The Bulletin

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CHARTERED ACCOUNTANTS · BUSINESS ADVISORS

DECEMBER 2019 • ISSUE 15

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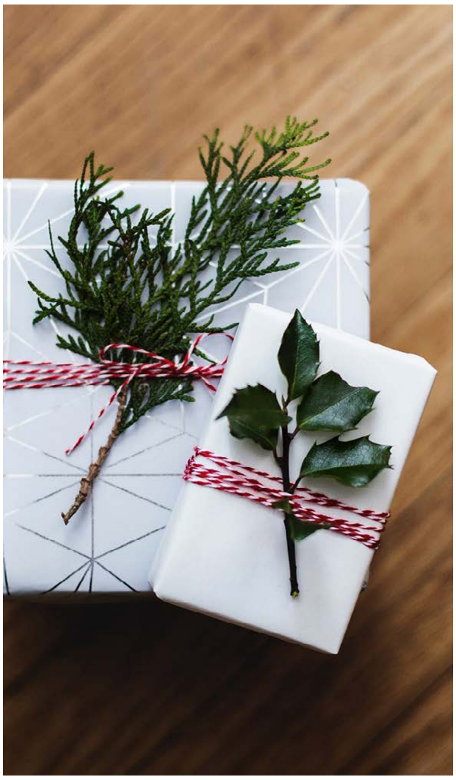
Getting Holiday Pay Right

Do you have staff taking leave over Christmas? Are systems in place to make sure everyone gets what they're entitled to? Even if someone else handles your payroll, you are responsible for making sure holiday pay and leave payments are handled correctly.

Remember:

- Whether your staff work full-time, part-time, casual, on-call, or do shift work, they're entitled to any benefits that come from working on public holidays.
- If your employee agrees to work on a public holiday that falls on a day they would normally work, they will need to be paid time and a half PLUS receive another paid day off later, otherwise known as a day in lieu. If an employee works on a public holiday, and it is not a day they would usually work, the employee is only entitled to the time and a half. The entitlement to time and a half has to be included in employment agreements.
- Employees can choose to take their day in lieu:
  - on a mutually agreeable date that is not a public holiday
  - on another day on which they would normally be working
  - for a whole working day, regardless of how much of the public holiday they actually worked.



- If your business is having a closedown period, employees are entitled to a paid public holiday if they would ordinarily work on the day of the public holiday.
- Make sure your payroll system:
  - is flexible enough to handle different working arrangements (eg, changing employee work schedules)
  - records all relevant time worked and payments made
  - has accurate and up-to-date information.
- If you realise an employee hasn't been paid the right amount, be up front and correct the mistake immediately.

Payday filing over December and January 2019/20

Since 1 April 2019 businesses have been required to file payroll information every payday, rather than once a month. (Replacing the employer monthly schedule (EMS).

Most businesses are already successfully filing every payday.

Up until now IRD have been reasonably lenient and not imposing penalties on those not complying but are now imposing penalties for non-filing of returns. Fines are $250 for a late return.

There will be a grace period close down from 24th December 2019 to 15th of January 2020. Any paydays within this timeframe are due on the 17th of January. Let IRD know if you are employing staff irregularly or if not paying wages for a month or more.

Key Tax Dates - Dec '19/Jan '20

DATE	CATEGORY	DESCRIPTION
5 December	PAYE	Large employers' payment due. File employment information within two working days after payday.
20 December	PAYE	Small and large employers' payment due. File employment information within two working days after payday.
20 December	RWT	RWT return and payment due for deductions from dividends and deductions of $500 or more from interest paid during November.
20 December	NRWT / Approved Issuer Levy	Payment and return for November.
15 January	PAYE	Large employers' payment due. File employment information within two working days after payday.
15 January	Provisional Tax	Instalment due for March balance dates.
15 January	GST	Payment & return for November
20 January	PAYE	Small and large employers' payment due. File employment information within two working days after payday.
20 January	FBT	Return and payment due.
28 January	GST	Payment and return for December.

IRD Payment Methods

From 1 March 2020 IRD will no longer accept payment by cheque from customers who are able to pay another way.

Here's a summary of other payment options:

- **myIR:** You can make direct debit and card payments securely through myIR online services. Visit the IRD website and register for myIR.
- **Online banking:** You may be able to make payments using online banking. Check with your bank for more information.
- **Credit or debit card via IRD website:** Use your credit or debit card to make online payments. Go to the IRD website and search for "Make a payment" and select "Pay using credit or debit card"
- **Westpac:** Pay by EFTPOS or cash at a Westpac branch or Smart ATM

Tax and property - ring-fencing rental losses

New rules apply for the tax treatment of rental losses from 1 April 2019 (for standard balance date taxpayers) for the 2019/20 and later income years.

Rental losses can't be offset against other income

For rental properties that make losses, owners can no longer offset those losses against other sources of income such as salary or wages.

However, owners who incur losses on their rental property can carry those forward and use them against future income or profits from that property. Owners with more than one property can also use those losses to offset income from other rental properties.

What property is subject to these rules?

The rules apply to 'residential rental property':

- land that has a dwelling on it
- land on which the owner has arranged to build a dwelling, or
- bare land that may be used to build a dwelling under the relevant operative district plan

What property is NOT subject to these rules?

The rules do not apply to property that is:

- used predominantly as business premises, or farmland
- a person's main home
- land subject to the mixed-use assets rules (such as a bach that is sometimes used privately and sometimes rented out)
- land owned by a widely-held company
- accommodation provided to employees or other workers because of remote location or equivalent reason
- land identified as taxable on sale (such as land held in dealing, development, subdivision, and building businesses, and land bought with the intention of resale), provided that:

  - the taxpayer notifies Inland Revenue of their rental income and expenditure on a property-by-property basis, or

  - the taxpayer notifies Inland Revenue of their rental income and expenditure on a portfolio basis and all the properties within the portfolio are on revenue account.

Offsetting rental losses within a portfolio

If you own more than one rental property, under the new rules a default method of ring-fencing deductions applies on a portfolio basis. You can offset deductions for a specific rental property against income from other rental properties in your portfolio. You can also offset losses against income from the sale of residential property if it is taxable (for example under the bright-line test) to the extent of bringing the gain down to zero. After a property is sold, any unused deductions would continue to be ring-fenced and carried forward to be used against future residential income or offset against other residential lands that are taxable.

However, if all the property within the portfolio is sold and all the property was taxable on sale (either in the current or an earlier income year), any unused deductions at that point can be used to offset against other income (including wages or salary).

If you don't want to proceed on a portfolio basis, you can elect to use a property-by-property basis.

Offsetting rental losses property-by-property

If you want to offset deductions for a specific property against future income or taxable gain from that same property, you must elect to do so. You do this by notifying Inland Revenue in your income tax return that you are applying the ring-fencing rules on a property-by-property basis. The 2019/20 income year is the first year you will be able to do this. For any property acquired after that, the election to use the property-by-property basis must be made in the relevant tax return in the year the property is purchased.

If you use the property-by-property basis, you must set out income and deductions relating to each specific property in your returns to Inland Revenue. When the property is eventually sold, at that point any unused deductions can be used to offset other income (including salary or wages). Note, however that unused deductions will not be available to offset against other income where it has been transferred from another property and income is derived on disposal of that property under the property-by-property basis.

Transfer between companies in a wholly-owned group

Where you own multiple companies, and those companies' assets include residential property, it will be possible

Continued...

to transfer rental losses from one company to another. The deduction would only be able to be used by the transferee company for residential rental income (or the sale of residential land that is taxable). Note that the companies must belong within a wholly-owned group.

Interposed entities

Some businesses do run complex entity structures involving companies, trusts or partnerships alongside the actual people at the heart of the business.

The new rules are designed to head off investors trying to be clever by separating losses and income into separate business entities.

For instance, where a person takes out a loan to buy shares in a company that then buys a residential property, in theory the person could claim deductions on the interest because the loan relates to investment in shares rather than buying a rental property. The person could then offset those deductions against other income (such as salary or wages).

This loophole for so-called 'interposed entities' has been closed with provisions for 'residential land-rich entities'. The rules for interposed entities apply not only to companies, but also to trusts, partnerships and look-through companies.

Our recommendation

The new rules are complex. Don't hesitate to contact us if you want to discuss the impact of these new rules on your current rental investments, and if you:

- are thinking about buying or selling rental property
- are arranging finance or refinancing your rental property

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.

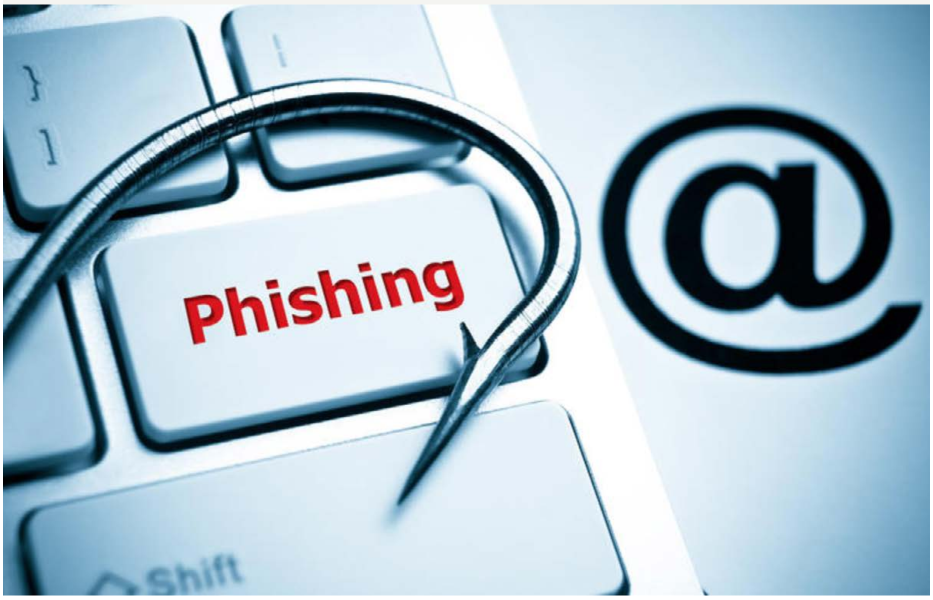
Check the sender's email address. All emails sent by IRD will be from ird.govt.nz. Scammers usually give out site names that look almost correct – but not quite, such as ird.co.nz or ird.qovt.nz, so it's important to look twice.

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 asked, 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.



New Trusts Act 2019: What you need to do

If you're protecting your family property in a trust, there may be changes you need to make before the new Trusts Act comes into force in January 2021.

The changes to the Trusts Act (the first in more than 60 years!) aim to make trust law more efficient and accessible, lower admin costs, simplify core trust principles and essential obligations for trustees, and make it easier to resolve disputes.

While it might seem an eternity away, 2021 will whip around quickly, so here's what you need to do.

1. **Review your trust:** Meet with your accountant and lawyer to review arrangements for your trust. There might be opportunities to improve your tax structure, reduce your risk profile and better your family's financial situation.
2. **Revisit your succession planning:** The new legislation has extended the maximum life-span of trusts by 45 years, to 125 years. This means you'll need to make significant succession planning adjustments.
3. **Be prepared for beneficiary requests:** The new law means most trust beneficiaries will be able to request financial reports on the state of the family trust and find out 'who gets what'. Be prepared for extra admin, costs and possibly damage control if you're having to avoid family issues around distribution of funds.
4. **Know your responsibilities as a trustee, which include:**

a. Knowing the terms of the trust

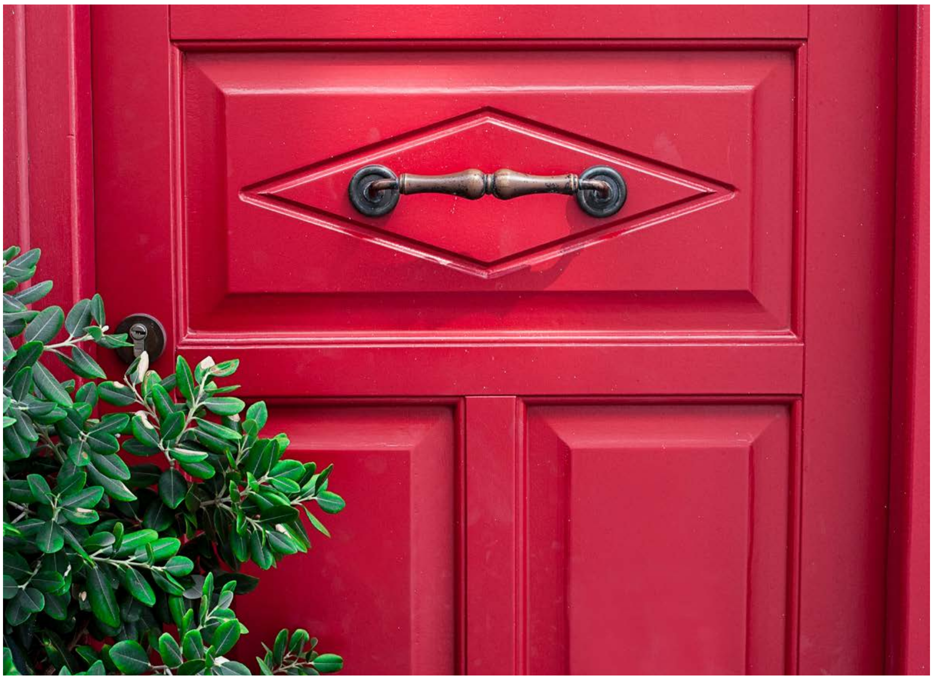
b. Acting according to the terms of the trust

c. Acting honestly and in good faith

d. Holding trust property

e. Acting for the benefit of the beneficiaries or the permitted purpose

f. Exercising trustee powers for a proper purpose



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.

Landlords and Tenancy changes

Since 12 December 2018 tenants are not able to 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

Company Directorship

Director duties and risk mitigation strategies

Being 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 team.

New GST on low-value imported goods

Overseas businesses selling goods valued at $1,000 or less online to New Zealanders are now required to register for, collect and return GST where their supplies to New Zealanders exceed (or are expected to exceed) $60,000 in a 12-month period.

This is good news for local businesses who may have been at a competitive disadvantage by having to charge GST on their sales, when their foreign competitors didn't. Want to know more?

Read the special report at taxpolicy.ird.govt.nz/publications/year/2019

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).

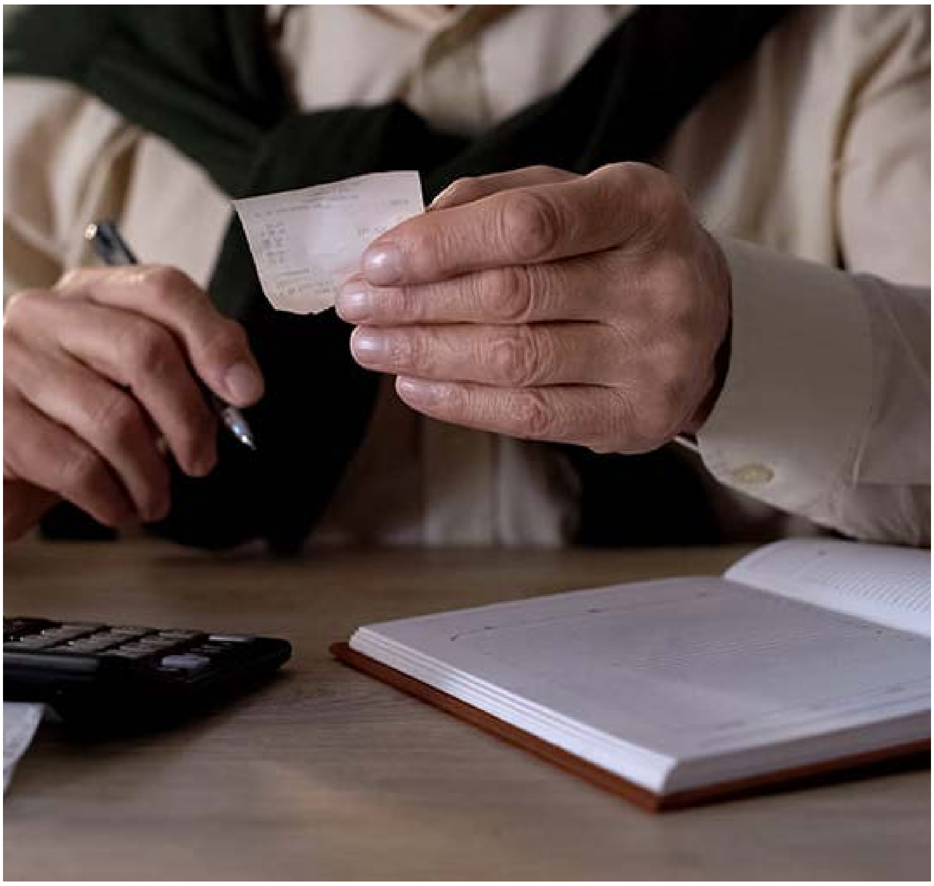
If you retain your overseas pension scheme, you will be taxed on a cash basis after the four years has elapsed. Likewise, lump sum withdrawals received after four years are taxed in accordance with either the scheduler or the formula method. This also applies if the scheme is transferred to New Zealand.

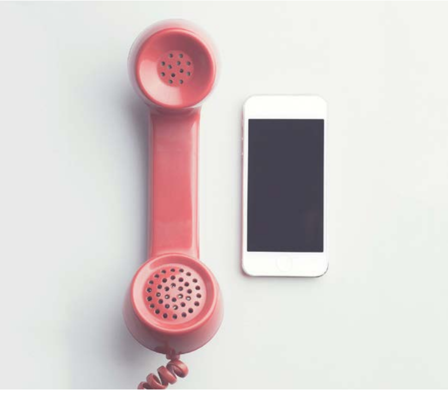
Lump sum payments are likely to work out better than pension payments. Be careful if you want to bring home lots of lump sum payments, as IRD is aware of this and could consider them to be taxable income. There are specialists doing this type of work. It could be prudent to consult with us before making decisions.

Petrol for motor mowers and farm vehicles

Petrol used for off-road vehicles is not subject to tax. If you use mowers and farm vehicles, which require petrol to drive them, (eg. are a mowing contractor or farmer), you should claim the rebate.

You can claim yourself using the refund form at: nzta.govt.nz/assets/resources/factsheets/14/docs/FED-Refund-Customer-Reg-Form-CRF.pdf, or use the services of any one of the agents who will do this for a small commission.



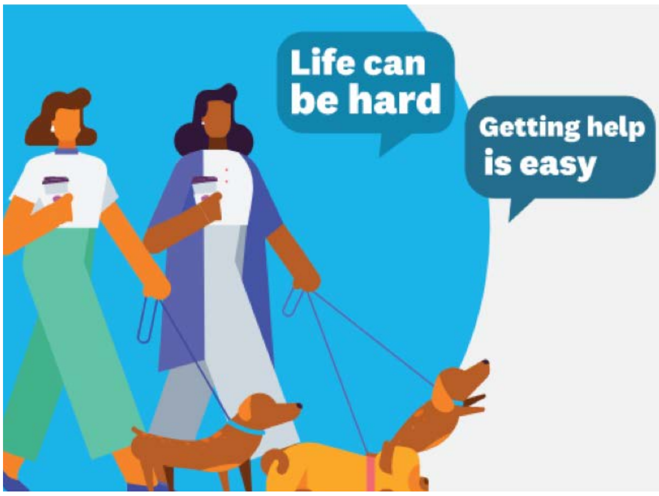


Changes in Particulars

Please remember to let us know of any changes in:

- Physical address
- E-mail address
- Phone numbers
- Shareholdings
- Directorships
- Trustees

Or anything else that may be relevant.



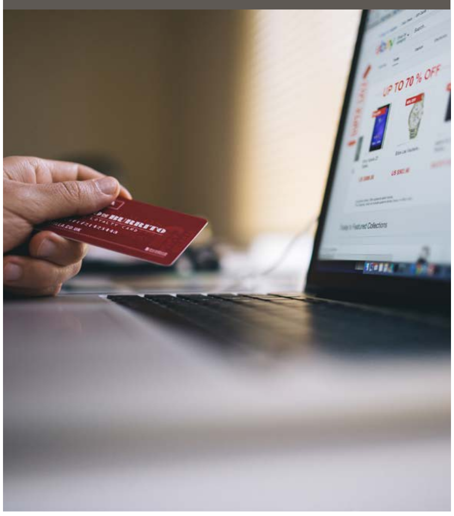
Xero Assistance Programme

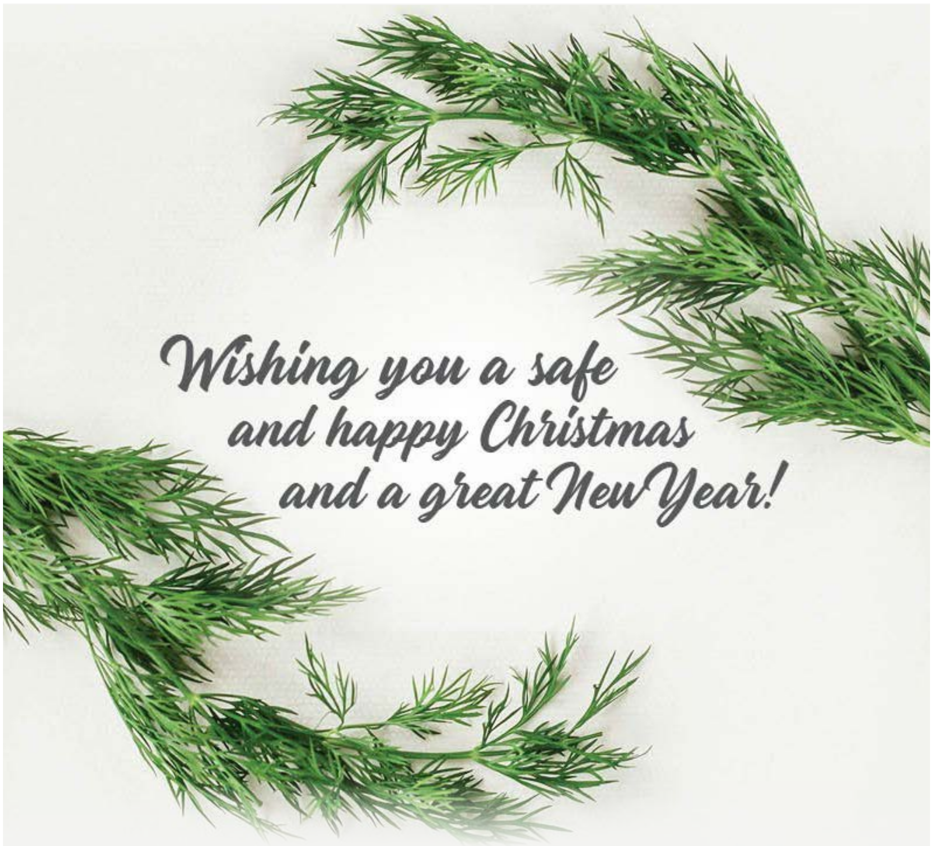
The Xero Assistance Program (XAP) has recently been introduced in New Zealand, XAP provides free and confidential mental health support to all starter, standard and premium Xero subscribers, including their employees and families. Expertly run by global provider Benestar, a world leader in mental health services, XAP gives Xero customers access to face-to-face, telephone, live chat or online counselling.
For more information, email xap@xero.com

Have you seen our new payments page?

You will find a “Pay Now” button on emailed invoices and on our website, which provides an easy platform to pay by credit card, get our banking details, or set up monthly instalments (feeSmart).

We are also planning to add direct debit features later this year.





Our office will close at 2.30pm on Friday 20 December and reopen in the New Year on Monday 13 January.
If you have any urgent queries during this period please email vicki.worker@nla.net.nz

Disclaimer: *This publication has been carefully prepared, but it has been written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation.*