

Impact Summary: Modernising the correction of errors in PAYE information

Section 1: General information

Purpose
Inland Revenue is solely responsible for the analysis and advice set out in this Impact Summary, except as otherwise explicitly indicated.
This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.

Key Limitations or Constraints on Analysis
<p>The key limitations on the analysis that follows are:</p> <ul style="list-style-type: none"><i>Consultation and testing:</i> Although there has been consultation with employers and payroll providers employers with small payrolls who do not use payroll software were underrepresented in submissions.<i>Quality of data used for impact analysis:</i> We have been unable to accurately estimate the monetary value of expected changes in administrative costs for Inland Revenue and compliance costs for employers and payroll software developers. <p>Neither limitation materially affects the analysis.</p>

Responsible Manager
<p>Mike Nutsford Policy and Strategy Inland Revenue</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

PAYE error correction

“PAYE error correction” describes the process by which employers advise Inland Revenue of changes to income, PAYE and other deductions, such as KiwiSaver when an error has been made in, or an adjustment is required to, the information originally filed with Inland Revenue.

For many reasons, including human error and late receipt of information, payroll errors¹ are inevitable.

There are three types of errors that require amendment to PAYE information:

1. **Reporting errors** arise when the employee(s) were paid and taxed correctly but reporting to Inland Revenue does not accurately reflect what was paid and/or withheld.
2. **Payroll overpayment errors** arise when an employee is overpaid, correcting the overpayment requires consequential change to the amounts withheld for PAYE and related deductions such as KiwiSaver.
3. **Interpretation errors** arise when the employee receives the correct pay but an incorrect tax treatment is applied, for example a benefit is treated as tax free when it should have been subject to PAYE.

Because salary and wage earners are taxed when they are paid underpayments are taxed when they are paid and so there is no requirement to correct the information already provided to Inland Revenue.

The current PAYE error correction process is set out in operational guidance from Inland Revenue and is largely manual.

The current PAYE error correction guidelines require all errors to be corrected by filing an amendment to the original return. This requirement imposes considerable compliance costs on employers and administrative costs on Inland Revenue.

The guidelines would need to be updated to reflect the changes proposed in the *Taxation (Annual rates for 2017-18, Employment and Investment Income, and Remedial Matters) Bill* (The Bill).

This Bill introduces “payday reporting”². In general, payday reporting would require employers to file “employment income information” with Inland Revenue within 2 to 10 working days of payday. This information is currently provided to Inland Revenue on a

¹ Payroll staff often distinguish between “errors” and “adjustments” with the latter category arising from timing events such as the late receipt of information. For simplicity these are all referred to in this document as errors.

² This Bill is currently before the Finance and Expenditure Committee and the proposed changes are due to be mandatory from April 2019, employers can voluntarily adopt payday filing from April 2018..

monthly basis. Payday reporting will allow some errors to be identified and corrected more quickly but it will reduce the amount of time available to employers to correct information before it is sent to Inland Revenue and, when an error has continued for several pay periods, it will require more returns to be amended. Therefore, in the absence of any other changes, payday reporting will increase the overall number of errors reported to Inland Revenue. This is the status quo position.

Inland Revenue's business transformation programme provides an opportunity to reduce compliance costs for employers and administrative costs for Inland Revenue by modernising the PAYE error correction process using employers' payroll software and taking advantage of the capabilities in Inland Revenue's new computer system. This could be achieved by revising some of Inland Revenue's requirements and coding PAYE error correction requirements into payroll software and Inland Revenue's system.

To achieve this outcome the requirements would need to provide certainty and must be accessible to employers and developers of payroll software. The requirements must also cater for those organisations which do not use payroll software. We note that the Bill proposes that the requirements for PAYE error correction can be set out in regulations.

Other problems with PAYE error correction

In addition, a matter affecting PAYE error correction has arisen which relates to the definition of PAYE income in the Income Tax Act 2007. The objective of providing certainty in relation to the requirements for PAYE error correction requires that this issue should be resolved as soon as possible so that it can be included in advice to providers of payroll software and employers.

The problem concerns the taxable status of overpaid PAYE income which is not repaid. Inland Revenue's legal position is that an overpayment which is not repaid is not taxable unless it has been obtained fraudulently or has become a debt remittance income.

Consultation with employers suggests that at least some employers treat this income as taxable and that any change to their approach would incur additional compliance costs and could reduce the likelihood of the employee agreeing to repay the net amount overpaid. Some employers who treat overpaid income which is not repaid as subject to PAYE seek a refund of PAYE and other deductions, when they obtain agreement from the employee that the net amount will be repaid³, others wait until the net amount is fully repaid.

³ If the employee subsequently defaults on the repayment these employers submit a further error correction to reinstate the outstanding amount as income and pay PAYE on it.

2.2 Who is affected and how?

Employers would be most affected by the current situation and those who responded to consultation generally supported the proposed changes on the basis that they would help to reduce their compliance costs.

Payroll software developers would also be affected by the proposals for PAYE error correction. They generally support the proposed changes because they would provide certainty and would simplify reporting.

Employees could be potentially affected. If the requirements for PAYE error correction are unclear or too complex employers could ignore them and adopt approaches which could be unfair for employees whose records of income and deductions might be affected.

Some tax professionals do not support the proposed change to the status of overpaid PAYE income which is not repaid because it would tax an amount which is not currently defined as PAYE income and denies the employer the refund of PAYE that is currently available. The individual employers who responded to consultation on this point nevertheless supported the proposed change.

2.3 Are there any constraints on the scope for decision making?

The common law principle that wage and salary earners are taxed when they are paid is a constraint. This principle means that underpayments are taxed when they are paid; there is therefore no “error” from a tax perspective and no requirement on the employer to amend earlier tax returns. No change is proposed and this issue is not analysed further in this impact summary.

The Bill’s changes to PAYE reporting are a constraint as they require more frequent filing of PAYE information. These changes form part of Inland Revenue’s business transformation programme. One objective of this programme is to, as much as possible; integrate tax obligations with normal business processes by using business software to automate processes.

Automation requires the rules to be set out clearly and centrally so that they can be coded. The proposed changes would be consistent with a largely automated approach to error correction. In most cases, this would allow an employer using payroll software to generate the information required by Inland Revenue as a consequence of updating their own records.

Because a significant group of employers do not use payroll software the requirements for PAYE error correction should also cater for employers who would manually correct their PAYE information.

Section 3: Options identification

3.1 What options have been considered?

Modernising PAYE error correction

Criteria

- Minimise compliance costs to the extent possible for employers and payroll software developers:
- Minimise administrative costs for Inland Revenue, including consistency with the objectives of Inland Revenue's business transformation.
- Maintain the equity of the tax system. This means allowable approaches to PAYE error correction should not disadvantage employees to whom the income and deductions belong.
- Maintain the integrity of the tax system.

Options for error correction

- Option 1: All corrections would be made by amending the original return (status quo).
- Option 2: Employers would be able to make corrections by either; amending the original return or reporting the correction in a subsequent return. The ability to amend in a subsequent return would exist even if the error occurred in a previous tax year. Additional sub-options have been considered for interpretation errors and these are discussed below.

Analysis of options for each error type against the stated criteria

1. Reporting errors

Option 1 is preferred over option 2 for dealing with reporting errors. If reporting errors were not corrected in the original return there could be a mismatch in the reported information and the amount paid. This would give rise to reconciliation problems which give rise to compliance costs and administrative costs. Amending the original return would also ensure that employees would not be disadvantaged by the income or deductions actually received being reported in a later period.

Option 2 does not address the problem.

2. Overpayment errors

Option 1 would involve higher compliance costs for users of payroll software, compared with option 2. This is particularly true in the context of payday reporting - that is, if an error has continued for more than one payday, an employer who pays more often than monthly would have more returns to correct.

Option 2 would involve a reduction in compliance costs for employers using payroll software, compared with option 1. These reductions would arise because employers would be able to report overpayment errors in a subsequent return which would

eliminate the requirement for a separate error correction return. Because it provides choices option 2 would also cater for employers who do not use payroll software and who prefer to make corrections by amending the original return. Option 2 would not give rise to integrity concerns.

If the overpayment error occurred in a previous tax year option two would more often ensure that the reduction in an employee's income feeds through into their annual assessment and social policy position. For this reason option 2 is also preferred on equity grounds as fewer employees would need to seek a reassessment to ensure the reduction in their income feeds through to an assessment.

Option 2 would not be fully available to employers until Inland Revenue's new computer system takes over the full processing of PAYE; this is not expected until 2020. Until then employers would only report overpayment errors in a subsequent return if the net amount reported were a positive number.

3. *Interpretation errors*

Option 1

Requiring all interpretation errors to be corrected by amending the original return (the status quo) would impose higher compliance and administrative costs than option 2. There would not be equity or integrity of the tax system concerns with this option.

Option 2

Allowing the employer to choose to correct the error either by amending the original return or by including the correction in a subsequent return would have lower compliance and administrative costs than option 1.

However if the ability to correct interpretation errors in a subsequent return is unconstrained employees could be disadvantaged by having a significant increase in their income reported in a single payday return when they have not had an increase in available cash⁴. This concern led to consideration of sub option 2a below.

In addition, concern for the integrity of the tax system led to consideration of a further sub option as set out in sub option 2b below.

Option 2a

This sub option would permit employers to choose to correct small interpretation errors in a subsequent return up to a threshold of PAYE on the error being less than 10% of the employee's PAYE in the payday return. Larger interpretation errors would need to be corrected by amending the original return(s).

Option 2a would mitigate the risk of disadvantaging employees but it would impose higher compliance and administrative costs than option two.

⁴ This situation could arise if a taxable benefit such as subsidised accommodation had been treated as tax free, if the value of this benefit is all reported in one payday return the employee has higher income reported but no more cash.

Option 2b

In addition to the 10% threshold proposed in sub option 2a concern for the integrity of the tax system lead to a further proposal: that an employer could only correct interpretation errors in a subsequent return if they had made less than \$10,000 of upward reassessments in that tax year.

This sub option would have significantly higher compliance costs than options 2 and 2a but it has the advantage of reducing the likelihood that the correcting interpretation errors in a subsequent return could conceal widespread non-compliance.

Options for amending definition of PAYE income

Three options are considered using the criteria set out at the beginning of this section.

- Option 1: no amendment to the Income Tax Act 2007. This is the status quo option.
- Option 2: no amendment to the Income Tax Act and a significant investment by Inland Revenue in employer education in an effort to change employer behaviour.
- Option 3: amend the Income Tax Act 2007 so that overpaid PAYE income that is not repaid remains subject to PAYE.

Analysis of options

Option 1

This option retains the current definition of PAYE income. Some employer submissions indicated that this option would be inconsistent with current employer practice and with how their payroll software is currently configured.

Continuing with the status quo may undermine the objective of automating error correction through software and is likely to result in continuing non-compliance which undermines the integrity of the tax system.

This option could also be seen as inequitable because it treats an employee who repays overpaid PAYE income as having the same income as an employee who does not repay it.

Option 2

Under this option there would be no change to the definition of PAYE income in the Income Tax Act 2007 and Inland Revenue would widely publicise its view of the law in an effort to change employer practice and how payroll software is configured. The objective would be to enable payroll software to be used to report such errors to Inland Revenue and recover overpaid PAYE and other deductions as soon as an overpayment is identified and regardless of whether it is repaid or not.

This option would have significant one-off educational costs for Inland Revenue and might not be successful. Those employers consulted view the status of overpaid PAYE income as wages or salary subject to PAYE. In addition, employers have reasons under employment law for not coding the amount as an overpayment in their

payroll system until agreement to repay has been reached.

If this option resulted in a change in employer behaviour employers would benefit by being able to recover PAYE and other deductions from Inland Revenue regardless of whether they had recovered the net amount from the employee.

Option 3

This option would expand the definition of PAYE income so that overpaid PAYE income not repaid would be subject to PAYE. This option would have lower compliance and administrative costs than the alternatives as it accords with how (some) employers currently treat such income and with how their software is configured.

This option supports the integrity of the tax system as overpayments not repaid would generally become taxable as debt remittance income. However, because employees would be unlikely to be aware of this obligation it is unlikely that tax would be paid on such income.

Option 3 would expand the definition of PAYE income and could be seen as unfair for employers because it denies employers refunds of PAYE and related deductions that they are currently entitled to.

It could also be seen as unfair to employees who have been overpaid because that amount would be taxed before it becomes debt remittance income. As noted above, there are countervailing equity arguments that suggest that Option 3 is preferable on equity grounds because for social policy purposes it would recognise an employer who repaid overpaid income as on a lower income than someone who received an equivalent overpayment but did not repay it.

3.2 Which of these options is the proposed approach?

Error Correction

1. **Reporting errors:** Option 1 (all corrections to be made by amending the original return) is the proposed approach as it is preferable on all criteria.
2. **Overpayment errors:** Option 2 (allowing the employer the choice between amending the original return and correcting in a subsequent period) is the proposed approach as it reduces compliance and administrative costs and is preferable on equity grounds.
3. **Interpretation errors:** Option 2a (allowing the employer the choice between amending the original return and correcting in a subsequent period subject to PAYE on the correction being less than 10 percent of the employee's PAYE in the return) is the preferred approach. This option represents the best trade-off between reducing compliance costs for employers and administrative costs for Inland Revenue without the possibility of unfair impacts on employees.

Definition of PAYE income

The taxable status of overpaid PAYE income which is not repaid: Option 3 (amending the definition of PAYE income so that overpaid PAYE income which is not repaid remains subject to PAYE) is the preferred approach as it is preferable on all criteria.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

PAYE Error correction: the error correction items are considered together as costs are principally driven by the requirement to amend original returns. When there is a continuing requirement to correct errors by amending the original return employers who use software should experience reduced compliance costs owing to automation.

Employers who do not use payroll software but who have internet connectivity would be able to access their already filed and processed returns through myIR and self-correct earlier returns; this should reduce costs for this segment. Employers who report PAYE on paper would continue to have access to a paper form for PAYE error corrections and for simple corrections should be able to make them over the telephone.

Additional costs of proposed approach, compared to taking no action

Regulated parties	<p>Providers of payroll software would need to upgrade their products to support the electronic submission of error corrections in line with the proposed methods for error correction. Software providers could integrate this change into the regular update cycle. Work to create an automated channel for the status quo position is already underway in advance of the proposed regulations, as part of business transformation changes. These are transitional costs.</p> <p>Employers would have transitional costs of understanding the new approach in order to take advantage of it.</p>	<p>Very low</p> <p>Very low</p>
Regulators	<p>Inland Revenue would need to ensure that employers and payroll providers are provided with appropriate education and support and that its new computer system is effectively set up and tested in order to receive negative values from 2020. These are transitional costs.</p>	Very low
Wider government	NA	NA
Other parties	NA	NA
Total Monetised Cost	NA	NA
Non-monetised costs		Very low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	<p>Providers of payroll software: Have additional certainty that their payroll offerings are compliant with requirements.</p> <p>Employers (including payroll intermediaries). Once it becomes possible in 2020 for employers</p>	<p>Very low</p> <p>Medium</p>
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	to file negative values to correct overpayment errors in a subsequent return, compliance costs to correct overpayment errors, are expected to materially reduce. The ability to correct small interpretation errors in a subsequent return should reduce costs of reporting these errors. These benefits are ongoing.	
Regulators	Inland Revenue once the new system has bedded in and employers can use their payroll systems to correct overpayment errors and minor interpretation errors in a subsequent return, including those showing negative values the cost of administering the PAYE system should reduce.	Low
Wider government	Government employers are expected to have the same experience as private sector employers. The changes are also expected to benefit the Ministry of Social Development and the Accident Compensation Corporation which pay PAYE income to beneficiaries and to recipients of New Zealand superannuation and accident compensation.	Medium
Other parties	NA	NA
Total Monetised Benefit	NA	NA
Non-monetised benefits	.	Low/medium

Overpaid PAYE income subject to PAYE		
Additional costs of proposed approach, compared to taking no action		
Regulated parties	<p>Software providers would have no costs as we understand their systems currently support the proposed approach.</p> <p>Employers: we understand that what is proposed aligns with how (some) employers currently treat this income and reflects how their systems work. Even though the proposed change would preclude employers from receiving a refund of PAYE on the overpaid income (some) employers are not currently claiming this refund. Unless this practice changed the increased cost would be theoretical, rather than real.</p> <p>Further, employers argue that continuing to treat overpaid income as subject to PAYE would make it more likely that the employee would repay the employer because repayment would be the only way their record of income for social policy purposes is corrected. To the extent this view is valid the theoretical increase in costs</p>	

	<p>identified below would reduce.</p> <p>Employer costs have been estimated as very low; this reflects the fact that the situation is not a common one and assumes that some employers do seek a refund of PAYE on overpaid PAYE income that is not repaid.</p>	Very low
Regulators	Inland Revenue: the proposal reflects the way the system is currently operating so no additional costs would be incurred.	No change
Wider government	NA	NA
Other parties	NA	NA
Total Monetised Cost	NA	NA
Non-monetised costs	As noted above (some) employers have advised us that what is proposed is how they currently operate. For these employers there would be no increase in costs. The costs have been entered as very low on the assumption that some employers are recovering PAYE on overpaid income not repaid.	Very low

Expected benefits of proposed approach, compared to taking no action		
Regulated parties	<p>Payroll providers will have certainty that their systems could be used as currently configured to seek a refund of overpaid income when repayment is agreed or made.</p> <p>Employers would have certainty that the widespread current approach, that treats this income as subject to PAYE, is consistent with the law.</p> <p>Employees would be freed of any obligation to pay tax on the overpaid PAYE income when and if it becomes debt remittance income.</p>	Low
Regulators	Inland Revenue would no longer have to deal with ambiguity around the current position.	Low
Wider government	NA	NA
Other parties	NA	NA
Total Monetised Benefit		
Non-monetised benefits	The primary benefit is increased certainty around how this income should be treated for tax purposes.	Low

4.2 What other impacts is this approach likely to have?

The proposed legislative change to deem overpaid PAYE that is not repaid as subject to PAYE would improve equity between overpaid employees. Under existing law two employees who are overpaid the same amount of PAYE income should be treated as having the same income for social policy purposes (for example working for families payments, student loan repayments and child support payments) despite one employee having repaid the money and the other not having done so.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Inland Revenue consulted with a number of providers of payroll software and employers and with the Corporate Taxpayers Group and Chartered Accountants of Australia and New Zealand prior to releasing an official issues paper in August 2017.

An officials' issues paper, *PAYE error correction and adjustment*, was released through Inland Revenue's normal channels and in addition was sent to the members of the Payroll Practitioner's Association, to providers of payroll software and to representatives of more than thirty employers who had indicated interest in the subject.

Thirteen submitters responded some representing more than one employer. Submitters generally agreed with the problem analysis and the proposed regulatory approach with the exception of the original proposal for an employer level threshold for interpretation errors.

Submitters argued that the employer level threshold could not be automated and that manual tracking would involve disproportionate compliance costs. In response to feedback the employer level threshold has been dropped.

Concern was also expressed by some respondents that the 10% threshold for interpretation errors at the employee level was unduly low. This threshold has been retained at 10% because the amount could be material for someone on a low income.

One respondent felt that the proposals were unduly complex. However an employer who wishes to minimise complexity will have the option to correct all errors by amending the original returns. No change has been made in response to this submission.

Most respondents agreed with the proposed amendment to the Income Tax Act 2007, deeming overpaid PAYE income not repaid as subject to PAYE. The Corporate Taxpayers Group and Chartered Accountants Australia and New Zealand however disagreed. The Corporate Taxpayers Group considered that the proposal would disadvantage employers by taxing an amount that is not employment income. Chartered Accountants Australian and New Zealand submitted that whether the net amount was recovered or not was a private matter between the employer and employee and the amount should not be taxed unless it became debt remittance income.

In addition one software provider submitted that if an employer had made an adjustment when agreement to repay the overpaid amount was repaid they should not be required to make a further adjustment if the employee subsequently defaulted on the repayment.

No changes we made in response to the submissions received on the proposal to amend the definition of PAYE income so that overpaid income not repaid is subject to PAYE.

A number of technical questions were raised by payroll software providers and these will be considered in the process of developing the technical specifications.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The proposals related to reporting errors, overpayment errors and interpretation errors would be given effect through regulations.

Clause 235C of the Taxation (*Annual Rates 2017 -18, Employment and Investment Income and Remedial Matters*) Bill proposes that the Governor General may, by Order-in-Council on the recommendation of the Minister of Revenue and following appropriate consultation, make regulations for the correction of errors in employment income information. The proposed timing provides adequate time for employers to understand the proposed changes and become familiar with the new options.

In general the proposed regulations introduce additional options, with continuing to file amendments on the current basis being one option. Having options provides a means of managing implementation risk including risks that arise from a relative lack of engagement with employers with small payrolls.

Inland Revenue's systems are being upgraded to accept automatic error correction schedules from 1 April 2018. Issues relating to the effectiveness of the automated process should be resolved by the time the regulations, which permit a greater number of errors to be correcting in a subsequent return, come into effect on 1 April 2019.

The proposal related to the tax status of overpaid PAYE income not repaid will be managed through a proposed amendment to the Income Tax Act 2007. It is intended that the amendment will be included in the next available taxation omnibus bill with a proposed effective date of 1 April 2019.

Consultation by select committee is expected to provide a further opportunity for interested parties to express their views on this proposed change. The proposed change to the legislation reflects how many employers are understood to currently treat such income, implementation risks are not therefore considered to be material.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Information on the number of errors and adjustments to employment income information that are corrected at the employer's request is currently available. There is no way to decompose the totals into different error types.

Once the systems changes are made and the regulations are in place Inland Revenue will know how many automated error correction schedules are filed and the number of changes made. If the system is working as intended the number of changes that are made by amending earlier returns should reduce after it becomes possible for employers to file returns which include negative values (estimated as 2020).

Inland Revenue will not know how many employers exercise the option of correcting overpayment and small interpretation errors in a subsequent return as this option eliminates the need to separately file error correction information.

Implementation and operational issues will be identified through feedback from payroll software providers and through our call centres, account managers and specialised units such as those established to support large enterprises.

7.2 When and how will the new arrangements be reviewed?

The arrangements will be reviewed as part of the post implementation review of phases three and four of Inland Revenue's business transformation.

In addition if monitoring shows unanticipated spikes in the numbers of error corrections being made to employment income information Inland Revenue will investigate the reasons and consider whether the issue:

- is insufficient education;
- reflects a problem with the specifications for payroll software or with Inland Revenue's processing of error correction information;
- stems from the regulations.

Employers will have the opportunity to raise any concerns with our call centres and account managers and payroll software providers can do so through Inland Revenue's Software Liaison Unit.

If employees consider that they are unfairly affected by the actions of employers pursuant to the proposed regulations or legislative change they will be able to make their concerns known through our call centres or by asking the Commissioner to reassess their income.