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# Client Newsletter

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December 2007/January 2008

## Wills

Surprising as it may appear, the existing law on wills dates back to the 1830's. The rules laid down almost two centuries ago such as signing, revoking or correcting wills are considered too archaic and strict to give proper effect to the intentions of the person making the will in the 21st century.

The Wills Act 2007 was enacted on 28 August 2007, and applies to all wills made by people who die in New Zealand on or after 1 November 2007. The intention of the new Act is not so much as to reform existing law, but to modernise the law by restating it in simple and plain language. This was probably prompted by some instances where the will was deemed invalid because of the manner in which it was signed in spite of knowing the clear intentions of the person making the will.

The main change in the new legislation is to give the courts some flexibility in rendering a will valid where the will did not comply with some formal requirements.

The formal requirements for making a valid will are essentially the same as before. However, the courts will be able to obtain external evidence in interpreting the wording of the will where the intention is ambiguous or uncertain, which

was not the case under previous law.

These requirements that remain the same are:

- That the will must be signed by the will-maker (previously known as the "testator") in the presence of two witnesses;
- The two witnesses must be present together when the will-maker signs the will;
- Both the witnesses must state on the will that they were present when the will-maker signed it; and
- Sign the will in the will-maker's presence.

What is crucial is the clarity of the intention of the will-maker, who needs to exercise some care and caution in ensuring that their intentions are clear in the will.

In summary, the new legislation will allow the courts to:

- Override clerical errors in a will that alters the true intention of the will-maker;
- Validate a will if it did not comply with the above requirements provided the intention of the will-maker is clear; and
- Interpret the will where the intention is not as clearly stated as required by law.

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# Changes to provisional tax payments

You would have noticed that the Inland Revenue Department (IRD) has successfully aligned the Goods and Services Tax (GST) periods to taxpayers' balance date. This was done to prepare the way for the introduction of the new provisional tax rules coming into force from the 2008-2009 income year.

Those with a standard balance date will be affected by the changes from 1 April 2008. However, the new rules already apply to taxpayers with early balance dates, that is those whose financial year starts from 2 October 2007.

The changes are as follows:

1. Align the provisional tax payment dates with the GST payment dates, to give the taxpayers more time to pay provisional taxes and enable facilitation of payment of both taxes at the same time.

Depending on the frequency of the GST returns filed, the new provisional tax payment dates will also differ.

- Where a taxpayer is not registered for GST, the provisional tax payments will be due on the 28th of the 5th, 9th and 13th month after the balance date.
- Where the taxpayer files monthly or two-monthly GST returns, the provisional tax payment dates are the same as the bullet above.
- Where the taxpayer files six-monthly GST returns, the provisional tax payments will be due only twice a year – on the 28th of the two GST payment dates.
- In addition, where a taxpayer opts for the new method of calculating provisional tax instalments called 'GST ratio' option (see below), the provisional taxes will be due six times a year on the 28th of the 3rd, 5th, 7th, 9th, 11th and 13th month after the balance date.

If the due dates fall on the 28th of December and April, they will be deemed to be on the 15th of January and 7th of May respectively as it is at present.

As you can see from above, for most taxpayers, payment of provisional taxes will change to the 28th of the 5th, 9th and 13th month after the

balance date instead of the current 7th of the 4th, 8th and 12th month from the balance date. So for example, if the taxpayer has a standard balance date of 31 March, they will be paying the three instalments of their 2009 provisional tax on the 28 August 2008, 15 January 2009 and 7 May 2009.

2. Introduce a new GST ratio option to calculate provisional tax.

*Why use this method?*

The benefits of using this option are:

- Use of money interest (UOMI), currently at 14.24%, will not apply to underpaid provisional tax until the terminal tax date. The flip side also holds where UOMI (at 6.66%) will not be paid by the IRD on overpaid tax.
- Where the business has fluctuating or declining income, the taxpayers need not have to base their tax instalments on previous year's residual income tax (RIT).
- Smaller taxpayers with cashflow problems can reduce or eliminate the UOMI altogether.

*How is it calculated?*

- Firstly, the GST ratio is calculated by dividing the taxpayer's RIT for the preceding year by the total GST taxable supplies for that same income year.
- The above ratio is then multiplied by the taxable supplies of the GST period with which date the provisional tax payment is due.

*Any limitations?*

Clearly the above limits the number of taxpayers who can avail themselves to the GST ratio option. Taxpayers who are eligible to choose the GST ratio method are those who:

- Are registered for GST;
- Were registered for GST for the whole of the previous year;
- File GST returns either monthly or two-monthly;
- Had their RIT for the preceding year between \$2,500 and \$150,000 exclusive; and
- Have the ratio percentage between 0% – 100%

If they meet the above criteria, they may choose the GST ratio method provided they elect to use this method before the start of the income year.