into voluntary withholding arrangements, provided the payer and the contractor agree to this arrangement in writing.

### Application date

The above amendments come into force on 1 April 2017.

In terms of the labour-hire rules, if the labour-hire firm cannot set up systems in a cost-effective way to achieve compliance from 1 April 2017, then the amendments will apply from the earlier of:

- (a) 1 July 2017; or
- (b) the date on which such systems can be put into place.



*Day 487: No word of any rescue, but I am receiving notices from the Internal Revenue Service reminding me that I'm late on my taxes."*