

DRAFT FOR CONSULTATION

Tax Administration (FamilyBoost Tax Credit Income and Schedular Payments) Exemption Notice 2024

Pursuant to section 6E(1)(b) of the Tax Administration Act 1994, the Commissioner of Inland Revenue, being satisfied of the matters set out in section 6E(2) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Tax Administration (FamilyBoost Tax Credit Income and Schedular Payments) Exemption Notice 2024.

2 Commencement

This notice comes into force on 1 October 2024.

3 Revocation

This notice is revoked on the close of 31 March 2025.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Income Tax Act 2007

exemption means the exemption in clause 5.

- (2) In this notice, unless the context otherwise requires, any term or expression that is not defined in this clause, but is defined in the Tax Administration Act 1994 or the Income Tax Act 2007 and used in this notice, has the same meaning given to it by those Acts.

5 Exemption

- (1) This exemption applies to a person who applies for a FamilyBoost tax credit for a quarter and who derived 1 or more schedular payments during that quarter.
- (2) The schedular payments are exempt from being treated as reportable income for the purposes of determining tax credit income under section MH 4 of the Act.
- (3) It is a condition of the exemption that the schedular payments must instead be treated as taxable income other than reportable income for that purpose, and that tax credit income must be determined under either section MH 4(3) or MH 4(4) accordingly.

6 Application period for exemption

The period for which the exemption applies—

- (a) commences on 1 July 2024; and
- (b) ends on the close of 31 March 2025.

7 Content of exemption

- (1) The exemption is available generally to all persons who apply for a FamilyBoost tax credit for a quarter.
- (2) A person to whom the exemption is available may choose whether or not to apply the exemption.

8 Opting-in and opting out

- (1) The default position is that the exemption applies to every person who applies for a FamilyBoost tax credit for a quarter.
- (2) However, a person can choose not to apply the exemption at any time by requesting the Commissioner, using the process for opting-out that is specified on the Inland Revenue Department's Internet site, to determine their entitlement to a FamilyBoost tax credit without applying the exemption

Dated at Wellington this day of 2024.

Chief Tax Counsel, Inland Revenue Department.

Explanatory note

This note is not part of the notice but is intended to indicate its general effect.

This notice, which comes into force on 1 October 2024 and is revoked on 31 March 2025, exempts schedular payments from being treated as reportable income for the purposes of determining tax credit income for the FamilyBoost tax credit under section MH 4 of the Income Tax Act 2007. Schedular payments are payments listed in schedule 4 of that Act, from which tax is withheld at source, and include payments made to contractors who perform certain activities. Section MH 4 was inserted on 1 July 2024 by the Taxation (Budget Measures) Act 2024. The exemption applies retrospectively, from 1 July 2024.

Statement of reasons

Commissioner's reasons for granting exemption

This statement of the Commissioner's reasons for granting the exemption is published in accordance with section 6E(7) of the Tax Administration Act 1994.

The Commissioner is satisfied that—

- the exemption is reasonably necessary to give effect to the intended purpose or object of a provision in the Inland Revenue Acts:
- the exemption does not materially affect the intended scope or effect of the provision to which it applies:
- the exemption is not inconsistent with the intended purpose or object of the relevant provision:
- the exemption has no, or has only negligible, fiscal implications for the Crown:
- the exemption is the most appropriate way of addressing or resolving the issue at this time:
- the exemption is not broader than is reasonably necessary to address or resolve the issue that gave rise to it:
- where the exemption applies to a person unless they choose not to apply it, the person has a reasonable opportunity to choose not to apply it:
- a consultative process has been undertaken on the proposed exemption and the explanation of the way in which it complies with the requirements of section 6F of the Tax Administration Act 1994:
- the exemption will not, in substance, have the effect of extending the period for which a modification previously made under section 6D, or an exemption previously granted under section 6E, of the Tax Administration Act 1994 applies.

Exemption is reasonably necessary to give effect to intended purpose or object of provision in Inland Revenue Acts

A summary of the situation is as follows:

- subpart MH of the Income Tax Act 2007 (**subpart MH**) was enacted by section 14 of the Taxation (Budget Measures) Act 2024, with effect from 1 July 2024:
- subpart MH provides for FamilyBoost tax credits. A person's entitlement to FamilyBoost tax credits depends, in part, on their tax credit income for a quarter. Section MH 4 provides for the calculation of a person's tax credit income:
- section MH 4(2) provides that, for a person who derives only reportable income in the quarter, their tax credit income is the amount of that reportable income. Reportable income includes schedular payments received by a person. Therefore, if a person only receives reportable income for a quarter, their tax credit income will include any schedular payments they receive:
- section MH 4(2) does not allow for any allowable deductions incurred in deriving the schedular payments to be offset against the schedular payments. This means that the gross amount of any schedular payments will be taken into account in determining the person's tax credit income.

This outcome is inconsistent with the purpose or object of subpart MH. It is intended that a person's tax credit income for a quarter is based on the person's most recent taxable income. Including schedular payments without allowing for allowable deductions to be offset may mean that the person's tax credit income is overstated, and their entitlement to FamilyBoost is reduced.

The effect of the exemption made above is that when a person's income for a quarter includes schedular payments, their tax credit income will be calculated by reference to the most recent income tax return filed by the person, pursuant to either section MH 4(3) or MH 4(4), depending on whether the person has any other reportable income. This means that their tax credit income will be based on their taxable income.

The Commissioner is satisfied that the exemption will assist in achieving, and is consistent with, the intended purpose or object of subpart MH.

Exemption does not materially affect intended scope or effect of provision to which it applies

The Commissioner considers that the exemption does not materially affect the intended scope of subpart MH.

Exemption is not inconsistent with purpose or object of relevant provision

The Commissioner considers that the intended purpose or object of the relevant provision was that the tax credit income of people who receive schedular payments would be their income after claiming any expenses (rather than the amounts reported before expenses). The exemption ensures the law can be applied as intended.

Exemption has no, or has only negligible, fiscal implications for the Crown

The Commissioner is satisfied that the exemption will have only negligible fiscal implications for the Crown.

Exemption is most appropriate way of addressing or resolving issue at this time

The Commissioner considers that this exemption is the most appropriate way of addressing this issue at this time. While legislative amendment would also correct this matter, the implications are that some people may not receive their correct entitlement to FamilyBoost until after such an amendment is enacted. This exemption allows the correct entitlement to be paid when intended. The proposal is to include a retrospective amendment addressing this issue in the Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill. This remedial legislation will resolve the issue in the primary legislation. However, until that remedial amendment is included in that Bill and the Bill comes into force, the Inland Revenue Department is unable to apply the law as was intended. The Commissioner considers it undesirable to wait for amending legislation to pass, as this will delay entitlements to the full intended FamilyBoost tax credits in some cases.

Exemption is not broader than is reasonably necessary to address or resolve issue that gave rise to it

The Commissioner considers that the exemption is not broader than is reasonably necessary to address or resolve the issue that gave rise to it. The exemption only applies to persons who apply for FamilyBoost tax credits and derive schedular payments in a quarter.

When exemption applies to person unless they choose not to apply it, person has reasonable opportunity to choose not to apply it

The exemption will apply to all applicants for FamilyBoost tax credits unless they opt-out. The Commissioner is satisfied that these taxpayers will have a reasonable opportunity to choose not to apply the exemption, as they can ask the Commissioner to determine their entitlement to a FamilyBoost tax credit in a manner that does not apply the exemption if they choose for it not to apply. Information on this choice, and how to exercise it, will be provided on the Inland Revenue Department's website.

Consultative process has been undertaken as required by Act

The Inland Revenue Department consulted on a proposed exemption, and an explanation of the way the exemption would comply with the requirements of section 6E of the Tax Administration Act 1994, between XX 2024 and XX 2024. The Commissioner decided a two-week period of consultation to be appropriate in the circumstances because of the urgency of the situation for affected taxpayers.

Exemption will not, in substance, have effect of extending period for which modification previously made under section 6D, or exemption previously granted, applies

The Commissioner is satisfied of this criterion because no modification has previously been made, and no exemption has previously been granted, under the Tax Administration Act 1994 to address or resolve this issue.

Other

The Inland Revenue Department will publish guidance on the exemption, its effect, and how affected applicants for FamilyBoost tax credits can choose to apply it or not to apply it. This guidance will be included on the Inland Revenue Department's website.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This notice is administered by the Inland Revenue Department.