# NEWS

## DECEMBER 2022

### SNIPPETS

### ACCESS TO FREE, CONFIDENTIAL MENTAL HEALTH COUNSELLING & RESOURCES

Xero subscribers on a Starter, Standard or Premium plan (along with their employees and their family members) are able to access three confidential face-to-face counselling sessions free of charge.

The software provider's Xero Assistance Programme (XAP) is currently available until March 2023. Xero is committed to improving small business wellbeing in the long term and believes there is a growing need for mental health support in small businesses, with 80% of small business owners saying isolation is their main concern. Many in business report just having the opportunity to speak with someone with an outside perspective, can be hugely valuable.

The programmes are run through Benestar, an Australasian Company with an established record of over 30 years championing wellbeing in the workplace. If you are already a customer, just log into Xero to access XAP.

### SICK LEAVE ENTITLEMENT THE WORLD OVER

In New Zealand the majority of employees are entitled to 10 days paid sick leave, with unused sick leave able to be carried forward to a maximum of 20 days. But how do we stack up compared to other countries?

In the USA there are no federal law requirements to provide paid sick leave. Such an entitlement is not considered a right and, as a result, any entitlement is provided at a state level. Most states do have sick leave policies which cap the entitlement at a maximum of 40 hours (approximately 5 days) per year. However, there are still 18 states that do not require employers to provide their employees with paid sick leave and some of these states also have pre-emption laws to prevent local government from implementing sick leave legislation.

In the UK the legislated weekly sick leave allowance is only approximately 20% of the average employee's income. On the other end of the spectrum, employees in Sweden are entitled to 80% of the salary for up to a year. In Slovenia the entitlements are unlimited and leave is also paid at the 80% rate.

### A CHARITABLE WORLD!

There are over 28,000 registered charities in New Zealand. To register as a charity here, the organisation must show that it has charitable purpose; to relieve poverty, advance education, advance religion or be beneficial to the community. But some examples certainly make you wonder!

The "Church of the Flying Spaghetti Monster' is an organisation that is legally recognised as a religion in New Zealand. The Church is based, not on a foundation of Christian or other religious evidence but was founded as a community touched by the Monster's "noodly (as in pasta noodles!) vision". Its registration has exposed some real issues as to legitimacy of some organisations that apply for charitable status.

The US recognised Jediism as an international ministry in 2015. However, the Temple of the Jedi Order was refused charitable status in the UK because it was not primarily focussed on charitable purposes, and rightly so.

Iglesia Maradoniana, an organisation achieving charitable status in Argentina, is registered as a religion to worship Diego Maradona, the late football player. Apart from the love of football above all else, its ten commandments include that the ball is never soiled, the templates erected in his memory must be honoured along with his sacred shirts!


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## FAREWELL TO "TAX INVOICES"

Despite significant technological and operational business changes, the rules regarding GST tax invoices have remained largely unchanged since GST was first introduced in 1986. However new legislation was passed in late March this year that is intended to improve and modernise GST invoicing and record keeping requirements.

The key change is to remove the long-standing requirement to issue and hold a "tax invoice" document (which meets certain prescribed requirements on the details required) and instead having GST requirements met through various business records, for example transactions records, accounting systems and/or commercial invoices or agreements which in combination must contain all the information needed to support the figures in the GST return. The information required to be provided or recorded depends on the value and type of supply.

Tax invoices will be replaced by taxable supply information (TSI). The information required to be provided or recorded depends on the value and type of supply. However, there is a set list of information that must be provided to any GST registered customers within 28 days of the date of supply. Information over and above the current tax invoice requirements include:

- The "date of the supply" when the time of supply is triggered, rather than the current tax invoice requirements of the date on which the tax invoice is issued
- For supplies over $1,000, the TSI must include the recipient's physical address (if that information is available)
- Taxable supply information can be provided using an automated direct exchange between a buyer's and seller's software, e.g. PEPPOL e-invoicing.

Low-value threshold supplies valued at less than $200 will not require TSI to be issued but in order to claim GST a TSI must be requested from the supplier and include the information as above.

For supplies over $200 it will become mandatory to issue a TSI to GST registered customers within 28 days of the date of supply – a TSI must be provided to a non-GST registered entity within 28 days from when the customer requests the information.

Meanwhile, credit and debit notes are being replaced by "supply correction information" ("SCI") which is deemed to have a larger scope. The issue of a SCI is required within 28 days of the TSI being issued or by a date agreed between the supplier and the recipient.

**It would appear that businesses currently issuing valid tax invoices would not have to make any changes to comply with the new rules but need to be aware their business processes will need to accept invoices which do not have the "tax invoice" on them.**

The changes bring in an element of confusion, because other than the reference to "taxable supply information" it is difficult to determine the practical effect of the changes. But because the process of "invoicing" is so fundamental to business, additional time has been given to allow businesses to work through implementation of the changes – hence the changes apply to taxable periods beginning on or after 1 April 2023.

One change that was introduced with immediate effect is that Inland Revenue approval will no longer be required to issue buyer created tax invoices – to be replaced by written agreements between parties to confirm self-billing.

This is a positive change that is welcomed but whether the broader changes as detailed here are also progressive, remains to be seen.


## DISCLOSING TRUST INFORMATION

The level of information required to be supplied to the IRD as part of a trust tax return has in many cases significantly increased, impacting on the time and cost required to complete the return.

The Tax Administration (Financial Statements - Domestic Trusts) Order was made in March 2022 and sets out minimum standards for financial statements prepared for trusts. This Order applies to income years ending on or after 31 March 2022 and to trusts that derive assessable income in a tax year. Certain trusts such as non-active trusts, charitable trusts and foreign trusts are excluded.

Pursuant to the Order, most trusts will have to prepare financial statements that include a statement of profit and loss and a statement of financial position. If a trust has income and expenditure of less than $100,000 and assets of less than $5m it will qualify for "simplified reporting". If this is the case, the financial statements do not need to include certain information such as a statement of accounting policies, a fixed asset register and details of transactions between the trust and associated persons. While financial statements are not actually filed with the tax return, they must be made available to the Inland Revenue if requested.

In most cases the Order might be of no effect if financial statements are already prepared.

The Inland Revenue has stated in a recent discussion document that it will use the additional information to determine why trusts are being used and what measures could be considered to prevent under-taxation from the use of trusts.

## ELECTRONIC MONITORING OF EMPLOYEES – A POSSIBILITY FOR NEW ZEALAND?

The frequency and intensity with which employees are monitored by employers via the use of electronic systems has been amplified with technological advancement in recent years, raising privacy concerns in many countries.

It started with some businesses recording telephone calls within their systems and with the installation of external video cameras/CCTV on business premises. However, monitoring has since progressed to include cameras inside the workplace, GPS in mobile phones, automatic recording of mobile telephone conversations, monitoring remote work through digital systems, biometrics and facial recognition, GPS monitoring of vehicles, as well as the recording and storing of that information.

Some have criticised that in the wake of such rapid technological advancement, the law has had little time to adapt and is being left behind. As the common law approach has historically favoured an employer's right to conduct business as they see fit over the privacy rights of employees, it would be challenging for an employee to establish grounds that satisfy the claims available in the Employment Relations Act 2000.

There are some restrictions on employers in New Zealand and electronic monitoring is mainly (but not exclusively) regulated by the Privacy Act 2020. This is a principle-based legislation overseen by the Privacy Commissioner. The Privacy Act stipulates that the means of collecting information should be fair and not unreasonably intrusive.

This became particularly relevant during the lockdowns in situations where some employers were requiring employees' laptop cameras to be on during working hours, even in the employee's own home. It is not clear whether employees subjected to monitoring in its wider forms, know the extent of the monitoring, what happens to the information or even that they are being monitored at all despite some clear information principles requiring employers to ensure their employees are aware.

In Canada, Ontario has taken a proactive path to address these concerns passing new laws to create prescriptive requirements. Bill 88 amends the Ontario Employment Standards Act 2000 to require employers with 25 or more employees to have a written policy on the electronic monitoring of its employees.

Electronic monitoring policies must include whether the employer electronically monitors employees and if so the type of monitoring in use, the circumstances in which monitoring will occur and the purposes for which the information may be used.

In the New Zealand context, much of the above requirements could be applied from guidelines under the Privacy Act 2020. However, the rights afforded under this Act may not cover all information obtained by an employer through electronic monitoring, the guidelines are not regulatory and it is unclear how widely understood these rights are by employers and employees.

In contrast, Bill 88 goes a few steps further to enhance transparency, create positive disclosure obligations and to ensure employees understand how and when their actions and movements are being monitored.

It does highlight potential areas for improvement in respect of New Zealand's own legislation.

## CONECTIONERY OR INGREDIENT

Here in New Zealand, we value simplicity and we call things as we see them. A spade's a spade and a marshmallow is confectionary. However, in the UK, things are a bit more complicated. Value Added Tax (VAT) is charged on goods and services (like GST is in NZ) but is subject to a number of fiddly and somewhat subjective exemptions. For example, supplies of food used for cooking are zero-rated, meaning no VAT is charged on these products. On the other hand, confectionary is subject to VAT at the standard rate, except for cakes and non-chocolate covered biscuits, which remain zero-rated. Clear as mud, right?

Innovative Bites Ltd (IBL), is a UK supplier, distributor and wholesaler of candy. One of their products is called a "Mega Marshmallow", a large marshmallow measuring 5cm x 4.5cm. According to IBL, the product is supposed to be roasted over a fire or put between two biscuits to make a s'more. Between 2015 and 2019, IBL sold these marshmallows with no VAT, on the assumption that their intended use fell within the "food used for cooking" exemption.

After being told they owed £470,000 in VAT, IBL appealed to the tax tribunal, asserting that their marshmallows were not confectionary as they were supposed to be cooked before eating. When taking into account the packaging, the size of the product and where it was positioned in the supermarket aisle, the tribunal eventually agreed that the marshmallows were in fact not confectionary. In his conclusion, the judge stated that if a consumer wanted to eat marshmallows as a snack, they would likely eat smaller, regular ones.

**The Principals and Staff of Graham & Dobson thank you for your continued support during 2022. We wish you a Merry Christmas filled with fun, laughter and a time of reflection, with family and friends.**

**Here's to a bright New Year.**

**Our office will close 3.00pm on Friday, 23 December and will re-open on Wednesday, 11 January 2023 at 8.30am**

# Vintage Letters to Santa
## – from almost 100 years ago

In the hustle and bustle of the holiday season, we sometimes forget that Christmas hasn't always been a time of stress, hectic shopping, expensive decoration, and frantic preparation.

Sweet, vintage letters to Santa via their local newspaper, the *Brady Standard*, from Texas farm kids, recall a simpler, more generous time.

**Dear Santa Claus:**
I have been a good little boy. Will you please bring me a velocipede, a flashlight, some apples and candy. Bring Grandpa a pair of socks and I'll put some corn at the gate for your reindeer.
Your friend,
*Robert Pearce (1927)*

**Dear Santa**
Will you please bring me a scooter-scoot, a horn, a football, a blackboard and a box of handkerchiefs for Christmas and if you have anything else for me send it to some other little boy who has no parents. I try to be a good boy.
Your loving friend,
A.*M. Finlay, Jr. (1923)*

**Dear Santa Claus:**
I've been the very best little boy lately, and if you don't hurry and come, I don't know if I can stay good much longer. I just want a few things this year, as daddy says Santa is as poor as he is. I'd like a tractor, a car, a ball, a bat, gloves, and a lot of fruit and candy and nuts. Now Santa, don't make a mistake and bring me a doll, 'cause I'm no "sissy;" I'm a real "man." Soon 9 years old.
Love to you, Santa.
*Forrest Roberts (1930)*

**Dear Santa:**
I sent a letter to the Brady Standard. I want you to know I am going to write to the Brady Standard every Christmas. I want you to bring me a cap and a sweater for my doll and a big ball. There are many other little boys and girls that want Christmas presents, so I will go now.
Yours truly,
*Golda Eileen Utsey (1930)*