

Accounting Alert

Staying on top of developments



Financial Reporting Act 2013 enacted providing clarity on the financial reporting obligations of New Zealand entities

Following several years of consultation and debate, this month the government finally passed legislation overhauling New Zealand's financial reporting framework. The end result is largely consistent with the Government's previous announcements, such as:

- removal of financial statement preparation requirements for most small and medium companies,
- clarification of reporting requirements for registered charities,
- removal of the requirement for companies and issuers to prepare parent financial statements when group financial statements are already provided,
- reduction in filing deadlines for some entities, and
- alignment of the penalties regime.

However, some late changes were made, particularly for overseas companies carrying on business in New Zealand and subsidiaries of overseas companies. Details of the changes are included in this alert.

The legislation has been split into the Financial Reporting Act 2013, and the Financial Reporting (Amendments to Other Enactments) Act 2013 which includes the amendments to entity specific legislation (such as to the Companies Act 1993, Financial Markets Conduct Act 2013, Charities Act 2005 etc.). These Acts are available at: www.legislation.govt.nz

Timeline

The Acts note that they come into force on a date appointed by the Governor-General by Order in Council, or on 1 April 2017. We expect that the legislation will apply to financial reporting periods beginning on or after 1 April 2014 (although charities may be at a later date). The Financial Reporting Act 1993 will continue to apply to periods beginning before that date.

In this alert:

- Legislative requirements – who has to prepare, have audited and/or file financial statements?
- Accounting requirements – what standards apply if financial statements are required in accordance with NZ GAAP?
- What needs to be considered where financial statements are not required in accordance with NZ GAAP?

Legislative requirements – who has to prepare, have audited and/or file financial statements

The following tables outline the newly enacted financial reporting requirements by entity type, focusing on which entities have to prepare financial statements, whether an audit is required and whether the financial statements have to be filed. These are a high level overview only and reference should be made to the relevant Act for a particular entity.

Issuers and other market participants

| Entity type | Preparation | Audit | Filing |
|---|---|-------|---|
| Entity captured by the Financial Markets Conduct Act 2013 (FMCA) – referred to as an FMC reporting entity | ✓ Within four months of balance date | ✓ | ✓ Within four months of balance date |
| Refer below for discussion. | | | |

FMC reporting entities

The Financial Reporting (Amendments to Other Enactments) Act 2013 includes the amendments to the FMCA in relation to financial reporting. This includes a definition of an FMC reporting entity in section 451 (as amended). In summary it includes issuers of regulated products, listed issuers, registered banks, licensed insurers, licensed building societies and credit unions and certain entities licensed by the Financial Markets Authority (FMA).

The FMA notes that operators of retirement villages who only issue occupancy agreements will not be FMC reporting entities. Companies that only issue ordinary shares with fewer than 50 shareholders or 50 parcels of shares are also excluded.¹

Public entities that are companies and limited partnerships

Public entities are those entities captured by the Public Audit Act 2001, section 5.

| Entity type | Preparation | Audit | Filing |
|--|---|-------|---|
| Companies that are public entities (regardless of size) | ✓ Within five months of balance date | ✓ | May be required under other legislation |
| Limited Partnerships that are public entities (regardless of size) | ✓ Within five months of balance date | ✓ | ✗ Must be distributed to each partner within five months of balance date |

One of the later changes to the Bill before it was enacted was to clarify that public entities that are companies and partnerships are required to prepare audited financial statements, even if they are not large. This differs to other domestic companies discussed further overleaf, but is consistent with current requirements.

¹Refer FMA Publication "Changes ahead for financial reporting" dated 18 November 2013.

Companies and partnerships

(that are not FMC reporting entities or public entities)

| Entity type | Preparation | Audit | Filing |
|---|---|------------------------|---|
| Large ² company with less than 25% overseas ownership (Large is more than \$60m assets or \$30m revenue) | ✓ Within five months of balance date | ✓ (can opt out) | ✗ |
| Large ² company with more than 25% overseas ownership, but not a subsidiary of an overseas company (Large is more than \$60m assets or \$30m revenue) | ✓ Within five months of balance date | ✓ | ✓ Within five months of balance date |
| Large ² company that is a subsidiary of an overseas company (Large is more than \$20m assets or \$10m revenue) | ✓ Within five months of balance date | ✓ | ✓ Within five months of balance date |
| Large ² overseas company that is carrying on business in New Zealand (NZ) (Large is more than \$20m assets or \$10m revenue) | ✓ Within five months of balance date (including for the NZ branch/ group business if it is large as well as the overseas company/ group) ³ | ✓ | ✓ Within five months of balance date |
| Every other company with 10 or more shareholders | ✓ Within five months of balance date (can opt out) | ✓ (can opt out) | ✗ |
| Every other company with fewer than 10 shareholders | ✗ (can opt in) | ✗ (can opt in) | ✗ |
| Large ² Limited Partnerships (Large is more than \$60m assets or \$30m revenue) | ✓ Within five months of balance date | ✓ (can opt out) | ✗ Must be distributed to each partner within five months of balance date |
| Other Limited Partnerships (i.e. not large) | ✗ (can opt in) | ✗ (can opt in) | ✗ |
| Large ² Partnerships under the Partnership Act 1908 (Large is more than \$60m assets or \$30m revenue) | ✓ Within five months of balance date | ✓ (can opt out) | ✗ |
| Other Partnership under the Partnership Act 1908 (i.e. not large) | ✗ | ✗ | ✗ |

²For an entity and its subsidiaries (if any), large is at least one of total assets greater than \$60m, or total revenue greater than \$30m, both in respect of the two preceding accounting periods, unless the entity (and group) is an overseas company carrying on business in New Zealand, or a subsidiary of an overseas company. In that case large is at least one of total assets greater than \$20m, or total revenue greater than \$10m both in respect of the two preceding accounting periods.

³The FMA has power to grant exemptions.

What is large?

An entity is large in respect of an accounting period if at least one of the following paragraphs applies:

- As at the balance date of each of the two preceding periods, the total assets of the entity and its subsidiaries (if any) exceed \$60 million, or
- In each of the two preceding periods, the total revenue of the entity and its subsidiaries (if any) exceeds \$30 million.

However, an overseas company carrying on business in New Zealand (i.e. has a branch) and subsidiaries of overseas businesses are large if total revenue in each of the two preceding periods is more than \$10 million or total assets at the balance date of each of the two preceding periods are more than \$20 million.

An entity is not large if it was an inactive entity in respect of the period. An entity is an inactive entity in respect of an accounting period if:

- during that period, the entity has not derived, or been deemed to derive any income, and has no expenses, and has not disposed of, or been deemed to have disposed of, any assets, and
- at the end of that period, the entity has no subsidiaries or all of its subsidiaries are inactive entities in respect of that period.

In making this determination, no account may be taken of:

- a. any statutory company filing fees or associated accounting or other costs, or
- b. bank charges or other minimal administration costs totalling not more than \$50 in the period, or
- c. interest earned on any bank account to the extent that the total interest does not exceed the total of any charges or costs incurred in (b).

Opt out requirements

Non-large companies with ten or more shareholders are required to prepare financial statements and have them audited, unless they opt out. In addition, large New Zealand privately owned companies may opt out from appointing an auditor (although must prepare financial statements). In order to opt out, a meeting of shareholders held within the opting period (as defined below) can opt out of compliance by way of a resolution approved by not less than 95% of the votes of those shareholders entitled to vote and voting on the matter.

The opting period for a company is defined as the period from the start of the accounting period until the close of the earliest of the following dates:

- the date that is 6 months after the start of the accounting period,
- the date of the annual meeting to be held in the accounting period, or
- in the case of an accounting period that is shorter than 6 months (as a result of the date of the registration of the company or a change of the balance date of the company), the balance date of the period.

Companies cannot opt out if the constitution expressly provides that this section of the Act (allowing opt-out) does not apply.

Large partnerships and limited partnerships can also annually opt out of appointing an auditor if within 6 months from the start of an accounting period a resolution is passed or signed by partners who together have contributed at least 95% of the capital contributions of all partners. They cannot opt out if the partnership agreement expressly provides that this section of the Act (allowing opt-out) does not apply.

Entities will need to implement procedures to ensure the relevant opt-out requirements are met if they intend to invoke them within the timeframes specified.

Opt in requirements

Non-large companies that have fewer than 10 shareholders have no financial reporting obligation unless shareholders with at least 5% of the voting shares require the company to prepare financial statements (and may also require audit).

Non-large limited partnerships also can opt in to preparation and/or audit of the financial statements by way of written notice (within the same opting period) by partners who together have contributed at least 5% of the capital contributions of all partners.

Group or parent financial statements?

If a company or overseas company has one or more subsidiaries at balance date, parent financial statements are not required. Instead group financial statements are prepared.

Group financial statements are not required if the company is a subsidiary of a body corporate incorporated in New Zealand, and group financial statements in relation to the group incorporating the company's parent and all of its subsidiaries (including that company) are prepared.

Other entity types

(those that are not an issuers or other market participants will need to comply with the requirements above)

| Entity type | Preparation | Audit | Filing |
|---|---|---|---|
| Registered charity (Charities Act 2005) | ✓ Within six months of balance date | N/A Not covered by this legislation – refer discussion overleaf | ✓ Included with the annual return within six months of balance date |
| Friendly Societies (registered society or branch) (expenditure >\$30m) | ✓ Within three months of balance date | ✓ | ✓ Included with the annual return within three months of balance date |
| Friendly Societies (registered society or branch) (expenditure <\$30m in each of the two preceding years) | ✓ Within three months of balance date (can opt out) | ✓ (unless opt out of preparation, or operating payments are less than \$125,000 and the entity's rules don't require financial statements) | ✓ Within three months of balance date (unless opt out of preparation) |
| Industrial and Provident Societies | ✓ Within four months of balance date (some non-large societies can opt out) | ✓ (some societies can opt out) | ✓ Within four months of balance date if large ⁴ Must be distributed to every member within four months of balance date |
| An operator of a retirement village | ✓ Within five months of balance date May also require financial statements in respect of each separate retirement village (see below) | ✓ | ✓ Within five months of balance date |
| Maori Incorporations under the Te Ture Whenua Maori Act 1993 | ✓ Submitted to annual shareholder meeting, or period ending not earlier than six months before the meeting | ✓ (unless operating payments are less than \$125,000 and shareholders don't opt in by special resolution) | ✓ Filed with Registrar in whose court district the land is situated within 14 days of submission to shareholders |
| Community Trusts | ✓ Within five months of balance date | ✓ | ✓ Published on the trust's website and sent to the Minister by 31 August in each year |
| Corporate Society under Gambling Act 2003 | ✓ Within three months of balance date | ✓ | ✓ If operate gambling equipment at a non-commercial class 4 venue within three months. Other entities publish on their website within four months of balance date. |

Registered charities

Audit requirements for charities are not included in this legislation. Proposals are instead incorporated in the Accounting Infrastructure Reform Bill (AIRB) as recently issued.

The audit requirements proposed in the AIRB are as follows:

- Large charities – audit
- Medium charities – audit or review
- Small charities – no requirement.

A charitable entity is large in respect of an accounting period if, in each of the two preceding accounting periods of the entity, the total operating expenditure of the entity is \$1 million or more. A charitable entity is of medium size in respect of an accounting period if it is not large and in each of the two preceding accounting periods of the entity, the total operating expenditure of the entity is \$500,000 or more. If these criteria are not met, the charitable entity is small.

Retirement villages

As noted above, some operators of retirement villages will FMC reporting entities an issuer – particularly if they only issue licences to occupy and no other debt or equity instruments. We also note that the Retirement Villages Act will require operators to prepare financial statements of both the operator and its retirement villages where the operator's financial statements include:

- More than one retirement village, or
- Another trading activity that operates independently of the retirement village,

and the statutory supervisor or Registrar requires it.

Opt out provisions

These differ depending on the entity type. We note that the requirements have strict timeframes so entities will need to implement procedures to ensure the relevant opt-out requirements are met on an annual basis.

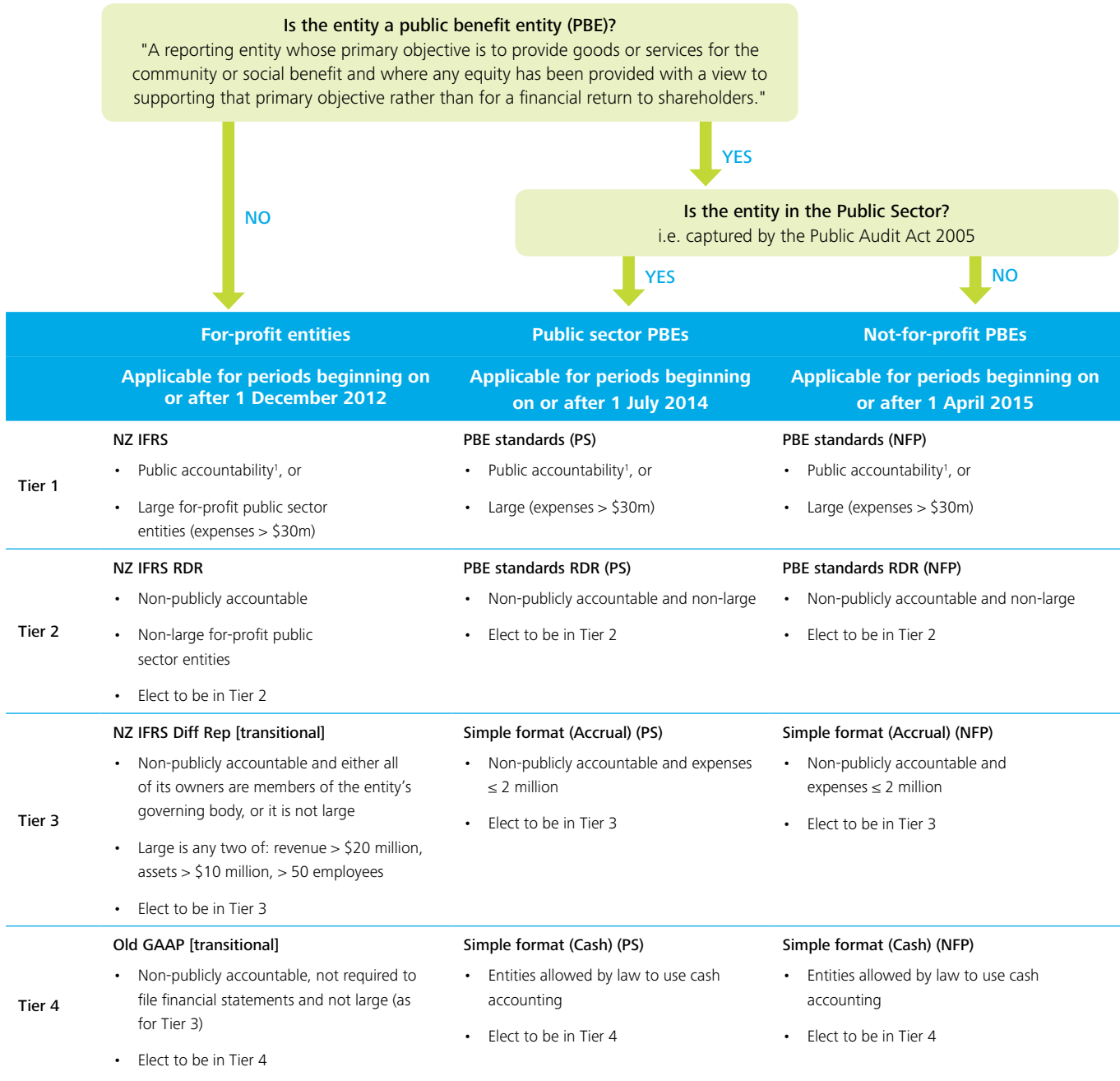
For more information

The [Financial Reporting Act 2013](#) and the [Financial Reporting \(Amendments to Other Enactments\) Act 2013](#) are both available on the www.legislation.govt.nz website.



Accounting requirements – what standards apply if financial statements are required in accordance with NZ GAAP?

The External Reporting Board (XRB) has been determining which standards apply for entities required to prepare financial statements in accordance with NZ GAAP. Standards have been issued across three sectors - for-profit entities, public benefit entities in the public sector, and other public benefit entities (referred to as 'not-for-profit' entities), with up to four different tiers for reporting within each sector.



Definition of "publicly accountable":

- Entities that meet the International Accounting Standards Board's (IASB) definition of public accountability:
 - Entities that have debt or equity instruments that are traded, or to be traded, in a public market,
 - Entities that hold assets in a fiduciary capacity for a broad group of outsiders as one of its primary businesses.
- Entities deemed to be publicly accountable. There is a proposal to change the criteria of what is "deemed" to be publicly accountable as a result of the FMCA 2013. The exposure draft notes that an entity would be deemed to be publicly accountable in the New Zealand context if:
 - It is a FMC reporting entity or a class of FMC reporting entities that is considered to have a higher level of public accountability than other FMC reporting entities under section 446W of the FMCA 2013, or
 - It is an entity or class of entities that is considered to have a higher level of public accountability by a notice issued by the FMA under section 446X(1)(a) of the FMCA 2013. The FMA has yet to designate any entities as having or not having 'higher public accountability' and in doing so vary their obligations.

For more information

Standards for for-profit entities and public benefit entities (PBEs) are available on the www.xrb.govt.nz website or at the below links.

| | For-profit entities | Public sector PBEs | Not-for-profit PBEs |
|------------------------|---|--|--|
| “Old” suite | Applies to periods beginning on or before 30 November 2012 Link here | Applies to periods beginning on or before 30 November 2012 Link here | Applies to periods beginning on or before 30 November 2012 Link here |
| “Interim” suite | N/A | Applies to periods beginning on or after 1 December 2012 and up to periods beginning on or before 1 July 2014 Link here | Applies to periods beginning on or after 1 December 2012 and up to periods beginning before 1 April 2015 Link here |
| “New” suite | Applies to periods beginning on or after 1 December 2012 Link here | Applies to periods beginning on or after 1 July 2014 Link here | Applies to periods beginning on or after 1 April 2015 Link here Note – exposure drafts are currently on issue to tailor the PBE standards for Tier 1 and Tier 2 not-for-profit entities. |



What needs to be considered where financial statements are not required in accordance with NZ GAAP?

As noted in this alert, many small and medium sized companies (that are not registered charities) will no longer have a legislative requirement to prepare financial statements in accordance with NZ GAAP.

Where shareholders choose not to opt in to the legislative framework, we note that there will still be a reporting obligation. The Inland Revenue has recently proposed some minimum reporting requirements for active companies to ensure that they accurately determine their tax positions and complete IR 10s on the basis of appropriate financial statements. A summary of the proposed requirements is included in **Deloitte's Tax Alert December 2013** available on our website www.deloitte.co.nz.

If financial statements are only prepared for tax purposes, the amendments to the Companies Act require companies to provide a copy of these statements to shareholders on request.

Companies and other entities may have other non-statutory obligations to prepare financial statements – such as under banking agreements, lease contracts and other arrangements. If these agreements currently specify that financial statements are required in accordance with NZ GAAP then the accounting framework as previously discussed will need to be considered.

Alternatively, we note that the New Zealand Institute of Chartered Accountants (NZICA) has been working on a framework for special purpose reporting that may meet the needs of the Inland Revenue, banks and other users who can request financial statements for their own purposes (i.e. special purpose instead of general purpose). This is currently in development.

We recommend that you check agreements in place and renegotiate with stakeholders as needed (e.g. will they be satisfied with opting out/not opting in or will they require financial statements prepared in accordance with an alternative special purpose framework?).

Trusts and incorporated societies

This legislation does not propose any changes to financial reporting by trusts and incorporated societies (which are not charities). However, the Law Commission is working on trust law reform which may address financial reporting. In addition, the Law Commission issued a publication proposing **A New Act for Incorporated Societies** suggesting that incorporated societies should not be able to opt out of preparing and filing at least simple annual financial reports.

For more information refer to www.lawcom.govt.nz.



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