
Rewriting the Income Tax Act

Exposure Draft

Part N

Land and Income Assessment Act 1891
Land and Income Assessment Act 1900
Land and Income Assessment Act 1908
Land and Income Tax Act 1916
Land and Income Tax Act 1923
Land and Income Tax Act 1954
Income Tax Act 1976
Income Tax Act 1994
Income Tax 2004

Rewrite Project Team

First published in June 2006 by the Policy Advice Division of the Inland Revenue Department,
P O Box 2198, Wellington.

Rewriting the Income Tax Act: Exposure Draft – Part N
ISBN 0-478-27136-0

Introduction

This exposure draft has been prepared by the project team responsible for rewriting New Zealand's income tax legislation. It contains draft legislation for the rewrite of Part N of the Income Tax Act 2004, which relates to the calculation and payment of amounts of tax.

The key objective of rewriting this Part is to produce tax legislation that is clear, uses plain language and is structurally consistent. This should make it easier for taxpayers to identify and comply with their income tax obligations, and ultimately save them time and money.

We are rewriting the law as it currently stands. Changes to the law, other than minor changes in the interests of clarity or simplicity, will continue to be handled through the normal legislative programme. Cross-references to sections outside Part N are to provisions within the Income Tax Act 2004. The presence or absence of provisions in the rewritten draft legislation does not necessarily indicate any future change in tax policy.

We invite submissions on any aspect of this work, including the points raised in this commentary. The closing date for submissions is 21 July 2006. Submissions should be made to:

The Rewrite Project
Policy Advice Division
Inland Revenue Department
PO Box 2198
WELLINGTON

Electronic submissions should be sent to: policy.webmaster@ird.govt.nz.

Please note submissions may be the subject of a request under the Official Information Act 1982. The withholding of particular submissions on the grounds of privacy, or for any other reason, will be determined in accordance with the Act. If you feel any part of your submission could be properly withheld under the Act (for example, for reasons of privacy), please indicate this clearly in your submission.

COMMENTARY ON REWRITTEN PART N OF THE INCOME TAX ACT 2004

Introduction

In the 2004 Act, Part N contains a range of rules relating to tax payments and obligations. As well as rewriting the provisions in Part N, the rewritten Part N includes similar rules that were previously located in Part M, including the rules relating to terminal tax, provisional tax, and refunds.

The drafting changes relate mainly to structural relationships, are relatively minor, and are intended to improve the legislation. They fall into three main types:

- modernising the style and language;
- improving the clarity of the law; and
- removing redundant material and moving some provisions to other parts of the Act.

Policy clarification

A minor drafting clarification has been made in the provisional tax rules in relation to the attribution rule for services in draft section NC 37(5). This minor change clarifies that the period of time by which a return of income is filed includes an extension of time agreed to by the Commissioner. This minor clarification provides a consistent rule for persons who have similar requirements for provisional tax purposes.

Drafting improvements

Major improvements in the clarity of the legislation will arise from:

- linking the obligations imposed under section BB 2 to the detailed rules for each payment type in the relevant subparts within Part N;
- rationalising common rules into a new subpart NA;
- drawing together into subpart NA the payment dates by which a person must satisfy the obligations imposed under section BB 2 and subpart BE, as recent amendments have harmonised many of these dates;
- locating administrative rules within the Tax Administration Act 1994 (TAA); and
- moving the Income Tax (Withholding Payments) Regulations 1979 to draft subpart ND.

Obligations

A list of obligations is set out in draft section NA 1, with this list being supplemented by draft sections NA 3 to NA 6.

Rationalisation of provisions

In the 2004 Act, many of the subparts contain similar provisions relating to:

- the treatment of an amount withheld from a payment of income for income tax and other purposes;
- the treatment of the various payment obligations as a debt due to the Commissioner; and
- who must satisfy the various payment obligations.

These rules have been rationalised in subpart NA to avoid unnecessary duplication.

The Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 contained measures aligning a number of the payment dates for a range of tax types. Because of this policy intent of aligning payment dates, all payment dates have been relocated to subpart NA.

Administrative rules

Administrative provisions have been moved to the TAA as they mainly involve information and notification requirements. The provisions moved are detailed later in this commentary.

Redundant material

Some rules in the 2004 Act relating to the change of taxable periods for GST periods duplicate rules contained in the Goods and Services Tax Act. These rules have been omitted as they are not necessary.

Benefits of the proposed structure

Although current readers may be familiar with the concepts contained in Part N, the rewrite of this Part must also take into account the needs of future readers.

Future readers will come to the legislation without knowledge of how the various rules in Part N interact with other Parts of the Act, particularly Parts B, L, and M. In identifying these interrelationships, the draft legislation helps readers understand the relationship between provisions in other Parts of the Act and the transactions and situations dealt with in Part N.

The ordering of the subparts and provisions in the subparts reflects the drafting policy that more generally applicable provisions should appear earliest in each Part.

Cross-references in this exposure draft to Parts outside Part N relate to the 2004 Act, not to the recently released exposure drafts of other rewritten Parts. This is because further intensive specialist reviews of these exposure drafts are planned and may lead to changes to these draft provisions.

Specific feedback

We invite comment on the proposed structure of draft subpart NA, in particular the location of the draft provisions relating to payment dates within this subpart.

Comment on any of the drafting clarifications and terminology is welcomed.

Relationship of Part N to other Parts

The main relationship between Part N and the rest of the Act is that Part N sets out how and when a person must comply with the obligations imposed under sections BB 2 and subpart BE. When a person satisfies an obligation under Part N, a credit of tax will arise under Part L.

When a company satisfies an income tax or dividend withholding payment obligation, the company is generally required to account for those payments under the memorandum account rules in Part M.

Moving 2004 Act Part M provisions to Part N

Subparts MB, MBA, MBB, MBC, MC and MD have been rewritten and moved to the draft Part N.

Part N provisions containing GST rules

Sections MB 11 and MB 26 have been omitted from the rewritten Part N or moved to the GST Act as they duplicate provisions within the GST Act.

Moving 2004 Act Part N provisions to the TAA

A large number of administrative provisions have been moved to the TAA and merged with existing rules or as part of proposed new TAA rules. The draft provisions are set out at the end of this Exposure Draft. The 2004 Act provisions moved are (including Part M provisions located in subparts that are being moved to the rewritten Part N):

- subpart MB (Provisional tax): MB 28;
- subpart MBA (Provisional tax pooling): MBA 2, MBA 3, MBA 4, MBA 5(5), (6), MBA 8 and MBA 9;
- subpart NBA (PAYE intermediaries): NBA 1 NBA 2, NBA 4, NBA 5, NBA 7 and NBA 8;
- subpart NBB (Subsidies paid to certain PAYE intermediaries): NBB 2, NBB 3, NBB 4 and NBB 7;
- subpart NC (PAYE rules): NC 7(1), (3) NC 8(1), (1AA), (2) to (4), (7), (9A), (10), (12), NC 8A, NC 9, NC 12A(1) to (3), NC 14 and NC 15(1)-(3);
- subpart ND (FBT): ND 2(3), ND 9(2), (3), ND 10(2) to (5), ND 11, ND 12, ND 13(5), (6), ND 14(5), (6), ND 15(7), (8) and ND 1(6);
- subpart NF (Resident withholding tax): NF 2AA, NF 8(2) to (4), NF 9, NF 10(1)(a), (d), (3) and NF 11;
- subpart NG (Non-resident withholding tax): NG 5 to NG 7 and NG 16(5); and
- subpart NH ([Payments] for foreign dividends): NH 2(4), NH 3(6) and NH 4(5)(b), (c).

Withholding payment regulations

The Income Tax (Withholding Payments) Regulations 1979 have been moved into draft subpart ND.